

issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of August 1, 1935, being Opinion No. 4486.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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3079.

APPROVAL—BONDS CUYAHOGA COUNTY, OHIO, \$17,000.00,  
PART OF THREE ISSUES DATED OCTOBER 1, 1938.

COLUMBUS, OHIO, October 11, 1938.

*Public Employes Retirement Board, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Cuyahoga County, Ohio, \$17,000.00.

The above purchase of bonds appears to be part of three issues of bonds of the above county dated October 1, 1938. The transcripts relative to these issues were approved by this office in an opinion rendered to the Teachers Retirement System under date of October 8, 1938, being Opinion No. 3056.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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3080.

CONTROLLING BOARD—ANY DEPARTMENT STATE GOVERNMENT—NO AUTHORITY TO INITIATE TRANSFERS OF MONEY FROM ONE APPROPRIATION TO ANOTHER—ABSENCE OF REQUEST FOR TRANSFER—LIMITATIONS TO GRANT OR DENY REQUEST—AMENDED SENATE BILL 369.

*SYLLABUS:*

1. *The Controlling Board has no authority under Section 8 of the General Appropriation Act, Amended Senate Bill No. 369, nor under*

any other act, to initiate transfers of money from one appropriation item to another which has been made to any department of the state government, in the absence of request for such transfer by such department.

2. Upon the receipt of a request for a transfer of moneys in accordance with Section 8 of such Senate Bill No. 369 from one specific appropriation item to another, the Controlling Board has no power or authority to effect other transfers than as requested and is limited to granting or denying the application of such department.

COLUMBUS, OHIO, October 12, 1938.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"I am writing you for an opinion as to the authority of the Controlling Board to transfer moneys from one item in the Health Department appropriation to other items in the appropriation without having received a request from this Department to do so.

I am calling your attention to Amended Senate Bill No. 369, page 192, Section 8, paragraph (a), which states as follows:

The controlling board shall have power:

(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in Section 1 of this act, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds within a department, division, bureau, or agency for which appropriations are made, from any item to another within "Personal Service" or "Maintenance" or to transfer to new classification items in cases where proper code items have not been provided by the legislature. The controlling board may, if it deems advisable, delegate to the director of finance authority to approve transfers of funds from any item to another within "Personal Service" or from any item to another within "Maintenance" during such period or periods as it might determine.

Recently this Department made a request to the Controlling board to make transfers from certain items in the appropriation bill to other items, and without our knowledge or consent, it transferred \$2,000 on two different occasions from A-1 Personal Service to other items in the appropriation. It is my belief from the powers given the Board in Amended Senate

Bill 369, as above quoted, that this money should be restored to our A-1 Personal Service appropriation.

Please give me your written opinion on this at your earliest convenience, and also advise if the Controlling Board should not offer an explanation when a request for transfer is denied."

I assume from your letter that in your recent request to the Controlling Board to make certain transfers from certain items in the appropriation bill to other items you requested that such transfers be made from some item or items other than the item designated as A-1 Personal Service, but that notwithstanding the fact that you did not request a transfer of any funds from such last mentioned item the Controlling Board saw fit upon its own initiative and without application therefor having been made by your department to transfer moneys from your personal service appropriation. The question is accordingly made as to whether or not the Controlling Board may, in the absence of request from a department of the state government for which appropriations are made, effect transfers among the various items in such appropriations for such department upon their own initiative.

The language of Section 8 of the current general appropriation act quoted in your communication is in my judgement in and of itself dispositive of your inquiry. The General Assembly has authorized such board "to grant authority\* \* \* to expend moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds \* \* \*." It should be noted that the statute confers no specific authority upon the Controlling Board to effect the transfer of funds from one appropriation item to another, but rather "to authorize" such transfers for the purpose of granting such authority to any department as therein set forth. Upon the receipt of a request from such department, it is evident that the approval of the request by the Controlling Board is sufficient to authorize the transfer in the budget office, but such authorization is only for the purpose of granting authority to any such department to expend moneys otherwise than in accordance with the appropriation items. There is here in my judgment a clear recognition of the right of such department in the first instance to determine whether or not a given transfer is necessary in the proper administration of that department. It would follow under such an interpretation that upon receipt of an application for the transfer of certain funds from one specific item to other specific item, the Controlling Board has jurisdiction to authorize such transfers subject to the limitations provided in the act, but the filing of an application by such department for a given

transfer is jurisdictional and provided the transfer is such as is authorized by law, the Controlling Board may approve or disapprove the same.

To construe the statute as conferring power upon the Controlling Board to change at will amounts available for the various departments under specific appropriation items would amount to conferring upon such board the power otherwise conferred upon the heads of the various departments. Under such circumstances, the courts will whenever possible give consideration to the practical results of a given construction and harmonize the statute under consideration with other statutes. In 37 O. Jur. 628, 629, the text is as follows :

“In interpreting a statute of plain and unambiguous terms which is not susceptible of more than one construction, the courts should not be concerned with the consequences that may result therefrom, but should enforce the law as they find it. In such case, the consequences of the state, if objectionable, may only be avoided by a change of the law itself, to be effected by legislative, not judicial, action. However, there are instances of statutes of apparently clear and unequivocal terminology being construed so as to avoid undesirable situations. In any event, when a statute is ambiguous in terms or fairly susceptible of two constructions, practical results may be given consideration to determine the intent of the legislature, so as to avoid, if practicable, an anomalous distinction or result, which should not be accorded the statute except by clear and explicit legislative enactment.”

Were Section 8 of the General Appropriation Act construed otherwise than hereinabove indicated, it would necessarily follow that the Controlling Board could at any time within the exercise of its discretion effectuate any or all transfers for any or all departments of the state government, subject, of course, to the limitations therein set forth, thereby effecting a wholesale amendment of the General Appropriation Act in contravention of the needs of the various departments as determined by those responsible for their administration. Such an interpretation would in my judgment result in the Controlling Board exercising legislative powers such as are exclusively conferred upon the General Assembly and raise a serious question as to the constitutionality of the section here under consideration.

This office held in an opinion appearing in Opinions of the Attorney General for 1927, Vol. II, page 1441, as set forth in the first branch of the syllabus :

“Neither the Controlling Board nor the Emergency Board is vested with any legislative power and neither can appropriate money nor amend a statute so as to provide that moneys appropriated by the legislature can be spent for a purpose other than that authorized by law.”

When confronted with two possible constructions of a statute, one of which will sustain its validity and the other of which might render the statute violative of the Constitution, the courts will adopt a construction which will sustain the validity of the legislative enactment. *Miami County vs. Dayton*, 92 O. S. 215.

As further support of the conclusion hereinabove indicated, it is interesting to note the language of paragraph (e) of Section 8, supra, which reads as follows:

“In case of any variation between the amount of any appropriation and the aggregate amount of the details thereof, the controlling board shall, with the advice and assistance of the department, institution, office or other agency or body affected thereby, adjust the details so as to correspond in the aggregate with the total appropriation.”

Even in case of a variation between the amounts of various appropriation items and the aggregate set forth as the amount appropriated to a given department, the Controlling Board has no authority to make any adjustment for the purpose of correcting such variation except with the advice and assistance of the department affected.

With respect to your second question, the statute imposes no duty upon the Controlling Board to ascribe reasons or explanations of the action of such board in either granting or denying a request for a transfer of funds. Since such duty has not been imposed upon the board, it necessarily follows that there is no requirement for the board so doing.

Specifically answering your question, it is my opinion that:

1. The Controlling Board has no authority under Section 8 of the General Appropriation Act, Amended Senate Bill No. 369, nor under any other act to initiate transfers of money from one appropriation item to another which have been made to any department of the state government in the absence of request for such transfer by such department.

2. Upon the receipt of a request for a transfer of moneys in accordance with Section 8 of such Senate Bill No. 369 from one specific appropriation item to another, the Controlling Board has no power or

authority to effect other transfers than as requested and is limited to granting or denying the application of such department.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3081.

APPROVAL—BONDS MAHONING COUNTY, OHIO, \$111,000.00,  
PART OF ISSUE DATED SEPTEMBER 1, 1938.

COLUMBUS, OHIO, October 12, 1938.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*  
GENTLEMEN:

RE: Bonds of Mahoning County, Ohio, \$111,-  
000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds in the aggregate amount of \$460,000, dated September 1, 1938, bearing interest at the rate of  $2\frac{3}{4}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said county.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*