

4799.

MEDICAL BOARD—MAY EXPEND ONLY FUNDS APPROPRIATED BY
LEGISLATURE—FEES DO NOT COMPRISE ROTARY FUND.

SYLLABUS:

1. *The State Medical Board has no right to expend all of the funds in the state treasury at the present time, accumulated from fees received for examinations to practice medicine, surgery and nursing, but only such portion of said funds appropriated by section 1 of House Bill No. 624 of the 89th General Assembly.*

2. *Sections 1294 and 1295-18, General Code, set aside in the state treasury the fees received by the Secretary of the State Medical Board from examinations for the practice of medicine, surgery and nursing, for the use of said board, but the moneys accumulated from said fees can only be used when appropriated by the legislature.*

3. *The language of sections 1294 and 1295-18, General Code, does not set up special funds provided for by sections 1277 and 1295-11, General Code, as rotary funds.*

COLUMBUS, OHIO, December 8, 1932.

HON. H. M. PLATTER, *Secretary, The State Medical Board, Columbus, Ohio.*

DEAR SIR:—This acknowledges your letter of recent date which reads as follows:

“At a meeting of the State Medical Board held October 8th I was requested to obtain an opinion from you concerning the right of the State Medical Board to the fees paid into the department and deposited in the State Treasury as provided in Sections 1294 and 1295-18. The reason for this request is that over a period of years there has accrued monies in the approximate amount of \$85,000 which the State Medical Board believes is available for administration in conformity with the provisions of the sections quoted above.

The opinion asked for would clarify two points: First, do not the sections give to the Board these funds to be used in administration? And, second, does not the language of Sections 1294 and 1295-18 in reality set them up as rotary funds?

Attached is a brief statement of the financial policy pursued by the department from the time of the enactment of the law in 1896.”

Sections 1277 and 1295-11, General Code, provide as follows:

Sec. 1277. “Each applicant for a certificate to practice medicine or surgery in this state shall pay a fee of twenty-five dollars for an examination. On failure to pass such examination the fee shall not be returned to the applicant, but within a year after such failure he may present himself and be again examined without the payment of an additional fee. All fees for examination shall be paid in advance to the treasurer of the board and by him paid into the state treasury to the credit of a fund for the use of the state medical board.”

Sec. 1295-11. “Each applicant for a certificate to practice nursing

as a registered nurse in this state shall pay a fee of not to exceed ten dollars for examination, which fee shall be fixed by the state medical board. The fees for examination shall be paid in advance to the treasurer of the state medical board and by him paid into the state treasury to the credit of a fund for the use of the said state in the enforcement of this act (G. C. §§ 1295-1 et seq.)."

Briefly, these sections provide that the fees received for examination to practice medicine, surgery and nursing shall be paid into the state treasury and constitute special funds for the administration of the State Medical Board.

Sections 1294 and 1295-18, General Code, to which you refer in your communication, state:

Sec. 1294. "The compensation and expenses of the members and officers of the state medical board, and the necessary expenses of the board shall be paid from a fund in the state treasury for the use of the board, upon the warrant of the auditor of state, issued upon vouchers signed by the president and secretary of the board."

Sec. 1295-18. "The compensation and expenses of the members and officers of the nurses' examining committee, and the necessary expenses of the committee shall be paid from a fund in the state treasury for the use of the board in the enforcement of this act (G. C. §§ 1295-1 et seq.), upon a warrant of the auditor of state, issued upon vouchers signed by the president and secretary of the state medical board."

Now, Article II, Section 22 of the Ohio Constitution provides:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

From the provisions of the above sections, when read with the foregoing constitutional provision, it follows that no part of the funds in the treasury to the credit of the State Medical Board can be drawn therefrom except such amounts as are specifically appropriated from time to time by the legislature in its appropriation acts.

This office has twice had before it similar situations in Opinions of the Attorney General for 1916, volume I, page 220, and Opinions of the Attorney General for 1929, volume I, page 192. In the first mentioned opinion, it was held in the syllabus:

"Section 1316, G. C., 106 O. L., 297, is not such an appropriation of the funds paid into the state treasury by the secretary of the state dental board as is contemplated by section 22 of article II of the constitution, as such funds cannot be used by said board until so appropriated."

Section 1316, in providing that all moneys from fees received by the State Dental Board shall be paid into the state treasury, is an identical provision to those of sections 1277 and 1295-11, General Code, quoted above, and section 1317, providing that "the compensation and expenses of the secretary and members, and the expenses of the (dental) board shall be paid from the fund in the state

treasury for the use of the board on the requisition signed by the president and the secretary of the board and the warrant of the auditor of state", is very similar to a portion of sections 1294 and 1295-18, General Code, quoted above.

In the second opinion it was held in the syllabus:

"All moneys received by the Secretary of the State Board of Optometry under the act of March 20, 1919, (108 O. L., Part 1, p. 73) must be paid monthly into the state treasury, and no part thereof can be drawn therefrom except in pursuance of a specific appropriation made by law. See section 22 of Article II of the state Constitution."

An examination of said opinion shows that sections 1295-25 and 1295-26, General Code, quoted therein, are very similar to sections 1277, 1295-11 and 1294, and 1295-18, General Code.

Hence, it appears to me to be clear that the State Medical Board has no right at the present time to expend the whole amount of the moneys paid into the state treasury accumulated from fees collected by said board, but only the portion appropriated by the General Assembly in the various appropriation bills from time to time, and the amount during the years 1931 and 1932 is the appropriation contained in House Bill No. 624 of the 89th General Assembly, to be found on pages 249 and 250 of the Appropriation Acts of the 89th General Assembly of Ohio.

In view of the foregoing conclusion, the answer to your first point is that sections 1294 and 1295-18, General Code, set aside in the state treasury the fees collected by the secretary of the State Medical Board for the sole use of said board in carrying out its activities, but these moneys can only be used when appropriated by the legislature.

Rotary funds are expressly established by the various appropriation bills from time to time, although such funds are occasionally authorized by the general statutes, as, for example, sections 5537 and 5541-7, General Code, establishing gasoline tax rotary funds. A search of the general statutes, however, fails to disclose the creation of a rotary fund from fees collected by the secretary of the State Medical Board. Now, section 6 of House Bill No. 624 of the 89th General Assembly (the general appropriation bill), provides as follows:

"Section 6. The term 'Rotary' as used in this act, means a working capital fund set aside to enable a department or institution to carry on a function or activity for which the rotary fund is established."

An examination of House Bill No. 624 fails to disclose the creation of a rotary fund from fees paid into the state treasury by the secretary of the State Medical Board.

Consequently, I am of the opinion that the language of sections 1294 and 1295-18, General Code, does not set up the special medical board funds as rotary funds.

Respectfully,
GILBERT BETTMAN,
Attorney General.