

**OPINION NO. 81-031****Syllabus:**

To the extent that the funds transferred by the Controlling Board on January 26, 1981, from fiscal year 1981 to fiscal year 1980 consisted of amounts which had initially been appropriated for fiscal year 1980 in Amended Substitute House Bill No. 204 of the 113th General Assembly, the transfer was not clearly contrary to legislative intent and was valid, but to the extent that the funds so transferred consisted of amounts which were initially appropriated for fiscal year 1981, the transfer was contrary to legislative intent and was invalid.

---

**To: Vernal G. Riffe, Jr., Speaker of the House of Representatives, Columbus, Ohio**  
**By: William J. Brown, Attorney General, June 23, 1981**

I have before me House Resolution No. 154, in which the House asks that I "render an opinion as to the validity of the action of the Controlling Board with respect to all programs, agencies, and departments which suffered deappropriation on January 26, 1981." As the resolution indicates, the action in question consisted of the transfer by the Controlling Board of "approximately \$6.7 million from the accounts of various programs, agencies, and departments." These funds had been appropriated by the General Assembly in Amended Substitute House Bill 204 for use by said programs, agencies and departments. It is my understanding that, in each case, the Controlling Board's action on January 26, 1981, transferred the funds from fiscal year 1981 back to fiscal year 1980, which had terminated on June 30, 1980, prior to the action in question.

Of direct relevance to this question is the recent decision of the Ohio Supreme Court in State ex rel. Meshel v. Keip, 66 Ohio St. 2d 379 (1981). As the resolution indicates, in that case the Ohio Supreme Court held that the Controlling Board's attempt to transfer from the account of the Ohio Rail Transportation Authority money which was appropriated for fiscal year 1981 and was intended to be used for the high speed rail program must be considered a nullity. The Court found

June 1981

that the money so transferred could not be used for the intended purpose after its transfer and, thus, that the transfer was contrary to the legislative intent. R.C. 127.14(B) authorizes the Controlling Board to transfer "all or part of an appropriation from one fiscal year to another," but the Court found that authority to be limited by the language of R.C. 127.17, which provides that "[t]he controlling board shall take no action which does not carry out the legislative intent of the general assembly regarding program goals and levels of support of state agencies as expressed in the prevailing appropriation acts of the general assembly."

With respect to amounts appropriated to the Ohio Rail Transportation Authority which were considered in State ex rel. Meshel v. Keip, the decision of the Ohio Supreme Court is obviously controlling. The Court stated, 66 Ohio St. 2d at 389, that, as to amounts which "can be attributed to appropriations for fiscal year 1980 which had been transferred forward by the board," the board was simply reconsidering its earlier decision, and transfer back to fiscal year 1980 was not clearly contrary to the legislative intent; however, as to amounts which were initially appropriated for fiscal year 1981, the transfer to fiscal year 1980 was a nullity because, after the transfer occurred, those amounts could not be used for the purpose intended by the General Assembly.

The same rule clearly applies to all of the other funds for various agencies about which the House has inquired. Where such funds were initially transferred from fiscal year 1980 to fiscal year 1981, in the words of the Court, "the board's reconsideration of that decision [to transfer the funds to 1981] and transfer back [to 1980] were not clearly contrary to the legislative intent." 66 Ohio St. 2d at 389. Therefore, under the law of Ohio as declared by the Ohio Supreme Court, such transfers are valid. On the other hand, where the funds in question were initially appropriated for fiscal year 1981, there was an implied intent by the General Assembly that they be available in the designated year. As the Court stated: "When an appropriation is made for a specific year, the General Assembly implicitly indicates an intent to appropriate those funds for the designated year. The Controlling Board can transfer those funds to another year only if there is some indication, implied or express, of a legislative intent to allow such action." 66 Ohio St. 2d at 386. Transfer of funds to a fiscal year which has passed clearly makes the use of the funds impossible and constitutes, in effect, a deappropriation of the funds. In State ex rel. Meshel v. Keip, the Ohio Supreme Court expressly found such action to be a nullity. 66 Ohio St. 2d at 390 ("In the case at bar the Controlling Board, in effect, deappropriated the money. Because there is no express legislative intent to allow such action, the transfer. . . must be considered a nullity.").

In light of the foregoing, it is my opinion, and the House is hereby advised, that to the extent that the funds transferred by the Controlling Board on January 26, 1981, from fiscal year 1981 to fiscal year 1980 consisted of amounts which had initially been appropriated for fiscal year 1980 in Amended Substitute House Bill No. 204 of the 113th General Assembly, the transfer was not clearly contrary to legislative intent and was valid, but to the extent that the funds so transferred consisted of amounts which were initially appropriated for fiscal year 1981, the transfer was contrary to legislative intent and was invalid.