

templated should be finished so as to ripen into a reappraisal effective in 1920. The extent of the work, the number of persons to be employed and, obviously, the time required to complete the reappraisal are all matters which the auditor must take into account in making his original application, and which the commissioners or the tax commission must take into account in acting upon that application. Hence it follows, as above stated, that although it is legal to extend the process of reappraisal from a time previous to the first of July to a time considerably subsequent to that date, and to postpone the making of returns until the succeeding first of July, such course must be determined upon by the board making the allowance and the auditor must be governed thereby, in the sense that it would not be lawful nor perhaps even possible for him to expend public moneys for this purpose in excess of any limitation fixed in such manner on his application, which must be made once for all, for and on account of a given reappraisal and cannot be renewed later to piece out such reappraisal.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1062.

SUNDRY APPROPRIATION ACT—HOUSE BILL NO. 558, SECTION 2 CON-
 STRUED—POWERS OF SPECIAL AUDITING COMMITTEE.

The powers of the special auditing committee provided for in section 2 of house bill No. 558 are as follows:

1. *To require as a condition of payment, and if deemed necessary by the committee, the production of such books, papers, statements and other evidence as will exhibit to the committee the amount claimed by each claimant, the nature of the transaction giving rise to the claim, and such itemization thereof as is possible in the nature of the case and which will tend to enable the committee to correct the items and the totals where they are capable of correction; and to pay on the basis of such corrections but not in excess, of course, of the amount appropriated.*

2. *On the basis of such investigation to identify the claims presented to the committee in all legal respects with the claim approved by the legislature, not only in amount but also in substance, as to each detail of each transaction which is capable of separate consideration; and to pay only on the basis of such separable transactions as represent the transactions which the legislature has approved and thus stamped as valid and just.*

COLUMBUS, OHIO, March 9, 1920

HON. J. E. HARPER, *Budget Commissioner, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date requests the advice of this department as to the powers of the special auditing committee designated by section 2 of house bill No. 558.

The section in question is as follows:

“The monies herein appropriated shall be paid upon the approval of a special auditing committee consisting of the major appointee authorized by section 270-5 of the General Code, commonly known as the budget commissioner, the attorney-general, the auditor of state, the chairman of the finance committee of the senate and the chairman of the finance committee

of the house of representatives. Such auditing committee is hereby authorized and directed to make careful inquiry as to the validity of each and every claim herein made and pay only so much thereof as may be found to be correct and just."

The act in which the section appears is entitled "An Act to make sundry appropriations."

Following section 2 appear numerous items classified as follows:

Claims arising out of contract; damage to property; payment for services; personal damage; refunders; salary claims, (which seem to include reimbursement for personal expenses incurred); unpaid bills; current expenses; capital improvement; "miscellaneous"; and permanent improvements.

It will be observed that many of the appropriations are not for "claims" at all, but constitute the setting aside of moneys to pay liabilities hereafter to be incurred; while the character of the claims arising out of past transactions included within the bill is most multifarious.

The words evidently requiring construction are found in the second sentence of section 2, which may be briefly analyzed. In the first place, the committee is declared to be an "auditing" committee. The word thus used is suggestive of a meaning which is to be given to the entire passage. The primary meaning of this word may be given, in the words of the Standard dictionary, as follows:

"An official examination of accounts, and their verification by reference to vouchers, etc."

The same term is defined in the Century Dictionary in a similar way. In fact, all the accepted definitions seem to follow that of Webster, which is as follows:

"An examination of an account or of accounts, with the hearing of the parties concerned, by proper officers, or persons appointed for that purpose, who compare the charges with the vouchers, examine witnesses, and state the balance."

Properly speaking, therefore, an "audit" can only be made of a liquidated account where verification by means of vouchers based on already existing standards can be had. The term does not have appropriate reference to the process of arriving at a settlement of an unliquidated claim. From the fact that many unliquidated claims are included within the scope of the bill, however, the word just discussed can not be given a strictly limiting effect in this context.

The committee, being primarily an auditing committee, is then directed to make inquiry as to the *validity* of each claim and to *pay* "only so much thereof as may be found to be *correct* and *just*."

The word "claim" need not be defined at the present time, although, as pointed out, some of the appropriations will not ripen into "claims" until work authorized to be done by the appropriation has been done and payment is asked for. Neither is it felt that there is any doubt about the meaning of the word "correct." The two words the meaning of which must be carefully weighed in order to give a lucid interpretation to the section are the words "validity" and "just."

The first of these words is defined in the Standard Dictionary as follows (in the legal sense in which it is evidently employed):

"Strength or soundness in point of law."

The adjective is defined as follows:

"Legally sound, both as to form and substance."

The non-technical meaning of the adjective is given as follows:

"Supported or defended by evidence which is sound and convincing; founded on truth; capable of being proved; sound; just; good."

Webster gives the following meanings for the adjective, among others:

"Founded in truth; * * * supportable by law or right."

The word "just" offers some difficulty because as defined in Webster and the other older dictionaries this word is substantially synonymous with the meaning which must be given to the word "correct" in the same context, whereas it is clearly intended to mean something more. For example, Webster's first meaning is:

"Conforming or conformable to rectitude; not doing wrong to any; violating no right or obligation; equitable; upright; honest; true."

He also gives the following, among others:

"Exact; proper; moral; regular."

It is felt that the idea that was evidently in the legislative mind is better expressed by the Standard Dictionary as follows:

"Based on or conforming to the principles of justice; impartial; *legitimate*; as, a just claim."

It is the opinion of this department that the word "correct" refers to the idea of mathematical verity, and the word "just" refers to the idea of the legal obligation (perfect or imperfect) also inherent in the word "validity." In other words, an examination is to be made under this section into the validity of each claim, i. e., its validity in point of correspondence in amount with the vouchers, etc., to be examined in the course of the audit, and also its validity in point of law as an obligation of the state (though perhaps only a moral one). The audit is to examine into the validity of each claim from both of these standpoints. If a claim is shown to be partially invalid from either standpoint, it is not to be entirely rejected, but so much thereof as represents that which is valid is to be paid.

In each case there must be a "claim." In some of these instances this will be more or less of a formality, but some evidence of the actual occurrence of the transaction on account of which the appropriation has been made must be before the committee in order that it may discharge its function. Having evidence as to the amount claimed, the committee should then take account of whether or not it is liquidated, i. e., represents matters susceptible of being shown with mathematical certainty by the production of books, papers or vouchers. In such case it is the duty of the committee to compare the claims with such evidence of its correctness in amount and to pay only so much as appears thus to be correct. This process can hardly be applied to an unliquidated claim, such as a claim for services not based upon a per diem or other time basis, or for injury to person, etc.; but it can be applied to nearly all the claims in the bill, even in instances in which they represent "damage claims" in the general sense.

All claims, however, whether liquidated or unliquidated, or whether capable of being liquidated or not, must be looked into to determine their validity from the stand-

point of justice. As above stated, the delegation of this duty and power to the committee is not equivalent to vesting the committee with legislative discretion.

It is necessary here to discriminate between two possible implications of the term "validity in point of justice" as used in the section. One possible implication would be that the committee is to examine into the original merits of each transaction constituting the whole or a part of each claim presented to it, and if satisfied that the transaction did not give rise to a legal or moral obligation against the state to withhold payment in whole or in part on that account. The other possible implication is that the committee is not to examine into the merits of the original transaction or transactions further than to identify such transactions with the items of the appropriation bill of which the section is a part, and to be satisfied that the claim presented for payment represents a transaction within the scope of the legislative purpose in making the appropriation. For example, the first item in the bill is an appropriation to pay the claim of the

"Cranford Construction Company, Cincinnati, Ohio, * * * for rental of orange peel bucket and swinging engine."

I, of course, have no knowledge as to the transaction giving rise to this claim. Let it be assumed for the purpose of illustration that some agent of the state, without actual authority, rented from the company the equipment referred to in the item and used it in what was supposed to be the state's business. The auditing committee in the first view of the phrase now under examination would be authorized to reject the entire claim and withhold payment of the whole amount appropriated, if it should come to the conclusion that the circumstances imposed no moral or legal obligation on the state. In the second possible view of the meaning of the section, however, the committee would not possess such authority but would be limited to inquiry into whether or not the transaction described in the item actually took place and whether or not the claim presented to the committee for payment is based on that transaction.

Again, to take a quite different type of case, there are numerous appropriations for

"In full settlement for all claims for salary and traveling expenses in the State oil inspector's department owing to a deficit in the appropriations made by the 81st general assembly, resulting from a change in the oil inspection law."

Each one of these claims is, of course, to be examined and audited by the committee to determine its correctness in point of amount; but in addition to such examination the committee is authorized and required to satisfy itself that the travel constituting the transaction on which any claim for traveling expenses would be based was actually had and that it was in connection with the business of the state oil inspector's department. This would be true whichever of the two views above suggested were taken.

Coming now to the choice between these views, it seems clear to me that the second or the narrower of them must be accepted, to the exclusion of the first. By making appropriations in settlement of claims, on the one hand, or by way of providing for future expenditures, on the other hand, the assembly has itself determined the essential merits of the claims which it has described in its appropriations. It has also placed the seal of its approval upon the amount to be paid in satisfaction of such claims provided they are found to be correct. But the general assembly lacks adequate machinery for the actual disbursement of money. It is quite appropriate and entirely within the power of the assembly to provide means for checking up and verifying the claims presented for payment, so as that the payments to be made may exactly carry out the intention which lies behind each appropriation. It is as if in each

case the general assembly had said: "We desire that A. B. shall be paid the sum of.....dollars in full settement of a claim which he asserts for doing certain work and incurring certain expenses. We do so because the doing of such work and the incurring of such expenses constitutes, in the judgment of the assembly, a claim which the state ought to recognize and pay. We therefore direct the committee, as a temporary and special administrative agency, to disburse the appropriation which we have made to A. B. in satisfaction of that claim; but we wish it to be understood that A. B. is to have the money only in respect of that claim and in respect of no other. Therefore the committee must require A. B. to present his claim and identify it with the transaction which we have approved and the amount which we have allowed. In so doing the committee is to audit the claim of A. B. as a final check upon its mathematical correctness and as a means of assurance that it is the claim which we have pronounced to be a just claim by the approval of it which we make in the succeeding section of this bill."

This interpretation seems to me to be the only possible one consistent with all the provisions of the bill. The appropriations which are made are not self-executing but are conditional upon the approval of the committee exercising such authority as has been defined, but not exercising the discretion which the legislature very clearly has exercised with respect to the approval of the merits of the claim. By this interpretation effect is given not only to the language immediately under examination, but to numerous other provisions of the bill found in section 3 thereof as well. The adoption of the broader meaning suggested would give rise to an inconsistency between section 2 and the many provisions of section 3, which is to be avoided on familiar principles of statutory interpretation.

It occurs to me also that to construe section 2 of the bill so as to vest in the committee final discretion as to the merits of any claim, or part of claim, from the standpoint of abstract justice would imperil the validity of the act as a whole; for it must be remembered that so far as claims arising out of transactions not covered by pre-existing law are concerned, the general assembly was in the passage of this act exercising the authority provided for in article II, section 29 of the Constitution, which provides as follows:

"No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the general assembly."

It is, of course, assumed that the bill in question received the proper vote in each branch of the general assembly. It would be valid as an appropriation bill with respect to the items not constituting claims for extra compensation after the service has been rendered, or claims the subject matter of which has not been provided for by pre-existing law, but as to such claims the bill would be invalid had it not received the proper vote.

The section of the constitution which has been quoted provides very clearly that the general assembly must itself *allow* the compensation or claim of the class to which the section relates before it can be paid. The general assembly will be presumed to have intended to discharge this duty in the enactment of this bill. This duty is believed to be non-delegable not only on the general principle that legislative power can not be delegated, which is very familiar, but also because of the express provisions of section 29 of Article II. Therefore, the general assembly is without power to delegate to any committee or administrative tribunal the authority to allow a claim of this character.

As the bill has been interpreted no such unconstitutional delegation of authority can be found in it. But if it were very broadly interpreted—in other words, if the committee could be regarded as not bound by the action of the general assembly so far as the substantial merits of each claim are concerned, the validity of the bill as a whole would become involved in considerable doubt. This fact is mentioned for the purpose of demonstrating that even if the interpretation of section 2 already made in this opinion be regarded as doubtful, the well settled principle that an act referable to a specific constitutional authority is to be construed consistently with the specific authority that is exercised comes into play and requires the interpretation which has been given.

In passing I may say also that the validity of the bill, in so far as any question respecting delegation of judicial power is concerned, is in my opinion beyond question. The function which the committee is to discharge, as above described, partakes in no³ respect of the character of judicial power. The essential attribute of judicial power is that when exercised it has a final and determining effect upon the rights to which it is applied. In this case each claimant prior to the passage of this bill had a right against the state which was an imperfect obligation because of the immunity of the state to suit, and the further inability to obtain satisfaction against the state as a sovereign. This claim is in nowise affected by any action which the committee may take, nor indeed could it have been affected by action of the legislature. True, the legislature by allowing the claim thereby gave it certain remedial potentialities which it formerly did not possess. In the first place, if the assembly had allowed the claim but had not made any appropriation, a subsequent appropriation might be made by a simple majority of the assembly as the effect of the first action would have been to satisfy the requirements of article II, section 29 of the constitution. In the second place, the appropriation entitled the claimant to receive the money through the channels provided for its payment by the act of appropriation. The function of the committee comes in here merely as a conduit through which the money must pass from the state treasury to the claimant and as a safeguard against the violation of the substantial legislative intent in making the allowance itself. That is to say, the legislature virtually enacted that each claim—describing in most instances the transaction in the mind of the legislature—is allowed and a certain sum appropriated to pay it, which sum is to be the amount with respect to which the allowance is made, except that the assembly does not intend to allow anything except the claim described to the individual or corporation mentioned as the claimant, nor is the amount appropriated to be paid to him or it at all events but only to the extent which the process of auditing may disclose to be "correct and just" as these terms are above defined.

The legislature, having itself created the new remedial potentialities of the claim, may in the act of creation qualify these matters and appoint a temporary administrative tribunal to discharge the necessary function involved without in anywise affecting the original claim itself, and without precluding either the state or the claimant from any juridical remedies which either might otherwise have, notwithstanding the action of the committee.

For the above reasons, then, it is the opinion of this department that section 2 of house bill No. 558 is a valid enactment; that the bill as a whole is valid; and that the powers of the special auditing committee provided for in said section 2 are as follows:

(1) To require as a condition of payment, and if deemed necessary by the committee, the production of such books, papers, statements and other evidence as will exhibit to the committee the amount claimed by each claimant, the nature of the transaction giving rise to the claim, and such itemization thereof as is possible in the nature of the case and which will tend to enable the committee to correct the items and the totals where they are capable of correction; and to pay on the basis of such corrections but not in excess, of course, of the amount appropriated.

(2) On the basis of such investigation to identify the claims presented to the committee in all legal respects with the claim approved by the legislature, not only in

amount but also in substance, as to each detail of each transaction which is capable of separate consideration; and to pay only on the basis of such separable transactions as represent the transactions which the legislature has approved and thus stamped as valid and just.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1063.

PROBATE COURT—WITHOUT JURISDICTION IN INSANITY CASES WHERE RESIDENCE OF ALLEGED INSANE PERSON IS KNOWN UNLESS SAID PERSON HAS LEGAL SETTLEMENT IN COUNTY—WHAT IS LEGAL SETTLEMENT—CASES OF NON-RESIDENT OR WHERE RESIDENCE IS UNKNOWN OF ALLEGED INSANE PERSON, COURT MAY TAKE JURISDICTION FOR PURPOSES CONTEMPLATED IN SECTIONS 1819 AND 1820 G. C.

A probate court has not jurisdiction in insanity cases where the residence of the alleged insane person is known unless said person has a legal settlement in the county. To acquire such a legal settlement the person must have lived in said county for a period of twelve consecutive months. However, in case the alleged insane person is a non-resident of the state, or his residence is unknown, the probate court may take jurisdiction for the purposes contemplated in sections 1819 and 1820 G. C.

COLUMBUS, OHIO, March 9, 1920.

HON. JOHN COONROD, *Probate Judge, Fremont, Okla.*

DEAR SIR:—Your letter of recent date is as follows:

"In section 1953 G. C. the form of affidavit to be filed in insanity cases must be substantially as follows:

"The State of Ohio.....County ss:
, the undersigned, a citizen of.....county, Ohio, being sworn, says that he believes.....is insane, (or, that in consequence of his insanity, his being at large is dangerous to the community.) He has a legal settlement in.....township, in this county.

Dated this.....day of....., A. D."

In order to give the Probate Court jurisdiction in insanity cases, must the alleged insane person have resided continuously in this county for twelve consecutive months as is provided by section 3477 G. C., which defines legal settlement?"

The opening paragraph of section 1953 G. C., to which you refer, is as follows:

"For the admission of patients to a hospital for the insane, the following proceedings shall be had. A resident citizen of the proper county must file with the probate judge of such county an affidavit, substantially as follows:" (Then follows the form of affidavit set out in your letter).

Section 3477 G. C. provides in part:

"Each person shall be considered to have obtained a legal settlement