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1. DEPARTMENT OF FINANCE IS AUTHORIZED TO PURCHASE ALL NECESSARY SUPPLIES AND EQUIPMENT FOR STATE DEPARTMENTS IF IT SO ELECTS, BUT IS WITHOUT AUTHORITY TO DETERMINE WHETHER ANY OR SAME SHOULD BE PURCHASED—

2. WHERE CONROLLING BOARD HAS RELEASED APPROPRIATED FUNDS OF A STATE DEPARTMENT FOR THE PURPOSE OF PURCHASING CERTAIN EQUIPMENT, THE DEPARTMENT OF FINANCE MAY NOT REFUSE TO ALLOW THE PURCHASE OF SUCH EQUIPMENT — §§125.08, 125.11, 125.13, 125.02, R.C.—SUBSTITUTE HOUSE BILL NO. 831 OF 103RD GENERAL ASSEMBLY.

SYLLABUS:

1. Under Sections 125.08, 125.11, and 125.13, Revised Code, the department of finance is authorized to purchase all necessary supplies and equipment for state departments if it so elects, but is without authority to determine *whether* any of such supplies and equipment should be purchased.

2. Where the controlling board, created by Amended Substitute House Bill No. 831 of the 103rd General Assembly has released appropriated funds of a state department for the purpose of purchasing certain equipment, the department of finance may not refuse to allow the purchase of such equipment.

Columbus, Ohio, March 30, 1961

Hon. James H. Maloon, President, Controlling Board,
Room 6, State House, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Controlling Board meeting on February 23, 1961 approved a motion to request a formal opinion on a question drafted at the request of the Board by Mr. DeForest Mellon, representing the Attorney General on the Controlling Board, and by Senator William H. Deddens, a member of the Controlling Board.

"As President of the Controlling Board, I present the following request for a formal opinion as approved by the Controlling Board:

" 'A basic legal question has been raised in the Controlling Board. Late in December, the Controlling Board unanimously voted to release appropriated funds of the Department of Mental Hygiene and Correction for the purpose of *buying* certain automation equipment for use in the Department of Mental Hygiene and Correction.

"Upon receipt of this release, the Director of Finance instructed that instead of buying the automation equipment it should be leased on an annual basis.

"The Director's representative on the Board voted *for* the release for purchase of certain automation equipment.

"Thereafter, the Director of Finance, granted a release to the Department of Mental Hygiene and Correction, to *lease* specific automation equipment, rather than to buy said equipment.

"The question that the Board would like to have settled is whether the Director of Finance is legally empowered to change a decision of the Board and if he is, under what circumstances such action is permissible.' "

Section 14 of Amended Substitute House Bill No. 831 of the 103rd General Assembly, the general appropriations bill for the biennium 1959-60, 1960-61, provides:

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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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It is my understanding that the release by the controlling board was necessary because there was no item or classification set forth in the appropriation act for the executive division of the department of mental hygiene and correction under which the purchase of the equipment could be made. The board, therefore, under the authority of the provisions of Section 14, *supra*, granted authority to the department to *purchase* the equipment with appropriated funds, and such action was clearly within the authority of the board.

It appears from your request that, although the release of funds was so authorized, the director of finance refused to purchase the equipment as specified by the controlling board. The question then arises as to the director's authority to take such a position, and in this regard the provisions of Sections 125.08, 125.11, and 125.13, Revised Code, appear pertinent. All of these sections deal with the method of purchasing and should be read together to determine their meaning.

Section 125.08, *supra*, provides :

“Except as to the military department, the general assembly, and institutions administered by boards of trustees, the department of finance *may* purchase supplies, material, and equipment for the use of the state departments, offices, and institutions, and make contracts for and superintend the telephone and telegraph service, and make contracts for, operate and superintend the data processing machine services for the state departments, offices, and institutions.

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(Emphasis added)

Section 125.11, *supra*, provides :

“Whenever it is deemed necessary the department of finance shall determine *what supplies and equipment*, required for the use and maintenance of the departments and offices of all elective

and appointive state officers, boards, and commissions, *shall be purchased and furnished. * * ** (Emphasis added)

Section 125.13, *supra*, provides:

“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 Section 125.08, *supra*, the department of finance *may* purchase supplies, material, and equipment for the state departments. Section 125.11, *supra*, gives the department authority to determine what supplies necessary for state departments will be purchased *by the department of finance*. Section 125.13, *supra*, forbids state departments to purchase necessary supplies and equipment other than through the department of finance, but authorizes purchases directly by other departments with the approval of the department of finance.

None of the sections above discussed give the department of finance authority to decide *whether* any particular supply or equipment should be purchased. The authority of the department is clearly limited to making the purchase when requested by a particular department, or allowing the department to purchase directly.

On reviewing the other sections of law dealing with the powers and duties of the department of finance, I find one which might be read by some to give the department further authority over purchases of equipment. That provision is found in Section 125.02, Revised Code, and reads:

“The department of finance shall have power to exercise control over the financial transactions of all departments, offices, and institutions, except the judicial and legislative departments, as follows:

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“(C) By requiring itemized statements of expenditures proposed for any specified future period to be submitted to the

department, and by approving or disapproving all or any part of such proposed expenditures;

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While the above provision of Section 125.02, *supra*, might, at first glance, appear to give the department of finance sweeping control over expenditures of state departments, I am of the opinion that it relates solely to the duty of the department of finance to supervise the accounting and auditing of expenditures to insure that statutory requirements are followed. Thus, where the legislature has appropriated a certain sum to be expended by a particular department, the department of finance is not authorized to disapprove the expenditure of such funds, but may require the department to submit itemized statements to insure that the state law will be followed.

Section 125.02, *supra*, prior to the code revision of 1953 was designated as Section 154-28, General Code. Referring to this section, the Supreme Court in the case of *State, ex rel. v. Herrick*, 107 Ohio St., 611, at page 622, stated:

“All of the provisions of Section 154-28 relate to the subject of accounting and auditing.”

Also, the second branch of the syllabus of that case states:

“The essential functions of the department of finance are those of auditing, accounting, supervising public expenditures, and all functions incident thereto, but that department has no control over the policies of the highway department under the Administrative Code.”

In the case of *State, ex rel. vs. Baker*, 112 Ohio St., 356, the third branch of the syllabus provides:

“By virtue of Section 2288-2, General Code, no public improvement constructed by the expenditure of state funds can lawfully proceed unless the director of finance shall first certify that there is a balance in the appropriation not otherwise appropriated to pay precedent obligations. In the event the money is in fact in the fund, it is the ministerial duty of the director of finance to make the required certificate, and the discharge of this duty may be compelled by mandamus.”

In the *Baker* case the court clearly determined that in the absence of specific provision of law conferring upon the director of finance the power to pass upon the advisability or propriety of an expenditure, his duties are

purely ministerial where there is an appropriation for such expenditure and money in fact in the treasury to meet the same.

Referring to the *Herrick*, and *Baker* cases, *supra*, it is stated in Opinion No. 487, Opinions of the Attorney General for 1937, page 778, at page 784:

“Under authority of the *Baker* and *Herrick* cases, *supra*, setting forth the powers and duties of the Director of Finance in connection with expenditures of the Highway Department, an administrative department created by the Administrative Code of 1921, it follows *a fortiori* that Section 154-28, *supra*, confers no power upon the Department of Finance to control questions of policy in the administration of independent constitutional offices.”

While Opinion No. 487, *supra*, dealt with expenditures of the office of treasurer of state, a constitutional office, it was based on the conclusion that the duties of the department of finance, under Section 154-28, General Code (Section 125.02, Revised Code), are of an accounting and auditing nature and do not give the department policy powers. Accordingly, the conclusion of that opinion appears to be equally applicable where the department concerned is not a separate constitutional office.

In view of the above, therefore, I am constrained to conclude that the deciding authority as to whether a purchase should be made is the department desiring to obtain the particular supply or equipment. And here, of course, there must be available funds which have been appropriated by the legislature for that purpose or which have been appropriated and then released by the controlling board for that purpose.

In the instant case, funds were released by the controlling board for use by the department of mental hygiene and correction in purchasing certain equipment. Upon such release, therefore, the authority of the department of finance, under Sections 125.08, 125.11, and 125.13, *supra*, was limited to making the purchase or allowing the department of mental hygiene and correction to make the purchase. And, clearly, the director of finance was without authority to refuse to purchase the equipment and to insist that said equipment should be leased.

Accordingly, it is my opinion and you are advised:

1. Under Sections 125.08, 125.11, and 125.13, Revised Code, the department of finance is authorized to purchase all necessary supplies and equipment for state departments if it so elects, but is without authority

to determine *whether* any of such supplies and equipment should be purchased.

2. Where the controlling board, created by Amended Substitute House Bill No. 831 of the 103rd General Assembly has released appropriated funds of a state department for the purpose of purchasing certain equipment, the department of finance may not refuse to allow the purchase of such equipment.

Respectfully,
MARK McELROY
Attorney General