

thereon, any obstruction whatever, without first obtaining the consent and approval of the Director of Highways and Public Works, in case of inter-county highways and main market roads and the bridges and culverts thereon, and the consent and approval of the county commissioners in case of highways other than inter-county highways and main market roads and the bridges and culverts thereon."

This portion of Section 7204-1a recognizes the existence of authority to authorize and consent to the placing of structures in the public highway, and I am of the opinion that by its terms the permission in the present instance may be granted.

Such permission would, however, be a mere license, revocable at will, whenever in your judgment the track became such an obstruction to the highway as to necessitate its removal. In other words, I do not believe it to be within the authority of your department to bargain away the right of absolute police power over the highway. The permission should accordingly contain such terms and conditions as you deem necessary for the effectual protection of the traveling public and should also reserve the right to order the removal of the track at any time upon such notice as may be deemed reasonable.

Answering your question specifically, I am of the opinion that you are authorized to grant permission to construct a switch track across a highway, which is either an inter-county highway or main market road, upon such terms and conditions as you may deem proper for the protection of the traveling public, provided that such permission is made revocable at any time when, in the exercise of reasonable judgment, it becomes necessary.

I am not free from doubt on the foregoing matter and suggest that you be extremely cautious in giving consents to grade crossings. You are, of course, familiar with Sections 8895 and 8902 of the General Code.

I note that you desire my assistance in drawing up the proposed agreement and I will be glad to cooperate with you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

79.

DIRECTED APPROPRIATION BILL—SENATE MAY PASS SAME WITHOUT REFERRING TO FINANCE COMMITTEE—LEGALLY PASSED IF IT RECEIVES MAJORITY VOTE OF ALL MEMBERS.

SYLLABUS:

1. *A bill making a directed appropriation may be legally passed by the Senate of Ohio without said measure being referred to the Finance Committee prior to action by the Senate.*

2. *A bill directing an appropriation of state moneys is legally passed by the Senate if it receives a majority of the votes of all the members elected thereto, said measure not being an emergency and not coming within the exceptions provided in Section 29 of Article II of the Constitution of Ohio.*

COLUMBUS, OHIO, February 14, 1927.

HON. THOMAS EDWARD BATEMAN, *Clerk, Ohio Senate, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of the 10th instant, which reads:

"Will you kindly prepare a ruling upon the questions hereafter submitted and have the same ready by Monday afternoon, 4 P. M., February 14th, this year?"

First: May a bill making a directed appropriation be legally passed by the Senate of Ohio without said measure being referred to the Finance Committee prior to action by the Senate, said measure not being an emergency nor such appropriation made according to pre-existing law?

Second: Is a bill legally passed by the Senate directing an appropriation of state moneys, said bill upon said passage having received 21 affirmative votes out of a total Senate membership of 37?

In considering the above questions, attention is called to the rules of the 86th General Assembly, under which the 87th General Assembly is now operating. Particular attention is called to rule Nos. 43 and 44 on page 17, and rule No. 78 on page 25.

Further attention is called to rule No. 124, page 39, providing that Hughes' American Parliamentary Guide shall be authority in all cases not provided for in the Senate rules or joint rules of the House and Senate. This last reference is made in view of the rule laid down on page No. 661 of Hughes' Guide, requiring that measures directing an appropriation shall first be referred to the Finance Committee."

Section 1, Article II of the Constitution of Ohio, provides that:

"The legislative power of the state shall be vested in a general assembly consisting of a Senate and House of Representatives."

Section 8, Article II, provides that:

"Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, * * *; and shall have all powers, necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, * * * ."

Under this constitutional authority each House has determined "its own rules of proceeding."

In the rules of the 86th General Assembly, under which the 87th General Assembly is now operating, Senate Rule No. 20 provides that:

"At as early a date as practicable after the organization of the Senate, there shall be appointed by the Senate the following standing committees, the number composing each committee to be fixed by resolution of the Senate, unless otherwise directed the number shall be as follows:

* * * * *

Finance, 15."

Senate Rule No. 9 provides that:

"As soon as the Journal is read and approved, the order of business shall be as follows:

* * * * *

5. Reports of standing committees in their alphabetical order."
Senate Rule No. 21 provides who shall be chairman of any committee.

Rule 22 provides for calling meetings of the committee and that they shall be open and a record shall be kept.

Rule 24 provides how the committee shall report.

Rule 26 provides that:

“Every committee to which a bill or resolution is referred shall carefully examine the form, phraseology, punctuation and arrangement thereof, and when necessary, report to the Senate the amendments to correct the same.”

It is noted that in the various provisions of these several rules for the appointment and duties of committees there is no requirement that bills shall be referred to said committees.

It is, therefore, my opinion that in answer to your first question, a bill making a directed appropriation may be legally passed by the Senate of Ohio without being first referred to the Finance Committee by the action of the Senate.

You call my attention to Senate Rule 124 providing that Hughes' American Parliamentary Guide shall be received as authority in all cases not provided for in the Senate rules or the joint rules of the Senate and House of Representatives.

As neither the Senate nor joint rules of the General Assembly require the referring of appropriation measures to the Finance Committee, the Senate must be governed by the Parliamentary Guide above named.

You also call my attention to the fact that said Parliamentary Guide on page 661 lays down the rule that measures directing an appropriation shall first be referred to the Finance Committee. Your statement is true; the rule is given by the Parliamentary Guide, but it does not apply to the Senate. The author of the Guide is stating the rule that applies to the House.

Rule 84, adopted by the House, provides:

“Every bill carrying an appropriation shall be referred to the Finance Committee before being read the third time.”

Under this specific rule of the House every bill carrying an appropriation must be referred to the Finance Committee; but the Senate has provided no similar rule. Section 1412 of the said Parliamentary Guide reads:

“Under the rules all bills appropriating money must be considered by the Committee of Finance, this being the only Committee having authority to report and recommend appropriations. * * * When the entire body orders its agent, the committee, to do a certain thing, no matter what the opinion of the committee may be, it is the duty of such committee to carry out the will of the House, not in part, but as a whole.”

You also inquire whether a bill directing an appropriation of state moneys is legally passed by the Senate if said bill upon its passage received twenty-one affirmative votes out of a total Senate membership of thirty-seven.

In Opinion No. 60 of this department, dated February 10, 1927, it was stated that:

“The number of votes required to pass a bill carrying appropriations (except for purposes noted in Section 29 of Article II) is governed by Section 9 of Article II of the Constitution and requires only a majority in each House of all the members elected thereto.”

In Hughes' American Parliamentary Guide to which you refer, it is stated in Section 1414 on page 662, in regard to vote necessary on appropriation bills:

"The constitution being silent on this subject, except as to appropriations for claims against the state which require a two-thirds vote, * * * From the Constitutional Debates we learn that in the Convention of 1851 an effort was made to require a two-thirds vote to pass an appropriation bill; but was defeated by a decisive vote and there was a large number of the members who were strongly opposed to the requirement that a majority of the House should be necessary to pass any bill."

Section 9 of Article II of the Constitution of Ohio provides that:

" * * * and no law shall be passed in either house without the concurrence of a majority of all the members elected thereto."

The exception to Section 9 of Article II is found in Section 29 of Article II which reads:

"No extra compensation shall be made to any officer, public agent, or contractor after the service shall have been rendered, or the contract entered into; nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly."

You also call my attention to the Senate rules following:

Rule 43 is to be read in connection with Rule 87. It does not refer to appropriations but to the expenditure by the Senate of money already appropriated.

Rule 44 refers to matters covered by Section 29 of Article II of the Constitution, which I have discussed above.

Rule 78 gives to any five (5) Senators the right to demand, in writing, a separate vote on any item or items contained in bills providing for tax levies, or making appropriations of money, or in concurring in House amendments thereto. I am of the opinion that this part of the rule is valid. As to that part of the rule which provides "and every such item failing to receive the votes of two-thirds of the members elected shall be stricken from such bill before the vote is taken upon its passage," I am in doubt.

On account of the fact that you require this opinion by four o'clock Monday afternoon, I cannot make the necessary research to come to a definite conclusion on Rule 78. Besides, notwithstanding that you call attention to this rule, I do not understand that there has been any demand in writing by five (5) Senators for a separate vote on any item of an appropriation bill. Therefore, there is no such pending question.

You are, therefore, advised that a bill directing an appropriation of state moneys is legally passed by the Senate if it receives a majority of the votes of all the members elected thereto, unless said appropriation comes within some of the exceptions mentioned in Section 29 of Article II.

Respectfully,
EDWARD C. TURNER,
Attorney General.