

conferred or duties imposed upon any such department, offices or officers, such powers and duties shall be construed as vested in the department of commerce."

This provision explicitly transfers all powers formerly exercised by the inspector of building and loan associations and the commissioner of securities to the new department of commerce. The answer to your question becomes relatively simple by observing here that the administrative code merely puts these powers and functions into one new department; it contemplates the same powers and duties as conferred and imposed by the then existing laws, relating to bond investment companies, and the business of loaning on endorsed notes at a rate in excess of eight per cent per annum; it does not in any manner change the substantive law in this regard and sections 696 et seq. and 6346-1 et seq. remain unaffected in any manner by the administrative code, except that they are now to be enforced by the new department thus created.

The conclusion seems to be irresistible that these loans being made upon "endorsed \* \* \* notes at a charge or rate of interest in excess of eight per cent per annum" may not be made except in compliance with sections 6346-1 et seq.

This department has not been advised of any theory upon which the claim of exemption from such compliance was based, unless it be the suggestion of duplicate license and inspection. The answer to this is that the company is doing two kinds of business, upon which the state, in separate and distinct laws, has imposed certain conditions, and it is the fact that the company is thus engaged in these two kinds of business that entails such apparent double license and inspection.

You are therefore advised that under these circumstances continued compliance on the part of this company with the chattel loan law will be necessary if its loaning business, as above described, is continued.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2407.

ADMINISTRATIVE CODE—DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—WITHOUT AUTHORITY IN MATTER OF INSTALLATION AND REPAIR AT STATE INSTITUTIONS ADMINISTERED BY DEPARTMENT OF PUBLIC WELFARE OF STEAM OR ELECTRIC POWER PLANTS, TRANSMISSION AND DISTRIBUTION SYSTEMS, MECHANICAL EQUIPMENT AND STRUCTURES OTHER THAN BUILDINGS—DEPARTMENT OF PUBLIC WELFARE DECIDES WHETHER OR NOT REPAIRS OF BUILDINGS AT STATE INSTITUTIONS SHALL BE MADE—HIGHWAYS AND PUBLIC WORKS PERFORM REPAIRS—PROCEDURE FOR CONSTRUCTION OF STATE BUILDINGS—EXCEPTIONS NOTED—AUTHORITY OF CONTROLLING BOARD DISCUSSED.

1. *The statutes prescribing the powers and duties of the department of highways and public works vest said department with no authority in the matter of the installation and repair at state institutions administered by the department of public welfare, of steam or electric power plants, transmission and distribution systems, mechanical equipment, and structures other than buildings.*

2. *The authority to decide whether repairs of buildings at state institutions administered by the department of public welfare shall be made at all or not, rests with said department of public welfare; and it is also the function of that department to say what those repairs shall consist of. This decision made, it then becomes the duty of the department of highways and public works, under the provisions of section 154-40 G. C. (109 O. L. 118), to carry forward the work of making those repairs.*

3. *Sections 2314 G. C. to 2330 G. C., inclusive, provide the procedure which is to be followed whenever any building or structure for the use of the state, or any institution supported by the state, is erected or constructed, altered or improved. These statutes constitute a general rule for state building operations, and the only exceptions to this rule which the legislature has made are those appearing from time to time in various appropriation bills in connection with what is known as the Controlling Board. See section 3 of H. B. No. 301 (109 O. L. 415).*

4. *The Controlling Board, as such, has no control over the Emergency Board, nor over the funds of the latter. The effect of the action of the Controlling Board approving an application made to it, is to authorize the expenditure of moneys appropriated for "total personal service" and "total maintenance" otherwise than in accordance with the interior classification of detailed purposes, but within the main purpose for which such appropriations are made.*

COLUMBUS, OHIO, September 9, 1921.

DR. H. S. MACAYEAL, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent letter, submitting a number of questions for the opinion of this department.

(1) Your first question is:

"Does the department of highways and public works have powers in connection with the installation, remodeling and repairing of steam and electric power plant, transmission and distribution systems, other mechanical equipment, and structures other than buildings at the state institutions, and if so, to what extent?"

The powers and duties of the department of highways and public works are set forth in section 154-40 G. C. (109 O. L. 118). The first part of said section says that said department shall have all powers and duties vested by law in the superintendent of public works, the state highway commissioner, the chief highway engineer, and the state building commission. Then follows an enumeration of some twelve specific additional powers, some of which are:

"(1) To prepare, or cause to be prepared, general plans, specifications, bills of materials, and estimates of cost for the public buildings to be erected by the state departments, offices and institutions. Nothing in this section shall be so construed as to require the independent employment of an architect or engineer as provided by section two thousand three hundred and fourteen of the General Code, in the cases to which said section applies.

(2) To have general supervision over the erection and construction of public buildings erected for the state government, or any department, office or institution thereof, and over the inspection of all materials previous to their incorporation into such buildings or work.

(3) To make contracts for and supervise the construction and

repair of buildings under the control of the state government, or any department, office or institution thereof.

(4) To prepare and suggest comprehensive plans for the development of grounds and buildings under the control of the state government, or any department, office or institution thereof.

\* \* \* \* \*

(6) To make and provide all plans, specifications and models for the construction and perfection of all systems of sewerage, drainage and plumbing for the state in connection with buildings and grounds under the control of the state government, or any department, office or institution thereof."

The work mentioned in your first question, to-wit:

"the installation, remodeling and repairing of steam and electric power plant, transmission and distribution systems, other mechanical equipment, and structures other than buildings at the state institutions",

is not included in the enumeration of powers made by that part of section 154-40 G. C. just quoted, nor by any other part of said section. While it is possible that steam or electric power plants, etc., could be so installed in a building as to become affixed thereto, and thus a part of the realty, it is thought that the phrase "repair of buildings", as used in section 154-40 G. C., refers to the repair of buildings proper, rather than to the repair of equipment like machinery, which is a part of the building only in the sense that it is a "fixture" therein.

You are advised that no section of the statutes has been found which indicates that the department of highways and public works has any powers and duties in the matter to which your first question relates.

(2), (3), (4). Your second, third and fourth questions may be answered together. These questions are:

"(2) Does the department of public welfare or the department of highways and public works have the power to decide what repairs are to be made and the character of such repairs?

(3) Does the supervision of repairs by the department of highways and public works or any other powers vested in that department, make it necessary that the approval of such department be obtained before repairs costing \$3,000.00 or less can be made?

(4) Who has the authority to decide what constitutes an emergency demanding immediate action in the way of construction, replacement or repairs?"

As noted above, in connection with the answer to your first question, section 154-40 G. C. says that the department of highways and public works shall have power "to make contracts for and *supervise the construction and repair* of buildings under the control of the state government, or any department, office or institution thereof." The administration of the state institutions (except those having boards of trustees) has been confided, however, to the department of public welfare, and it is to that department that the legislature has appropriated moneys to be expended for repairs. Accordingly, it is our view that it is for the department of public welfare to decide whether repairs on buildings at state institutions under its jurisdiction shall be made at all or

not; and it is also the function of that department to say what those repairs shall consist of. This decision made, it then becomes the duty of the department of highways and public works to carry forward the work of making these repairs.

In this connection it may be profitable to repeat the following portion of Opinion No. 2353, rendered to you by the Attorney-General on August 20, 1921:

“The procedure is as follows: The department to which the appropriation is made (in this instance the department of public welfare) should make requisition upon the department of highways and public works for the preparation of such plans, etc., as are required. When the plans are approved by the department of public welfare, that department may order the department of highways and public works to proceed with the contract and the execution of the work.

The foregoing is an outline sketch of the manner in which the activities of the department of highways and public works are to be correlated with those of the department or institution to which an appropriation for construction or repair of a building is made \* \*.”

Your third question has in effect been answered by what has been said herein responsive to your second question. While the department of highways and public works is given the authority to supervise the repair of buildings under the control of the state government, or any department, office or institution thereof, the decision to make repairs originates with the department of public welfare, and it is not necessary that such decision have the approval of the department of highways and public works. Your question, it is noted, relates to “repairs costing \$3,000.00” or less, but the amount is immaterial. The department of public welfare has the right to decide that the repairs should be made, and the amount of these repairs—whether in excess of three thousand dollars or not—is important only in so far as the question of complying with the provisions of the so-called building commission act (section 2314 G. C., 107 O. L. 453) is concerned.

Your fourth question seems to go to the same point as your second and third questions, namely, to the matter of who is to decide whether or not repairs on buildings at state institutions should be made. We repeat: Such decision is to be made by the department of public welfare, and this is so as to emergencies “demanding immediate action” as well as to non-emergencies.

Your fifth question is:

In case of an emergency demanding immediate construction, replacement or repairs, the cost of which will exceed \$3,000.00, must section 2314 to 2330 G. C. apply, or what method of procedure should be followed?”

Sections 2314 G. C. to 2330 G. C., inclusive, indicate the procedure which is to be followed whenever any building or structure for the use of the state or any institution supported by the state is erected or constructed, altered or improved, the aggregate cost of which improvement exceeds three thousand dollars. The procedure requires competitive bidding after publication of notice to bidders once each week for four consecutive weeks (section 2318 G. C.)

These statutes constitute a general rule for state building operations.

The only exceptions to this rule which the legislature has made are those appearing from time to time in various appropriation bills in connection with what is known as the controlling board. For instance, section 3 of H. B. No. 301 (109 O. L. 415) says:

“Authority to expend the monies appropriated for ‘Total Personal Service’ and ‘Total Maintenance’ in section 1 of this act otherwise in accordance with such classifications of detailed purposes, but within the purpose for which appropriation is made may be granted to any department, institution, board or commission for which appropriations are made in said section by a board to be known as the ‘Controlling Board’ \* \* \*.”

Section 6 of the same act says:

“If the order and invoice drawn against any appropriation herein is made for labor and material furnished or for commodities purchased, it shall show that the same was furnished or purchased pursuant to competitive bidding and that the lowest bidder was awarded the contract, unless the controlling board shall have authorized the furnishing of such labor or material or the purchase of such commodity without competitive bidding.

Whenever in the judgment of a department, board, commission or institution affected it seems desirable and in the interests of economy to construct or repair any building or make any other improvement herein provided by force account and the controlling board consents to such method and certifies such consent in writing to the auditor of state and the director of finance in duplicate, sections 2314 to 2330, inclusive, of the General Code shall be deemed not to apply to that part of such work to be done by force account. \* \* \*”

As pointed out in our said Opinion No. 2353, the special authority to proceed by “force account” so-called, and the special exemption from the provisions of sections 2314 to 2330 of the General Code, both embodied in section 6 of House Bill 301, are not found in all appropriation bills. In order, therefore, to determine in any given case whether repairs to buildings may be had without following the procedure set forth by section 2314 G. C., it is necessary to consult the language of the act appropriating the moneys which are to be expended to pay for those repairs.

The method of invoking the action of the controlling board is by written application to that body. Notice that part of section 3 of H. B. 301, which says:

“Application for such authority shall be made to the president of the controlling board in writing, and the consent of not less than four members of the controlling board shall be required for the granting of such authority. Said board may authorize the expenditure of monies appropriated in said section of this act within the purpose for which the appropriation is made, whether included in the detailed purpose for which such appropriations are distributed in said section or not.

The secretary shall make a complete record of authority so granted, and shall certify a copy of the record of each action of the board to the auditor of state.”

(6) Your sixth question is:

"When an emergency expenditure is allowed by the controlling board, can such controlling board authorize the transfer of a certain amount from a specific appropriation for taking care of such emergency; or must the funds be granted from appropriation allowed the emergency board?"

When the controlling board grants an application made to it, the effect of that action is to authorize the department, institution, board or commission making the application, to expend moneys appropriated to it by the legislature (for "Total Personal Service" and "Total Maintenance") in a way other than "in accordance with such classifications of detailed purposes, but within the purpose for which appropriation is made." See the excerpt from H. B. 301, section 3, hereinabove quoted.

To illustrate: Said H. B. 301 appropriates to the department of public welfare under the heading "F. Contract and Open Order Service", the following sums (for the first year of the biennium):

"F 1. Repairs .....	\$40,000 00
F 2. Motor Vehicle Repairs.....	4,500 00
F 3. Water .....	25,000 00
F 4. Light, Heat and Power.....	35,000 00
F 5. Express, Freight and Drayage.....	1,500 00
F 6. Traveling Expense.....	11,000 00
F 7. Communication .....	11,800 00
F 9. General Plant.....	39,900 00."

It would be legally possible for the controlling board, upon application made, to give the department of public welfare authority to expend for *repairs* (F1) all or any part of the moneys appropriated for *water* (F3).

The emergency board, however, is separate and distinct from the controlling board. It is provided for by section 2312 G. C. (109 O. L. 233), which says:

"There shall be an emergency board to consist of the governor, or a designated officer or employee, auditor of state, attorney general, chairman of the senate finance committee, and chairman of the house finance committee. \* \* \*"

The powers of the emergency board are set forth in section 2313 G. C. (109 O. L. 130) and section 2313-1 G. C., which say:

"Sec. 2313. 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. Such applicant shall fully set forth to the secretary in writing the facts in connection with the case. \* \* \*"

"Sec. 2313-1. The written authority provided for in section 2313

shall specify the amount in which and the purpose for which obligations may be created as therein provided. It shall be filed with the auditor of state and he shall open an account in his office in accordance therewith for the payment of any obligation authorized as provided in section 2313. The applicant receiving such authority shall issue proper vouchers to the auditor of state, as provided by section two hundred and forty-four of the General Code. Upon receipt of such vouchers the auditor, if satisfied as provided in said section that the claim presented is due and payable, shall draw his warrant on the treasurer of state against any appropriation for the uses and purposes of the emergency board."

In other words, the controlling board is resorted to when a state department, institution, board or commission seeks, not *more* money, but the authority to spend money *differently* than the legislative schedule or classification of detailed purposes calls for; whereas the emergency board is resorted to when *more* money is needed—either (a) to take care of a deficiency in running expenses, or (b) to take care of an emergency requiring the expenditure of money not specifically provided for by law.

The controlling board as such has no control over the emergency board, nor over the funds of the latter.

Your sixth question is therefore answered by saying that the effect of the action of the controlling board approving an application made to it is to authorize the expenditure of moneys appropriated for "total personal service" and "total maintenance" otherwise than in accordance with the interior classification of detailed purposes, but within the main purpose for which such appropriations are made.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2408.

APPROVAL, BONDS OF UHRICHSVILLE CITY SCHOOL DISTRICT IN AMOUNT OF \$275,000.

COLUMBUS, OHIO, September 9, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

2409.

APPROVAL, BONDS OF CITY OF LORAIN IN AMOUNT OF \$34,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, September 9, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of the city of Lorain in the amount of \$34,000 to pay the city's portion of the cost and expense of improving certain named streets, being 1 bond of \$4,000 and 6 bonds of \$5,000 each, 6 per cent,