

918.

APPROPRIATIONS—AUTHORITY OF CONTROLLING BOARD DISCUSSED—MONIES EXPENDED FOR PURCHASE OF REAL ESTATE SUBJECT TO THE CONSENT OF SAID BOARD.

SYLLABUS:

1. *By virtue of the terms of Section 12 of the act to make general appropriations, passed by the 87th General Assembly (House Bill 502), no monies therein appropriated or reappropriated for the purchase of real estate, regardless of amount, may be expended without the consent and approval of the Controlling Board, evidenced by the consent of not less than four members entered on the minutes.*

2. *No monies appropriated or reappropriated in said act may be expended for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars, without the consent and approval of the Controlling Board, evidenced in like manner. The expenditure of monies therein appropriated or reappropriated for the construction of new buildings or new structures or other public improvements, costing five thousand dollars or less, does not require such board's consent and approval.*

COLUMBUS, OHIO, August 26, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date, in which you request my opinion, reading as follows:

“The question arises in the Division of Public Works as to what sum of money in the appropriations for additions and betterments can be expended by the Department without the approval by release of the Board of Control.

Section Twelve of House Bill 502 refers to an amount of \$5,000.00 as the maximum amount that can be expended without such approval.

We respectfully request an opinion at your earliest convenience as to the amount that can be expended by this Department without the approval of the Board of Control.”

Section 12 of House Bill No. 502, entitled “An Act—To make general appropriations”, passed by the 87th General Assembly, reads as follows:

“No monies herein appropriated or reappropriated for the purchase of real estate or for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars shall be expended without the consent and approval of the Controlling Board herein provided for; such approval to be evidenced by the consent of not less than four members of the Controlling Board entered on the minutes. The appropriations made herein for buildings or structures, including remodeling and repairs, shall be for a complete operating unit ready for use and occupancy except furnishings, and shall include complete heating, lighting, ventilating and plumbing systems, when such systems are authorized or necessary, unless otherwise specifically provided in the item of appropriation.”

This section was undoubtedly included in the appropriation act because of the present financial condition of the state, it being the manifest intention of the legislature to vest the Controlling Board with power to check the expenditure of state moneys for additions and betterments, until such time as there were ample funds in the state treasury to take care of the necessary running expenses of the state and the improvements for which appropriations were made.

The first sentence of Section 12 of the appropriation act of the 86th General Assembly (Amended House Bill 517) contained no provision with reference to the expenditure of money for the construction of new buildings or other public improvements, and reads as follows :

“No monies herein appropriated for the purchase of real estate shall be expended without the consent and approval of the Controlling Board herein provided for; such approval to be evidenced by a majority vote of the Board entered on the minutes.”

While there is no comma after the phrase in Section 12 of House Bill 502, *supra*, reading “no monies herein appropriated or reappropriated for the purchase of real estate,” in view of the fact that the General Assembly has for the past several years required the approval of the Controlling Board before the expenditure of any monies appropriated for the purchase of real estate, regardless of amount, it is my opinion that such section should be construed as though a comma were placed after the words “real estate.” That is to say, the section should be read to mean that no monies whatever, appropriated or reappropriated in the act in question, should be expended for the purchase of real estate without the consent and approval of the Controlling Board and that no monies therein appropriated or reappropriated should be spent for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars. If the new buildings or new structures or other public improvements are to cost five thousand dollars or less, it is my opinion that from the plain provisions of the section under consideration the consent and approval of the Controlling Board is not required.

The rule of statutory construction to be applied with reference to the omission or misplacing of commas or other punctuation marks is stated in Lewis' Sutherland on Statutory Construction, Vol. 2, p. 688, as follows :

“In *Ewing vs. Burnet* the court say: ‘Punctuation is a most fallible standard by which to interpret a writing. It may be resorted to when all other means fail; but the court will first take the instrument by the four corners in order to ascertain its true meaning. If that is apparent on judicially inspecting it, the punctuation will not be suffered to change it.’

Where effect may be given to all the words of a statute by transposing a comma, the alternative being the disregard of a material and significant word, or grossly straining and perverting it, the former course is to be adopted. Courts, in the construction of statutes, for the purpose of arriving at or maintaining the real meaning and intention of the law-maker, will disregard the punctuation, or transpose the same, or substitute one mark for another, or repunctuate. When the intent is uncertain, punctuation may afford some indication of the true intent and may be looked to as an aid, and may even determine the construction, but it is never allowed to have a controlling effect.”

It will be noted that if the expenditure be one where the consent and approval of the Controlling Board is required, such approval must be evidenced by the consent of not less than four members of the Controlling Board entered on the minutes,

In view of the foregoing, it is my opinion that :

1. By virtue of the terms of Section 12 of the act to make general appropriations, passed by the 87th General Assembly (House Bill 502), no monies therein appropriated or reappropriated for the purchase of real estate, regardless of amount, may be expended without the consent and approval of the Controlling Board, evidenced by the consent of not less than four members entered on the minutes.

2. No monies appropriated or reappropriated in said act may be expended for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars, without the consent and approval of the Controlling Board, evidenced in like manner. The expenditure of monies therein appropriated or reappropriated for the construction of new buildings or new structures or other public improvements, costing five thousand dollars or less, does not require such board's consent and approval.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

919.

TRUST FUNDS— UNDER SENATE BILL NO. 101, 87TH GENERAL ASSEMBLY TRUST FUNDS IN HANDS OF DEPARTMENT OF PUBLIC WELFARE RECEIVED FOR USE OF STATE SCHOOLS FOR THE BLIND AND DEAF SHOULD BE TRANSFERRED TO THE DEPARTMENT OF EDUCATION.

*SYLLABUS:*

*Under the provisions of Amended Senate Bill 101 passed by the 87th General Assembly, trust funds in the hands of the Department of Public Welfare, which have been received for the benefit or use of the State School for the Blind or the State School for the Deaf, should be transferred and given into the possession of the Department of Education.*

COLUMBUS, OHIO, August 26, 1927.

*Department of Public Welfare, Columbus, Ohio.*

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows :

“The Gillen Law, S. B. 101, passed by the 87th General Assembly, provided for the transfer of custody and control of the State School for the Deaf and the State School for the Blind from this department to the Department of Education, transfer to become effective as of August 10, 1927.

No appropriations for the maintenance of these schools was made by the General Assembly; however, under the provisions of section 7 of the general appropriation bill, authority is given the control board to make transfer of funds from one department to another whenever change is made in departmental control. At a meeting of the control board under date of August 9, 1927, transfer of funds appropriated to this department under H. B. 502 was