

the board of education may become a non-resident of the district in which he has been elected without removing therefrom.

It is provided in Section 4692, General Code, relating to the transfer of part or all of one school district to another, that

“if an entire district be transferred the board of education of such school district is thereby abolished or if a member of the board of education lives in a part of the school district transferred the member becomes a non-resident of the school district from which he was transferred and ceases to be a member of such board of education.”

It will thus be seen that situations which may be created when transfers of part of a school district are made show the justification of the use of both the expressions “non-residence” and “removal from the district” as used in the statute and removes all suggestion of tautology.

Specifically answering your question it is my opinion, from the facts as you have outlined them, that no vacancy has been created in either the Deercreek or Perry township Boards of Education by reason of the temporary moving of Mr. A and Mr. B to Circleville. It should be understood however, that there may be other circumstances connected with the matter which you do not mention, and of which you are perhaps not informed. This opinion is based entirely on the facts set out in your inquiry.

I might say in conclusion, that in any event so long as the persons to whom you refer continue to exercise the function of the office of members of the boards of education of their respective townships, their acts as such members are valid, no matter where they reside, and the title to their office, which is dependent entirely on the determination of questions of fact, can only be definitely and finally determined in an action in quo warranto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

622.

CURRENT EXPENSES—INSTALLATION OF BOILERS AND STOKERS IN STATE HOUSE IS NOT AN APPROPRIATION FOR CURRENT EXPENSES—PROCEEDINGS LEADING UP TO LETTING OF CONTRACT MAY NOT BE STARTED UNTIL APPROPRIATION ITEM UNDER WHICH SUCH EXPENDITURE IS TO BE MADE BECOMES EFFECTIVE.

SYLLABUS:

1. *An appropriation item entitled “Additions and Betterments—Capital Equipment”, for the purchase and installation of boilers and stokers in the State House, is not an appropriation for “current expenses” of the state or its institutions, and hence the moneys so appropriated are not available for expenditure until the expiration of ninety days after the appropriation act of which such appropriation item is a part, was filed with the Secretary of State, by the Governor of Ohio, viz., on and after August 9, 1927.*

2. *It is unlawful under Section 2288-2, for an officer, board or commission of the state to enter into any obligation involving the expenditure of money, unless*

the Director of Finance first certifies that there is a balance in the appropriation, from which such obligation is to be paid.

3. *Proceedings may not be started under Sections 2314, et seq., General Code, leading up to the letting of a contract until such time as the appropriation item under which such expenditure is to be made becomes effective.*

COLUMBUS, OHIO, June 14, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your request for my opinion as follows:

“In the Appropriation Bill passed by the last session of the legislature there was included an item to cover the cost for new boilers for the State House. As it will take some time to remove the old boilers and install the new it would be expedient to start on this work as soon as possible in order that the work be entirely completed before it is necessary to again supply heat.

The question arises as to when it is legally possible to start proceedings for the purchase and installation of said boilers. Specifically, is it necessary to allow the ninety days referendum period to expire or may the funds be encumbered before that time and advertised as required by law previous to the expiration of such period but withholding the formal execution of the contracts until the period has expired.”

A determination of your question involves a consideration of whether or not the appropriation item contained in the Appropriation Act (House Bill No. 502), passed by the 87th General Assembly and filed in the office of the Secretary of State on May 11, 1927, for the purchase of boilers, stokers and equipment to be installed in the State House falls within that class of appropriation items which are subject to referendum as provided in Article II, Section 1 of the Constitution of Ohio.

The legislature, by the appropriation act, appropriated under the heading “Department of Highways and Public Works, Division of State House and Grounds, * * * G. Additions and Betterments * * * G31, Capital Equipment—New Boilers, Stokers and Equipment (Subject to approval by the Controlling Board)—Thirty-two thousand dollars (\$32,000.00).”

These boilers are to be installed in the State House and are to replace those now located therein, which have become inadequate properly to supply heat for the State House.

It will be observed that the legislature has in making this appropriation classified it as “Additions and Betterments—Capital Equipment” and that its intention was to provide for this expenditure in addition to that made for the purpose of maintaining the State House and its equipment, and that the boilers purchased were to be a part of the permanent equipment of said State House.

The question arises as to whether this appropriation item is an appropriation for “current expenses” of the state, which under Section 1d, Article 11, of the Constitution of Ohio, would not be subject to referendum. It will be seen that Section 1d, Article II, makes only those items of the Appropriation Act exempt from the referendum, provided for in Sections 1, et seq., of Article II, which contain appropriation for “current expenses” for the state and its institutions. Section 1d, Article II, provides:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum."

The Supreme Court of Ohio, in the fourth branch of the syllabus in the case of *State ex rel James vs. Brown, Secretary of State*, 112 O. S. 590, gives the following definition as to what is meant by the phrase "current expenses" as used in Article II, Section 1d, of the Constitution of Ohio:

"4. The phrase 'current expenses,' as used in Section 1d of Article II of the Constitution, in addition to including the expenses incident to the officering and maintaining of the state government, includes the expenses of keeping in repair and maintaining the property of the state government, and, as applied to roads, includes the maintaining and repairing thereof as distinguished from new construction."

If the money had been appropriated for the maintaining and repairing of the present boilers, it would have been a matter of current operating expenses and would not be subjected to the right of a referendum.

A question similar to the one here presented was passed upon by my predecessor in office in an opinion dated May 10, 1919, Opinions Attorney General, 1919, p. 519, wherein it was held:

"An appropriation for a new building is not one 'for the current expenses of the state government and state institutions'; it is therefore subject to the referendum and does not go into effect until after ninety days after the law making it is filed in the office of the secretary of state."

In the opinion it was said as follows:

"The question thus raised does not require a comprehensive definition of the phrase 'current expenses' as used in Article II, Section 1-d, which has been cited. It is only necessary to inquire whether or not the expenditure of money for the erection of a new building to cost one hundred and fifty thousand dollars is a 'current expense' within the meaning of the constitution. This department is clearly of the opinion that it is not. Whatever the term 'current expenses' may mean as applied to various items of expense, it is clear that its meaning excludes expenditures in the way of permanent investments. A number of decisions of the courts of other states under statutes using this term so hold.

State vs. Marion county, 21 Kas., 419;

Sheldon vs. Purdy, 17 Wash., 135;

Helena Water Works Co. vs. Helena, 31 Mont., 243;".

However, in the instant case it is necessary to consider the nature of the improvement for which the appropriation was made, for the reason that the legislature has seen fit to appropriate this money as a capital expenditure for the

purchase of the new boilers and its determination that such expenditure is not included in the "current expenses" as such term is used in Section 1d of Article II of the Constitution of Ohio is final. Whatever question there may have been as to the proper classification of this expenditure, was resolved by the legislature when it denominated this item as "Additions and Betterments—Capital Equipment", thus plainly classifying this expenditure as one not for "current expenses".

Therefore, it is my opinion that this item of the Appropriation Act is subject to referendum and that the money so appropriated will not be available for the purchase of new boilers, stokers and equipment until after the expiration of the referendum period as provided in Article II, Section 1c of the Constitution of Ohio. Said section in part is as follows:

"* * * No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided."

I come now to a discussion of the question as to the legality of starting proceedings to let a contract for these boilers before such money as appropriated is available. Since the boilers, stokers and equipment will involve the expenditure of more than three thousand dollars (\$3,000.00), it will be necessary to comply with the provisions of Section 2314 of the General Code, and have prepared full and accurate plans, details, bills and specifications showing quantity and kinds of material, and the other matters as set forth in said section. It will be observed that the architect's or engineer's contract of employment, if one be employed, must be approved by the Attorney General and filed with the Auditor of State.

Section 2318 of the General Code, provides for the publication of notice to bidders in a newspaper once a week for four consecutive weeks.

Section 2288-2 of the General Code, provides:

"It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations."

A reading of this section will reveal that it is unlawful for an officer, board or commission of the state to incur an obligation or enter into a contract involving the expenditure of money unless the Director of Finance first certifies that there is a balance in an *appropriation* pursuant to which such obligation is incurred. The compliance with Section 2314 is a condition precedent to the awarding and execution of a contract as provided in Section 2319 of the General Code.

Therefore, being of the opinion that the appropriation item for the purchase of new boilers, stokers and equipment is not one that may be classified as an appropriation for "current expenses", as contemplated in Article II, Section 1d of the Constitution of Ohio, and that such appropriation will not become effective until after a period of ninety (90) days from the date of filing the same with the Secretary of State by the Governor of Ohio, I am forced to the conclusion that proceedings to let a contract for this work, as provided in Sections 2314, et seq., of the General Code, can not lawfully be started until such time as the Appro-

priation Item, of which this appropriation is a part, shall become a law, namely, on and after August 9, 1927.

Respectfully,
EDWARD C. TURNER,
Attorney General.

623.

ELECTION—TIME OF OPENING AND CLOSING OF POLLS—HOUSE
BILL NO. 10 DISCUSSED.

SYLLABUS:

Sections 5056, 4925 and 5976, General Code, are unaffected by House Bill No. 10 passed by the 87th General Assembly amending Section 5979, General Code, and the polls should be opened at five-thirty forenoon and be kept open until five-thirty o'clock central standard time in the afternoon of the same day, as prescribed by the three sections above enumerated.

COLUMBUS, OHIO, June 15, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“This department has been asked several times as to the application of Section 5056 in view of the enactment of House Bill No. 10.

In other words will the election polls now open at 5:30 o'clock forenoon and close at 5:30 o'clock eastern standard time or as set out in Section 5056 at 5:30 o'clock central standard time?”

Section 5056, General Code, enacted in its present form on February 6, 1913, (103 v. 21) reads as follows:

“The polls shall be open at five-thirty o'clock forenoon and kept open up to, and closed at five-thirty o'clock central standard time, in the afternoon of the same day.”

In connection with this section your attention is directed to Section 4925, General Code, passed as it now reads on February 28, 1906, (98 v. 31) and to Section 5976, General Code, enacted in its present form on February 6, 1913, (103 v. 25) which sections respectively provide as follows:

“Sec. 4925. On the day of the November election in each year and of any other election, the polls shall be opened by the judges of elections appointed and organized, as herein provided, by proclamation made by the chairman at the hour of five-thirty o'clock forenoon, standard time, and shall be closed by proclamation at the hour of five-thirty o'clock afternoon.”

“Sec. 5976. The first Tuesday after the first Monday in November of each year, between the hours of twelve o'clock noon, central standard time, and five-thirty o'clock p. m., central standard time, shall be a legal part holiday.”