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1. DRIVERS' LICENSE FEES—REGISTRAR OF MOTOR VEHICLES WITHOUT AUTHORITY TO EXPEND SUCH FUNDS WHETHER COLLECTED PRIOR OR SUBSEQUENT TO AMENDMENT, SECTION 6296-22 G.C., AMENDED SENATE BILL 78, 94 GENERAL ASSEMBLY—SUCH FEES PAID INTO AND ARE IN STATE TREASURY—EXPENDED "IN PURSUANCE OF A SPECIFIC APPROPRIATION MADE BY LAW."
2. CERTAIN NEW DUTIES CREATED — NO MONEYS APPROPRIATED.
3. EMERGENCY BOARD WITHOUT AUTHORITY TO ALLOW MONEYS TO "BUREAU OF MOTOR VEHICLES-DRIVERS LICENSE DIVISION" TO COVER SUCH NEW DUTIES.
4. HOUSE BILL 665, SECTION 8, 94 GENERAL ASSEMBLY—CONTROLLING BOARD—AUTHORITY TO TRANSFER CERTAIN FUNDS TO SAID BUREAU AND LICENSE DIVISION.

SYLLABUS:

1. *The Registrar of Motor Vehicles is without authority to expend funds derived from "Drivers' License Fees", collected under section 6296-22 and cognate sections of the General Code, whether such fees were collected prior or subsequent to the amendment of Section 6296-22, supra, by the 94th General Assembly (Am. S.B. No. 78), except "in pursuance of a specific appropriation made by law" for a period not longer than two years, as required by Section 22, Article II, of the Constitution, since such fees are required to be paid into, and are in, the State Treasury.*

2. *Amended Senate Bill No. 78, amending certain sections pertaining to the "Drivers' License Law" and creating certain new duties, does not appropriate any moneys to cover such new duties, notwithstanding the fact that the Legislature in enacting the Current General Appropriation Act may not have considered such new duties in making an appropriation to the "Bureau of Motor Vehicles—Drivers' License Division".*

3. *The Emergency Board is without authority to allow moneys to the "Bureau of Motor Vehicles—Drivers License Division" to cover any new duties imposed by Amended Senate Bill No. 78, 94th General Assembly.*

4. *Under the provisions of section 8 of House Bill No. 665 of the 94th General Assembly, the Controlling Board may authorize, within, from and to the classifications set out in said section, a transfer of surplus funds derived from fees collected under the provisions of the Drivers' License Law (section 6296-1, et seq., General Code), which have been credited to the Maintenance and Repair Fund of the Highway Department pursuant to section 6296-22, General Code, to the Bureau of Motor Vehicles—Drivers' License Division.*

Columbus, Ohio, September 10, 1941

Hon. H. G. Sours, Director, Department of Highways,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"It is necessary that the Department of Highways, Bureau of Motor Vehicles, obtain an opinion as soon as possible relative to Amended Senate Bill No. 78, Section 6296-22, wherein it is stated that 'the deputy registrar shall transmit the fees collected at the time and in the manner provided by section 6294 of the General Code to the registrar, who shall pay the same into the state treasury to be disbursed upon the order of the registrar of motor vehicles for the expense of the administration of this act.'

This Amended Senate Bill No. 78 was passed by the Ninety-Fourth General Assembly and it amends House Bill No. 569 passed by the Ninety-First General Assembly on December 3, 1935. Both of these enactments deal with the Drivers' License Law.

An appropriation was made by the Ninety-Fourth General Assembly to take care of House Bill No. 569, but no appropriation was made for the additional duties as provided in Amended Senate Bill No. 78. The amount necessary to administer this last act is approximately \$55,000.

It is necessary, in view of the fact that this enactment will become effective in September, 1941, that the monies be made available. These monies will be applied to the purchase of various items including 3,000,000 folders, 150 filing cabinets, index systems, sorting machines, postage, envelopes, type-writing implements, and several items of printing, a few of which include driving permits, instructions, special reportings, temporary applications, etc; This is complicated in view of the

fact that the Federal Government has certain priority on materials.

Hence, in light of the above information, will you please advise us:

1. Does the Registrar of the Bureau of Motor Vehicles have authority to use Drivers' License Fees collected under Section 6296-22 prior to amendment, and would the Bureau be limited to a sum determined by the Board of Control, or to an amount that is determined by the Registrar as necessary for the administration of Amended Senate Bill No. 78?

2. Although the General Appropriation Act did not include an appropriation for the administration of the new duties created under Amended Senate Bill No. 78, does the Amended Senate Bill No. 78 appropriate monies for the administration of this act?

3. Can the Department of Highways, Bureau of Motor Vehicles, obtain an advancement of monies from the Emergency Fund of the Emergency Board, to be repaid when the revenues are collected in the administration of the act, said act being Amended Senate Bill No. 78?

4. Does the Board of Control have authority to transfer the surplus funds derived from the Drivers' License Law assigned to the Maintenance and Repair Fund to the Bureau of Motor Vehicles for the purpose of administering the recent enactment of the General Assembly as set forth in Amended Senate Bill No. 78?"

Amended Senate Bill No. 78, passed by the 94th General Assembly, and which by the express terms thereof is to "take effect on September 1, 1941", is entitled "An Act—To amend sections 6296-6, 6296-7, 6296-8, 6296-10, 6296-11, 6296-12, 6296-13, 6296-15, 6296-16, 6296-18, 6296-22, 6296-23, 6296-25 and 6296-37 of the General Code, to enact supplemental sections 6296-14a, 6296-18a and 6296-18b of the General Code, and to repeal section 6296-38 of the General Code, relative to the operation of vehicles on streets and highways, and licensing of drivers and operators of motor vehicles, and the fees and charges therefor." Since this act was not passed as an emergency and was not filed in the office of the Secretary of State until June 6, 1941, the same did not become effective until September 5, 1941, notwithstanding the language thereof.

With the exception of Section 6296-22, General Code, it is unnecessary, for the purpose of this opinion, to set forth the various sections enumerated in the title of the above act as being either amended or enacted as supplemental sections. It is sufficient to say that in such sections specific and detailed provisions are contained pertaining to the examination and "licensing of drivers and operators of motor vehicles, and the fees

and charges therefor", Section 6296-22, *supra*, reading as follows (the words emphasized indicating the amendments):

"Each application for a temporary instruction permit and examination shall be accompanied by a fee of fifty cents, and each application for an operator's or chauffeur's permit, or renewal thereof, or for a certified duplicate thereof, shall be accompanied by a fee of twenty-five cents, and on Monday of each week the deputy registrar shall transmit the fees collected at the time and in the manner provided by section 6294 of the General Code to the registrar, who shall pay the same into the state treasury to be disbursed upon the order of the registrar of motor vehicles for the expense of the administration of this act. Any surplus remaining in such fund shall from time to time be credited to the maintenance and repair fund of the highway department and is hereby appropriated to the use of said fund."

Pertinent to your inquiry are Section 5, Article XII and Section 22, Article II of the Constitution of Ohio, which sections respectively provide as follows:

Sec. 5, Art. XII:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

Section 22, Art. II:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

The office or position of registrar of motor vehicles was created by the General Assembly in the act codified as Section 6290-1, General Code, this section, *inter alia*, providing that it "shall be the duty of the registrar to enforce and administer the laws of the state relative to the registration of and certificates of title for motor vehicles and the licensing of motor vehicle dealers and salesmen." What is known as the "drivers license law of Ohio" is contained in Sections 6296-1 to 6296-37, inclusive, of the General Code, in which specific and minute provisions are set forth pertaining to the administration of such law, by and under the direction and authority of the registrar of motor vehicles.

At page 59 of the General Appropriation Act of 1941-1942 (H. B. No. 665; filed 6-3-1941), appropriations are made to the "Bureau of

Motor Vehicles—Drivers License Division” in the sum of \$513,080.00 to cover “personal service” and “maintenance”, it being expressly provided that these monies are appropriated “under the provisions of Section 6292-22, General Code (sic.: i.e., Sec. 6296-22, G.C.), and related sections of the General Code.”

As you shall have noticed, Section 6296-22, *supra*, as amended, requires that fees received from applicants “for a temporary instruction permit and examination” or “for an operator’s or chauffeur’s permit, or renewal thereof” shall be paid by the registrar of motor vehicles “into the state treasury to be disbursed upon the order of the registrar of motor vehicles for the expense of the administration” of the act. The section further provides that any “surplus remaining in such fund shall from time to time be credited to the maintenance and repair fund of the highway department”, said surplus being thereby “appropriated to the use of said fund.” Being paid *into*, and therefore being *in*, the state treasury, such fees may not be withdrawn therefrom “except in pursuance of a specific appropriation made by law”, for a period not longer than two years. It is therefore my opinion that neither the registrar of motor vehicles, nor any other officer, division or department of state, may “use Drivers License Fees, collected under Section 6296-22”, General Code, either prior or subsequent to the amendment of such section, other than such sums as have been or may be duly appropriated by the legislature in accordance with the constitutional mandate above noted.

And in this connection it is not without significance that former Section 6296-37, General Code, which read:

“The registrar of motor vehicles, with the approval of the director of highways, is hereby authorized to transfer any sum not exceeding one hundred thousand dollars of funds arising from the tax on motor vehicles which shall have been paid into his hands and not finally distributed, to a fund for defraying the initial expenses of this act, and the auditor of state and the treasurer of state are hereby authorized and directed to make such transfers as may be necessary to give effect to this section; provided, however, that the fund from which the transfer is made shall be reimbursed from the first receipts of the fees provided for herein.”

was expressly repealed in Amended Senate Bill No. 78, the new section 6296-37 (which number was given by the legislature), providing only

that this "act shall take effect on September 1, 1941".

In view of the negative answer to the first branch of your first question, an answer to the other two branches thereof is rendered unnecessary.

I come now to a consideration of your second question. From what has been said above, the answer thereto requires no extended discussion. Clearly there is no appropriation in Amended Senate Bill No. 78. And even if Section 6296-37, supra, had been re-enacted as it formerly read, I am persuaded that the detailed and itemized appropriation on page 59 of the current General Appropriation Act, supra, appropriating to the "Bureau of Motor Vehicles—Drivers License Division" specific amounts for salaries; for supplies of various kinds; for different types of equipment; for contracts and open order services of several descriptions; etc., would govern for two reasons. First, it is an act dealing specifically with a special subject, viz., appropriations, that is to say, a special act dealing with a particular subject, and, Second, it is both a grant and also a limitation thereof. See *Rogers v. United States*, 183 U. S. 83, 89, 1902; *Doll v. Barr*, 58 O. S. 113, 120 (1898); *State ex rel. Steller, etc. v. Zangerle, Auditor, etc.*, 100 O. S. 414 (1919), as to the first principle here applicable, and see *Frisbie Company v. East Cleveland*, 98 O. S. 266 (1918), as to the second proposition. For the reasons above set forth, I have no alternative but to answer your second question in the negative.

This brings me to your third question. Pertinent thereto is section 2313, General Code, which reads in part as follows:

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law."

In an opinion rendered by the then Attorney General on August 3, 1927 (*Opinions of the Attorney General, 1927, Vol. II, page 1441*), wherein the above statute was under consideration, it was held:

"The Emergency Board is empowered to make an allotment

of funds only (a) in case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or (b) in case of an emergency requiring the expenditure of money not specifically provided by law, i.e., in case of a sudden or unexpected happening or unforeseen occurrence or condition.

“The power and duty of determining whether or not a case of an emergency exists is primarily vested in the Emergency Board, which is to be guided by legal principles and not by questions of policy, any abuse of discretion being reviewable by the courts.”

In said opinion it is stated:

“While the power and duty of determining whether or not ‘a case of an emergency’ exists is primarily vested in the board itself, the board is to be guided by legal principles in determining what is an emergency and not by questions of policy. The word emergency has been defined many times and its meaning is not difficult to ascertain. The definition given by the Century Dictionary, quoted with approval by the Supreme Court of Ohio, in the case of State, ex rel. vs. Zangerle, Auditor, 95 O.S. 1, 8, is readily understandable and is as follows:

‘(1) A sudden or unexpected happening; an unforeseen occurrence or condition; specifically, a perplexing contingency or complication of circumstances.

(2) A sudden or unexpected occasion for action; exigency; pressing necessity.’

Only is the board empowered to act, when an emergency, as that term is legally defined, exists. Any attempt to exercise a discretion in the absence of an emergency under the law is clearly unwarranted.”

In the instant case there are no facts present which, in my opinion, constitute an emergency within the above definitions.

The question then arises as to whether or not the Emergency Board may make an allowance to the Drivers License Division of the Bureau of Motor Vehicles if such Board determines that there is a deficiency in the appropriation to said Division. A careful consideration of this question leads me to the conclusion that the answer thereto should also be in the negative.

In regard thereto, it should be pointed out that the Legislature has

definitely provided that the expense of administration of the Drivers License Law shall be paid from fees derived from the issuance of permits provided for therein. A definite legislative policy to the effect that general revenue funds should not be used to finance the activities of said Division was declared by the enactment of section 6296-22, supra. The apportionment made to the Emergency Board in House Bill No. 665, supra, expressly provides that the money appropriated therein is to be taken from the general revenue fund and, consequently, any allowance made from such appropriation to the Bureau of Motor Vehicles for the purpose of administering the Drivers License Law would be from moneys in the general revenue fund. As pointed out above, this would be in direct conflict with the express provisions of section 6296-22, General Code, wherein the Legislature clearly and definitely stated that the fees collected from the issuance of permits shall be "disbursed upon the order of the Registrar of Motor Vehicles for the expense of the administration of this act."

The third question in your letter seems to contemplate that the allowance from the Emergency Board is to be treated as an advancement to be repaid when revenues are collected in the administration of the act. Having pointed out above that only such an amount of the fees collected or to be collected as is appropriated in House Bill No. 665 may be used for administrative expense, it is difficult for me to perceive how any money can be available to repay any allowance made by the Emergency Board if such allowance is made for the reason that the appropriation made in House Bill No. 665 is insufficient.

You are therefore advised that, in my opinion, the Emergency Board is without authority to make an allowance from the emergency appropriation to your Department for the administrative expense of the Drivers License Law.

In your last question you ask whether the Controlling Board has authority to transfer the surplus funds derived from the Drivers License Law assigned to the Maintenance and Repair Fund to the Bureau of Motor Vehicles for the purpose of administering Amended Senate Bill No. 78. The powers of the Controlling Board with respect to the transfer of funds are set out in House Bill No. 665, supra, as follows:

"The controlling board shall have power:

- (a) To grant authority to any department, institution,

office or other agency or body for which an appropriation is made in section I of this act, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds within a department, division or agency for which appropriations are made from any item to another within 'Personal Service,' 'Maintenance,' 'Subsidies' or 'Additions and Betterments'; also to authorize transfers of funds from items entitled 'Personal Service,' 'Maintenance,' 'Subsidies' or 'Additions and Betterments' to any one of the aforementioned classifications, or to transfer to new classification items in cases where proper code items have not been provided by the legislature. However, the controlling board may, if it deems advisable, delegate to the director of finance authority to approve transfers of funds from any item to another within 'Personal Service' or 'Maintenance' during such period or periods as it might determine."

From the above, it is at once apparent that a transfer of funds within a department from one item to another within "Personal Service," "Maintenance," "Subsidies" or "Additions and Betterments" may be authorized by the Controlling Board. The moneys in the Maintenance and Repair Fund are, under the provisions of House Bill No. 665, appropriated to the Highway Department and the Bureau of Motor Vehicles — Drivers License Division, to which an appropriation is made in said bill, is of course within the Highway Department and consequently the Controlling Board may, under the above powers conferred upon it, authorize the transfer in question.

In connection therewith, however, it should be pointed out that the moneys in the Maintenance and Repair Fund are derived from different sources. In addition to the surplus derived from the issuance of drivers' licenses, credited to such fund under the provisions of section 6296-22, supra, certain taxes which are levied for a specific purpose are also placed therein. In such fund are revenues derived from what is commonly called the "first gasoline tax" levied under the provisions of section 5527, et seq., General Code. This is an excise tax levied for the purpose of providing revenue for maintaining the state highway system; for repairing damage caused to such highway system of the state by motor vehicles using the same; for widening existing surfaces; for resurfacing such highways in proper cases; for enabling counties of the state properly to maintain and repair their roads; and for enabling municipal corporations of the state properly to maintain, repair, construct and repave their streets. The section further provides that the taxes so levied are to supplement moneys received as registration fees of motor vehicles. Second, the so-

called "second gasoline tax," provided for in section 5541, General Code, for the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of the state; supplying the state's share of the cost of eliminating railroad grade crossings upon such highways; for the purpose of enabling the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets; and for paying the cost and expenses of the Department of Taxation incident to the administration of the motor vehicle fuel laws.

The third source of revenue for such fund is what is known as the "annual motor vehicle license tax" provided for in section 6291, General Code. This section provides in part as follows:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles, constructing, maintaining and repairing public roads, highways and streets, and maintaining and repairing bridges and viaducts, paying the counties' proportion of the cost and expenses of cooperating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, reconstructing, improving, maintaining and repairing roads, and for the purpose of enforcing and paying the expenses of administering the law to provide reimbursement for hospitals on account of the expenses for the care of indigent persons injured in motor vehicle accidents, and, until and including April 15, 1941, for the purpose of supplementing revenues available for paying the salaries and wages of traffic police officers in cities. * * * "

It is at once patent that in view of the provisions of Section 5, Article XII, of the Constitution of Ohio, above quoted, these taxes having been levied for a definite object, any moneys derived therefrom may not be applied to any other purpose.

In view of the above, the Controlling Board may not lawfully authorize a transfer from the Maintenance and Repair Fund to the Bureau of Motor Vehicles — Drivers License Division, of any amount in excess of the surplus funds derived from the Drivers License Law which are credited to the Maintenance and Repair Fund.

In view of the foregoing, it is my opinion that:

1. The Registrar of Motor Vehicles is without authority to expend funds derived from "Drivers' License Fees," collected under section 6296-22 and cognate sections of the General Code, whether such fees were collected prior or subsequent to the amendment of Section 6296-22, supra, by the 94th General Assembly (Am. S.B. No. 78), except "in pursuance of a specific appropriation made by law" for a period not longer than two years, as required by Section 22, Article II, of the Constitution, since such fees are required to be paid into, and are in, the State Treasury.

2. Amended Senate Bill No. 78, amending certain sections pertaining to the "Drivers' License Law" and creating certain new duties, does not appropriate any moneys to cover such new duties, notwithstanding the fact that the Legislature in enacting the Current General Appropriation Act may not have considered such new duties in making an appropriation to the "Bureau of Motor Vehicles — Drivers License Division."

3. The Emergency Board is without authority to allow moneys to the "Bureau of Motor Vehicles — Drivers License Division" to cover any new duties imposed by Amended Senate Bill No. 78, 94th General Assembly.

4. Under the provisions of section 8 of House Bill No. 665 of the 94th General Assembly, the Controlling Board may authorize, within, from and to the classifications set out in said section, a transfer of surplus funds derived from fees collected under the provisions of the Drivers' License Law (section 6296-1, et seq., General Code), which have been credited to the Maintenance and Repair Fund of the Highway Department pursuant to section 6296-22, General Code, to the Bureau of Motor Vehicles — Drivers' License Division.

Respectfully,

THOMAS J. HERBERT,
Attorney General.