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1. GOVERNOR OF OHIO—IN PREPARING AND SUBMITTING TO GENERAL ASSEMBLY, STATE BUDGET FOR ENSUING BIENNIUM, MAY, BUT IS NOT REQUIRED TO INCLUDE AMOUNTS OF CLAIMS AGAINST STATE WHICH HAVE BEEN INVESTIGATED AND APPROVED BY SUNDRY CLAIMS BOARD.
2. POWER OF GOVERNOR OF OHIO—CONFERRED BY ARTICLE II, SECTION 16, CONSTITUTION OF OHIO—TO DISAPPROVE ANY ITEM OR ITEMS IN ANY BILL APPROPRIATING MONEY, NOT IMPAIRED OR RESTRICTED BY PERFORMANCE OF STATUTORY DUTY TO PREPARE AND SUBMIT TO GENERAL ASSEMBLY BIENNIAL STATE BUDGET—ITEMS SO INCLUDED MAY LATER BE DISAPPROVED BY GOVERNOR.

## SYLLABUS:

1. The Governor of Ohio, in preparing and submitting to the General Assembly of Ohio the state budget for the ensuing biennium, may but he is not required to include therein the amounts of claims against the state which previously have been investigated and approved by the Sundry Claims Board.

2. The power of the Governor of Ohio to disapprove any item or items in any bill appropriating money, conferred by Section 16 of Article II of the Constitution of Ohio, is not impaired or restricted by the performance of the statutory duty to prepare and submit to the General Assembly the biennial state budget and items so included may later be disapproved by the Governor.

Columbus, Ohio, March 23, 1949

Hon. Frank J. Lausche, Governor of Ohio  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which is as follows:

"On December 15th, 1948, the Sundry Claims Board approved petitions of bingo and lotto operators for the return of admission taxes in the sum of \$238,799.15 alleged to have been erroneously paid to the State of Ohio as admission taxes.

"It is my understanding that admission taxes erroneously paid to the State must be applied for within one year after they were paid. A part of the bingo and lotto operators who made application and whose claims were allowed by the Sundry Claims Board have asked for the return of admission taxes paid eight and nine years ago.

"It appears that under the law they were barred from recovering the moneys which they had paid to the State. The one year period had expired and therefore their claims were outlawed. The thought was then conceived by the operators to present a claim to the Sundry Claims Board on the grounds of a moral right to have returned to them the taxes which they allegedly paid in error. As herein before indicated the Board approved the claims of the various applicants among whom were various fraternal associations but principally the following:

FOOE—Akron Aerie No. 555 of Akron, Ohio, in the sum of.....	\$22,835.51
Blue Arrow Club, Inc. of Canton, Ohio, in the sum of.....	35,757.28
The Arrow-Keno Club of Canton, Ohio, in the sum of.....	6,870.47
The Arrow-Keno Club of Canton, Ohio, in the sum of.....	31,582.30
The Liberal Club of Hudson, Ohio, in the sum of.....	6,742.83
The Liberal Club of Hudson, Ohio, in the sum of.....	15,997.78
East Side Circle Club of Akron, Ohio, in the sum of.....	1,540.80
The Liberty Club of Akron, Ohio, in the sum of.....	4,096.84

The Liberty Club of Akron, Ohio, in the sum of.....	1,988.42
The Guiding Star Social of Cincinnati, Ohio, in the sum of.....	11,062.60

"You probably have been told by Mr. Kinneary, Assistant Attorney General, that three such claims are now pending but undecided, among them being the claims of :

Frankie's Amusements, Inc. of Dayton, Ohio, in the sum of.....	\$32,617.29
Lakeside Park Company of Dayton, Ohio, in the sum of.....	4,677.87

"The final appropriation bill for the biennium of 1949 and 1950 is now being prepared. It is my desire to include in it a request for the appropriation of moneys to pay all proper claims filed and allowed by the Sundry Claims Board. I am vigorously opposed to the payment of the claims made by these bingo and lotto operators on admission taxes paid eight and nine years ago.

"If these moneys are returned to the operators the benefit of them will never be enjoyed by the players whose moneys were taken out of the price paid for the bingo card to pay the admissions taxes. Of course, the players could not be identified and it is folly to think that eventually any of them would receive any of the benefits of the refund.

"Further it appears to me that if the bingo and lotto operators filed an action in court to recover the moneys which they paid out of their operations to the State, they definitely would be precluded from a judgment. First, their action would be barred by the statute of limitations, secondly, in the presentation of their claim they would have to reveal that the incident about which they complain had its origin in bingo and lotto operations.

"However, I ask your advice in respect to two legal questions.

"1. Under the law is it mandatory that I include in the final appropriation bill a request for the earmarking of State moneys that would be needed to pay the claims allowed on December 15, 1948.

"2. If it is mandatory that I make a request for such moneys and the legislature grants the request, do I have the legal power to veto the grant of the legislature.

"May I have your answers on the law applicable to the two questions above set forth."

I will give consideration first to your question as to whether it is mandatory that you include in the final appropriation bill a request for

the earmarking of moneys needed to pay the claims allowed on December 15, 1948 by the Sundry Claims Board.

The duty of gathering together the material for the biennial state budget rests upon the Department of Finance, the powers and duties of which department are outlined in Section 154-28, et seq. of the General Code. Under the provisions of Section 154-31 of the General Code, it is made the duty of the Department of Finance to prepare and submit to you state budget estimates. The steps to be taken by this department in ascertaining the requirements of the state government, so far as they concern budget estimates, are detailed in Section 154-33 of the General Code and the Director of Finance is authorized either to "approve, disapprove or alter the estimates, excepting those for the legislative and judicial departments of the state government."

In Section 154-36 of the General Code, it is provided that "papers, statements and copies thereof" which have been filed with the "Sundry Claims Board" shall be delivered to and filed in the office of the Department of Finance. The section concludes with the following language:

"\* \* \* The director of finance shall include all claims allowed by the 'Sundry Claims Board' in the state budget estimates."

I presume that the language referred to in Sections 154-33 and 154-36 gives rise to the question which you have submitted to me.

While the supreme executive authority of the state is, by the Constitution and laws, vested in the Governor, it is necessary in practical operation that the duties to be performed be departmentalized and power given to those in charge of the various departments to perform, subject to your approval, the duties imposed. Hence it is that those duties and responsibilities pertaining to estimates of amounts of money needed for the various functions are imposed, so far as detailed execution thereof is concerned, upon the Department of Finance, with the final authority being vested in you, as Governor. The Legislature, in the exercise of its power to make laws, may outline the duties required to be performed and the manner of their performance and, while it has seen fit to vest the Director of Finance with the authority to approve, disapprove or alter estimates, it has withdrawn from him the power to do so in the case of the legislative and judicial departments of the state government. This is entirely consistent with the well established policy of the separation of

powers of government into the three branches—legislative, executive and judicial. The further limitation contained in Section 154-36, General Code, by which the Director of Finance is required to include claims which have been allowed by the Sundry Claims Board in the state budget estimates, likewise is not inconsistent with the principles above enunciated.

A further reason for this limitation would appear upon examination of Section 270-6 of the General Code establishing the Sundry Claims Board, to be composed of the Superintendent of the Budget, now the Director of Finance, the Auditor of State, the Attorney General and the chairman of the finance committee of the House and Senate. Were this limitation not imposed, the Director of Finance, in the preparation of the budget, would exercise a veto on the decisions made by the Sundry Claims Board.

The payment of claims is a legislative function and the Sundry Claims Board is the agency which has been provided by the Legislature for the initial determination of the validity of such claims. Section 270-6 of the General Code authorizes the hearing and determination of the claims presented and provides for their disposition, but does not establish any substantive right.

In the case of *State, ex rel. Krieg v. Tracy*, 47 O. App. 65, at page 67, the court used the following language:

“\* \* \* A study of this Section 270-6 shows that it simply provides a certain procedure for the board therein authorized to hear and determine claims presented, and provides for their disposition. This section nowhere establishes any substantive right. It nowhere passes upon any subject-matter of any kind or description.”

That being the case, the ultimate disposition of all claims rests with the General Assembly of Ohio. It would appear, therefore, that if any effect is to be given to the requirement of Section 154-36 of the General Code, it would have to be done by interpreting the language quoted above from that section to mean that the Director of Finance must include all claims allowed by the Sundry Claims Board in the state budget estimates and that he may not alter them as to amount.

So far as you are concerned, however, the document which you submit to the General Assembly is not denominated a “state budget estimate” but, by the terms of Section 154-34, General Code, is known as “a state budget.” Had the Legislature intended the limitation contained in Section

154-36 of the General Code to apply to you, it could easily have used the other terminology. This being true, and there being no limitation on your power with reference to the state budget except that it contain "a complete financial plan for the ensuing fiscal biennium," together with the other detailed matters required to be set forth under the terms of Section 154-34 of the General Code, I conclude, and it is my opinion, that there is no specific requirement in the statutes requiring you to include in the state budget the items mentioned in the first question contained in your letter.

This is further borne out by the language dealing with appropriations as found in paragraph (B) of Section 154-34 of the General Code. This paragraph provides in part as follows:

"(B) A detailed statement showing the amounts recommended to be appropriated from each fund for each fiscal year of the biennium for current expenses \* \* \* etc."

It is obvious in this case that you do not recommend that the General Assembly appropriate the money to pay these claims but, on the contrary, you are opposed to such payment.

In light of the foregoing, and it being my opinion that there is no legal duty upon you to include such items in your state budget for the biennium, it becomes unnecessary to answer the second question contained in your letter other than to say that the power of the Governor to veto items arises from clear and unmistakable language in the Constitution of Ohio, wherein, in Section 16 of Article II, you are empowered to "disapprove any item or items in any bill making an appropriation of money." Clearer and more explicit language could hardly be conceived and it is obvious that no act of the General Assembly can alter or set aside an express mandate found in the Constitution of Ohio.

It is, therefore, my opinion, in answer to your second question, that your authority to veto items contained in the state budget, if enacted into law in the form of an appropriation bill or Sundry Claims Bill, is not limited or restricted by the fact that you have so submitted them to the General Assembly.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.