

times are residents of the political subdivision whose funds are secured, and friendly with the authorities who must necessarily enforce the contract. That fact, however, if such surety is taken, does not change the law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

478.

HOUSE BILL NO. 377—APPROPRIATION TO PAY EXPENSES OF SPECIAL COMMISSION ABROAD— SUBJECT TO REFERENDUM.

SYLLABUS:

House Bill No. 377, passed by the 88th General Assembly, and the appropriation therein made are subject to referendum, and the same will not go into effect until ninety days from April 25, 1929, to-wit, July 24, 1929.

COLUMBUS, OHIO, June 4, 1929.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of the recent communication from your office over the signature of Wade C. Christy, Assistant Adjutant General, requesting my opinion on the question as to whether House Bill No. 377, enacted by the recent General Assembly, is subject to the referendum, or whether, on the other hand, said act and the appropriation therein provided for are now in effect. The act here in question, which was passed by the 88th General Assembly, approved by the Governor April 19, 1929, and filed in the office of the Secretary of State, April 25, 1929, provides as follows:

“Section 1. The governor of the state, the adjutant general, and ten members of the 88th general assembly of Ohio, to be appointed by the governor, and all of whom shall be veterans of the world war, preference to be given to those members who are veterans of the 37th Division of the American Expeditionary Forces, are hereby constituted a commission to attend and officially represent the state of Ohio at the dedicatory ceremonies of the Ohio battle monuments which have been erected, by the authority of the state of Ohio, at the village of Eyne in Belgium and the villages of Montfaucon and Hattonchatel in France. A band to be selected by the 37th Division, A. E. F. Veterans' Association from former bandsmen of the 37th Division is hereby authorized to accompany said commission.

Section 2. All actual and necessary expenses of the members of said commission and the cost of transportation and uniforms of the band shall be paid out of the state treasury on the warrant of the auditor of state, upon the presentation of vouchers signed by the adjutant general.

Section 3. There is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated the sum of thirty thousand dollars for the uses and purposes of this act.”

The functions of the state government in the expenditure of public funds, pursuant to appropriations made by the Legislature, extend not only to expenditures

essential to the continued existence of the government and the performance of its ordinary functions, but extend likewise to expenditures in the discharge of duties which rest entirely on considerations of honor, gratitude and patriotism. In this view, the expenditures provided for by the act here in question are for a public purpose, and said act and the appropriation therein made are in all respects a valid exercise of legislative power and authority. *Cooley's Constitutional Limitations*, Vol. II, p. 1030; *Allied Architects Assn. vs. Payne*, 192 Cal. 431; *Barrow vs. Bradley*, 190 Ky. 480; *Hill vs. Roberts*, 142 Tenn. 215. However, no question is here presented with respect to the validity of the above quoted act. The only question here made is whether the appropriation therein provided for is excepted from the right of referendum reserved and granted to the people by the Constitution, and, therefore, effective and available for the purposes of the act at this time. Section 1d of Article II of the State Constitution, which operates by way of exception to the general right of referendum reserved to the people to adopt or reject any law or any section of any law or any item in any law appropriating money, passed by the General Assembly (Constitution, Section 1, Article II), provides that "laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.* * * The laws mentioned in this section shall not be subject to the referendum." As above noted, the provisions of Section 1d of Article II of the State Constitution operate by way of exceptions to the general right of referendum otherwise reserved to the people by the Constitution, and in this view said provisions should receive a strict but reasonable construction. *State ex rel. Keller vs. Forney*, 108 O. S. 463. Construing the provisions of Section 1d, Article II of the Constitution, the Supreme Court in its opinion in the case just cited said:

"The rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law. In view of the great precaution taken by the constitutional convention of 1912 to set forth and safeguard, with the particularity of detail usually found only in legislative acts, the right of referendum, and the three exceptions thereto, our court should not deny the people that right, unless the act in question is plainly and persuasively included within one of the three classes excepted from the operation of the referendum."

The appropriation here in question for the uses and purposes of the commission provided for in this act is, of course, not an appropriation to a state institution within the meaning of the constitutional provision above quoted. As above indicated, however, this appropriation is one for the purpose of carrying out a legitimate function of the state government, and the only question here presented is whether this appropriation is one for "current expenses" within the meaning of the phrase as used in Section 1d, Article II of the Constitution. The phrase "current expenses" being found in an instrument emanating from the people, is to be construed in its usual and ordinary sense, as the people must have understood the term in its ordinary sense as applied to governmental affairs. It has been held that the term as applied to public expenditures is identical in signification with the term "running expenses." The term has been further defined as "ordinary, running and incidental expenses." Construing this term in the connection in which it is used, the Supreme Court in the case of *State ex rel. James vs. Brown*, 112 O. S. 590, held that: "The phrase 'current expenses' as used in Section 1d of Article II of the Constitution, in addition to including the expenses incident to the officering and maintaining of the state government, includes

the expense of keeping in repair and maintaining the property of the state government." It is not thought that any of the definitions of the term "current expenses" above noted are necessarily exclusive; however, I do not see how the appropriation here in question can be brought within any permissible definition of the term. If this appropriation were one for the purpose of constructing and erecting the monuments referred to in the act, no suggestion would be ventured that such appropriation would be one for current expenses within the meaning of said constitutional provision; nor, in my view of this question, can it be said that an appropriation made by the Legislature for the purpose of providing for the expenses of the special mission provided for in this act is in any sense one for current expenses.

By way of specific answer, therefore, I am of the opinion that the act here in question and the appropriation therein made are subject to a referendum and that the same will not go into effect until ninety days from April 25, 1929, to-wit, on July 24, 1929.

Respectfully,
GILBERT BETTMAN,
Attorney General.

479.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND BOONE, EASON, WOOD, OF BLUEFIELD, W. VA., FOR CONSTRUCTION OF COTTAGE, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT AN EXPENDITURE OF \$96,750.00—SURETY BOND EXECUTED BY THE FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

COLUMBUS, OHIO, June 5, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and Boone, Eason, Wood, of Bluefield, W. Va. This contract covers the construction and completion of general contract for cottage for patients, Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of ninety-six thousand seven hundred and fifty dollars (\$96,750.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has also been submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1, 1929, and that the original appropriation lapsed before such contract was approved by the Attorney General. However, it will be further noted that the 88th General Assembly, in Amended House Bill No. 203, reappropriated such funds and authorized the expenditure of money for such purposes with the consent and approval of the Controlling Board, which has been obtained.