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1. THE PROVISIONS OF SECTION 14 OF AMENDED SUBSTITUTE HOUSE BILL NO 831 OF THE 103RD GENERAL ASSEMBLY AUTHORIZING THE CONTROLLING BOARD TO ALLOW EXPENDITURES OF MONEYS APPROPRIATED BY THAT ACT OTHERWISE THAN IN ACCORDANCE WITH THE ITEMS OR CLASSIFICATIONS SET FORTH, AND THE PROVISIONS OF SECTION 18 OF THAT ACT REQUIRING COMPETITIVE BIDDING ON EXPENDITURES OF MORE THAN \$1,000 EXCEPT WHERE THE CONTROLLING BOARD ALLOWS OTHERWISE ARE NOT IN CONFLICT WITH THE PROVISIONS OF SECTION 125.13, REVISED CODE, REQUIRING THAT PROCUREMENTS AND PURCHASES OF SUPPLIES OR EQUIPMENT OR CONTRACTS FOR OR OPERATION OF DATA PROCESSING MACHINE SERVICES, MUST BE MADE THROUGH THE DEPARTMENT OF FINANCE—

2. WHERE A TRANSFER OF FUNDS IS MADE BY THE CONTROLLING BOARD PURSUANT TO SECTION 15 OF AMENDED SUBSTITUTE HOUSE BILL NO. 831, THE FUNDS MAY BE EXPENDED FOR ANY ITEM PROPERLY WITHIN THE CLASSIFICATION TO WHICH THE APPROPRIATION IS ALLOCATED IN ADDITION TO BEING EXPENDED FOR ANY CLASSIFICATION ALLOWED BY THE CONTROLLING BOARD PURSUANT TO SECTION 14 OF THAT ACT—SEC. 14, AMENDED SUBSTITUTE HOUSE BILL NO. 831, 103RD GENERAL ASSEMBLY—SEC. 15, AMENDED SUBSTITUTE HOUSE BILL NO. 831, 103RD GENERAL ASSEMBLY—§125.13, R.C.

SYLLABUS:

1. The provisions of Section 14 of Amended Substitute House Bill No. 831 of the 103rd General Assembly authorizing the controlling board to allow expenditures of moneys appropriated by that act otherwise than in accordance with the items or classifications set forth, and the provisions of Section 18 of that act requiring competitive bidding on expenditures of more than \$1,000.00 except where the controlling board allows otherwise, are not in conflict with the provisions of Section 125.13, Revised Code, requiring that procurements and purchases of supplies or equipment or contracts for or operation of data processing machine services, must be made through the department of finance.

2. Where a transfer of funds is made by the controlling board pursuant to Section 15 of Amended Substitute House Bill No. 831, the funds may be expended for any item properly within the classification to which the appropriation is allocated in addition to being expended for any classification allowed by the controlling board pursuant to Section 14 of that act.

Columbus, Ohio, March 30, 1961

Hon. James H. Maloon, Director, Department of Finance
State House, Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Section 125.08 requires the Department of Finance to purchase all supplies, materials, and equipment for the use of the state departments. Section 125.14 requires such purchases to be made through competitive bidding except where the amount is less than \$150.00 or where the purchase is made pursuant to section 5101.24 of the Revised Code.

“Section 125.14 has been, during the present biennium, modified by Paragraph one of Section 18 of Am. Sub. H.B. 831 through its provision that commodities costing in excess of \$1000 must be purchased by competitive bidding, *unless the controlling board shall have authorized the furnishing of the commodity without competitive bidding.*

“Section 125.13 empowers the Department of Finance to authorize the department, office or institution to procure or purchase a supply or equipment or make contracts for or operate data processing machine services other than from or through the department of finance.

“Pursuant to the power conferred upon them by Section 15, Paragraph one, of Am. Sub. H.B. 831, the Controlling Board on November 23, 1960 acted to transfer appropriations made to the Department of Mental Hygiene and Correction, Division of Business Administration to the Executive Division of the department by reason of the fact that the Support Bureau function was being transferred from the Division of Business Administration to the Executive Division.

“Pursuant to the authority granted by Section 14, subparagraph (a) the Controlling Board also approved on the above date transfers of appropriations between classifications.

“On December 2, 1960 the Board approved a transfer of funds from the Division of Mental Hygiene, Bureau of Training and Research to the Executive Division, Support Bureau. The request to the Controlling Board included, as Exhibit IV, as itemized list of Equipment needed for the proposed reorganization of the Bureau of Support and listed under Office Equipment, E-1 two NCR Computronics at a total cost of \$37,500.00. It should be noted here that there were 40 other items of office

equipment listed on said Exhibit together with a dollar amount for each item. Exhibit IV proposed expenditures totalling \$100,-684.70. A copy of this Exhibit is attached hereto as a part of this communication.

“On December 15, 1960 the Board approved the request of the Department of Mental Hygiene and Correction to dispense with the requirement of competitive bidding in connection with its proposed purchase of the two NCR computronic data processing machines.

“Thereafter on January 4, 1960 the Department of Mental Hygiene and Correction made application to the Department of Finance for a release and permit to obtain these 2 NCR computronic data processing machines and several other items other than from or through the Department of Finance.

“On January 13, the Department of Finance issued a release and permit to the Department of Mental Hygiene and Correction to lease and operate 2 NCR computronics for the period commencing January 13, 1961 to June 30, 1961 setting out the data therein required by Section 125.13 of the Revised Code.

“We respectfully request your formal opinion on the following questions:

“1. Does the exercise of the powers granted to the Controlling Board by Section 14, sub paragraph (a) and Section 15, paragraph one of Am. Sub. H.B. 831 to transfer appropriations from one division to another division within the same department, or the power to transfer between or among classifications in Section 14 of that act, operate to effect a repeal of Section 125.13 of the Revised Code?

“2. Do the *reasons* given by the agency requesting such transfer so condition the use of the appropriation so as to (1) supplant the agencies authority to determine whether the appropriation authority shall be used? (2) if the agency expends money under the appropriation authority may it be expended for any item properly within the classification to which the appropriation was allocated? or (3) are the particular items enumerated as reasons for the request, the only items within a classification for which expenditures may be made?

“3. Does the exercise of the authority given to the Controlling Board by paragraph one, Section 18 of Am. Sub. H.B. 831 by its release from competitive bidding repeal Section 125.13 of the Revised Code?

“It is contended that paragraph one of Section 18 of Am. Sub. H.B. 831 confers only the power to exempt the purchase from the competitive bidding requirement and does not nullify

the authority of the Department of Finance to grant or not to grant a release to procure the supply or equipment or make contracts for or operate data processing machine service other than from or through the department when in its judgment it is impractical for the department, office or institution to obtain such through the Department of Finance. It is also our contention that any exercise of the authority granted to the Controlling Board by Section 14, sub paragraph (a) and/or Section 15, paragraph one of Am. Sub. H.B. 831 does not repeal the authority given by Section 125.13 of the Revised Code to the Department of Finance and even if the converse were the rule such repeal would only extend to the use of the precise funds transferred by the Board and would not effect a general repeal of that section. The Ohio courts have repeatedly held that it is only when a later statute upon the same subject matter and having the same object or purpose is in *clear conflict* and can be reconciled under no mode of interpretation with existing legislation that existing legislation is held to be repealed by implication by the later act. (37 Ohio Jurisprudence, Sections 143-149)"

Amended Substitute House Bill No. 831 of the 103rd General Assembly, effective June 30, 1959, (hereafter referred to as H.B. 831) made general appropriations for the biennium beginning July 1, 1959 and ending June 30, 1961. Section 14 of that act creates a controlling board and reads in part;

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"The controlling board shall have power:

"(a) To grant authority to any department, office or institution for which an appropriation is made in this act to expend the moneys appropriated otherwise than in accordance with the items or classifications set forth and for such purpose to authorize transfers of appropriations within a department, office or institution for which appropriations are made between or among any items, or classifications set forth in this act, or to transfer to new classifications, items in cases where proper items have not been provided for in this act. However, the controlling board may, if it deems advisable, delegate to the director of finance authority to approve transfers of appropriations between or among any items or classifications set forth in this act during such period or periods as it may determine.

"* * *

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Section 15 of that act provides:

"Whenever the exercise of the authority of the director of any department or of the director and the governor as provided in Section 121.07 of the Revised Code, changes the divisions

within such department for which appropriations are made by this act, or transfer functions of personnel from one division to another within the same department, the director shall certify such action to the controlling board. Thereupon the net balances remaining to the credit of the appropriations made by this act in excess of the amounts of liabilities theretofore incurred, or such part of said balances as in the opinion of the controlling board shall be necessary to permit such action, shall be transferred to similar appropriation accounts by the controlling board for the division to which such activities or personnel are transferred.

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It would appear, therefore, that the November 23, 1960 transfer of appropriations from the division of business administration to the executive division, and the December 2, 1960 transfer of funds from the division of mental hygiene to the executive division, were authorized under the provisions of Sections 14 and 15, *supra*.

Section 18 of House Bill No. 831, *supra*, provides:

“If any order or invoice drawn against any appropriation or rotary fund herein made is for labor and materials furnished, the aggregate amount of which exceeds one thousand dollars (\$1,000.) or for commodities purchased, at a cost in excess of one thousand dollars (\$1,000.), it shall show that the same was furnished or purchased pursuant to competitive bidding and the lowest or best bidder was awarded the contract, unless the controlling board shall have authorized the furnishing of such labor or material or the purchase of such commodities without competitive bidding, provided, however, that the controlling board shall authorize the furnishing of such labor or material or the purchase of such commodities only after it has determined that an emergency exists requiring such action. Nothing herein shall be construed as a limitation upon the authority of the director of highways as granted in Section 5525.14 of the Revised Code.

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The expenditure of \$37,500.00 for the NCR equipment would necessarily have been drawn from appropriations made by House Bill No. 831 or rotary fund therein. Thus, the competitive bidding requirement would have applied unless the controlling board allowed the purchase without competitive bidding. Under the facts as given, the controlling board did, on December 15, 1960, allow the purchase without competitive bidding, and I will assume that this was done after the board determined that an emergency existed as required by the section.

Looking at H. B. No. 831, I note that appropriations for the division of hygiene, bureau of training and research, were made under the heading of Personal Service and Contract and Open Order Services (page 59), and appropriations for the division of business administration were made under the headings of Personal Service, Supplies, Equipment, Contract and Open Order Service, and Fixed Charges and Contributions. The Equipment appropriation was \$22,300 for the first year and \$10,900 for the second year. Since the equipment transfer made by the controlling board totalled \$100,684.70 it is evident that part of this amount must represent appropriations made for other purposes. The controlling board under Section 14, however, is authorized to grant authority to a department to expend the moneys appropriated otherwise than in accordance with the items or classifications set forth in H.B. No. 831, and I conclude, therefore, that the office equipment classification to which you refer was validly created by the controlling board in its December 2, 1960 approval of transfer.

Considering your second question first, in view of Section 15, *supra*, it would appear that when a transfer is made the funds available may be spent for any item properly within the classification to which the appropriation was allocated. I do not believe that the particular items enumerated as the reasons for the request have any bearing on the use of the transfer funds unless under Section 14, *supra*, the board has granted authority to expend the funds, or any part of them, otherwise than in accordance with the items or classifications set forth. Thus, funds may be spent under the classification to which the appropriation was allocated and as approved by the board.

The first and third questions of your request appear to raise the same questions of law and I will, therefore, consider them together. Section 125.13, Revised Code, referred to in both of these questions, reads in part as follows :

“No elective or appointive state officer, board, or commission, other than those excepted in Section 125.11 of the Revised Code, shall procure or purchase any supply or equipment or make contracts for or operate data processing machine services other than from or through the department of finance. When the department determines that it is impractical for any officer, board, or commission to obtain any supply or equipment or to contract for or operate data processing machine services other than from or through the department, it may issue to such officer, board, or

commission a release and permit to secure such supply or equipment or to contract for or operate data processing machine services other than from or through the department. * * *”

Under said Section 125.13, therefore, any procurement or purchase of supplies or equipment or contracts for or operation of data processing machine services (other than exceptions in Section 125.11, Revised Code) must be made through the department of finance unless that department allows otherwise. As to this section, I see no conflict with Section 14 which authorizes the controlling board to allow expenditures otherwise than in accordance with the items or classifications set forth in H.B. 831. Section 14 deals with the allowance of the expenditures while Section 125.13, *supra*, deals with the procedure to be followed in making the expenditures.

Coming to Section 18, this provision deals with the requirement of competitive bidding for expenditures over \$1,000.00 and the authority of the controlling board to dispense with such requirement in case of emergency. While this provision does deal with the procedure to be followed in making certain expenditures, it does not appear to be in conflict with Section 125.13, *supra*. It appears to me that the two provisions of law may be read together. First, certain purchases and procurements of commodities must be made through the department of license pursuant to Section 125.13, *supra*. Second, if the matter concerns the purchase of such commodities at a cost in excess of \$1,000.00, such must be done in accordance with Section 18.

Answering your specific questions, therefore, it is my opinion and you are advised:

1. The provisions of Section 14 of Amended Substitute House Bill No. 831 of the 103 General Assembly authorizing the controlling board to allow expenditures of moneys appropriated by that act otherwise than in accordance with the items or classifications set forth, and the provisions of Section 18 of that act requiring competitive bidding on expenditures of more than \$1,000.00 except where the controlling board allows otherwise, are not in conflict with the provisions of Section 125.13, Revised Code, requiring that procurements and purchases of supplies or equipment or contracts for or operation of data processing machine services, must be made through the department of finance.

2. Where a transfer of funds is made by the controlling board pursuant to Section 15 of Amended Substitute House Bill No. 831, the funds may be expended for any item properly within the classification to which the appropriation is allocated in addition to being expended for any classification allowed by the controlling board pursuant to Section 14 of that act.

Respectfully,

MARK MCELROY

Attorney General