

By Sections 1295-25 and 1295-26, General Code, like provision is made as to all moneys received by the State Board of Optometry. It was held, however, in an opinion of this office appearing in Opinions of the Attorney General for 1920, Vol. I, page 192, that:

“All moneys received by the Secretary of the State Board of Optometry under the act of March 20, 1919 (108 O. L., Part I, p. 73) must be paid monthly into the state treasury, and no part thereof can be drawn therefrom except in pursuance of a specific appropriation made by law. See section 22 of Article II of the state constitution.”

By way of specific answer to the question presented in your communication, I am of the opinion, therefore, that moneys received by you as royalties or rentals on sand and gravel permits issued by your department under the provisions of Substitute Senate Bill No. 236, above referred to, should be paid into the State Treasury in the manner provided by section 24, General Code, and that such moneys cannot be expended for shore erosion prevention projects or for the other purposes mentioned in said Act until these moneys have been appropriated by the General Assembly for the purposes stated.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1301

NO AUTHORITY FOR AUDITOR OF STATE TO CHARGE
DEPARTMENT OF COMMERCE FOR EXAMINATION
BY STATE EXAMINERS.

SYLLABUS:

There is now no authority whereby the cost of examinations by state examiners of the office of the Auditor of State may be charged to the Department of Commerce or the various divisions therein.

COLUMBUS, OHIO, October 13, 1937.

HON. ALFRED A. BENESCH, *Director of Commerce, Columbus, Ohio.*

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

“Paragraph 2 of Section 1 of Amended Senate Bill 369, which constitutes the General Appropriation Act for the biennium beginning January 1, 1937, provides as follows:

‘The cost of examinations by state examiners of the bureau of inspection and supervision of public offices, including heat, light and rent, rendered to departments and institutions supported in whole or in part by special funds, shall be charged against said special funds by the auditor of state, on statements rendered monthly for services rendered during the preceding month.’

All of the Divisions of the Department of Commerce are supported in part by special funds.

The question arises as to whether the cost of examinations by the state examiners is to be charged **only** against such special fund by the Auditor of State. A situation may arise wherein the special fund in and of itself is inadequate to defray the cost of such examination, and in that event, is such cost chargeable to the *general* appropriation made for the particular division?

Apparently, the cost of examination in question should be paid out of the item known as ‘Personal Service, A-2, Wages.’ However, it appears that none of the Divisions in the Department of Commerce has made provision in said item for the cost of examination, and if it be your opinion that the cost of examinations is chargeable against the special funds, the divisional budgets will necessarily have to be established upon a different basis.”

What may be termed your first question is answered by the first paragraph of Section 1 of Amended Senate Bill No. 369, the General Appropriation Act:

“The sums set forth herein designated ‘Total Personal Service’, ‘Total Maintenance’ and ‘Total Additions and Betterments’, for the purposes herein specified, are hereby appropriated out of any moneys in the state treasury not otherwise appropriated. Appropriations for departments, divisions, bureaus, institutions, offices, and other agencies and bodies, for the uses and purposes of which, or of any activity or function thereof, including the audit by the auditor of state of the accounts and records of any such department, division, bureau, institution, office, agency, body or activity, or function, specific funds in the state treasury are provided by law,

are hereby made from such specific funds, in so far as such funds are subject by law to appropriation and expenditure for the purposes herein mentioned, and to the extent that the moneys to the credit of such specific funds on the day when this act shall take effect, or which may be credited thereto prior to December 31, 1938, shall be sufficient to satisfy such appropriations. Unless otherwise provided by law, any sums necessary to supply the balance of such appropriations are hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, not otherwise appropriated; * * * *."

It is apparent that to the extent appropriations are made in the act to pay the cost of the auditing of the various departments by the Auditor of State such appropriations are payable from the specific funds referred to to the extent that such funds may be sufficient to satisfy such appropriations. Any shortages are payable from the general revenue fund.

However, you present the question of charging such auditing cost to the general appropriation made for such division of your department and suggest that such cost be payable from appropriations for personal service made to each of your divisions.

An examination of the permanent statutes as contained in the General Code discloses no general provision authorizing the Auditor of State to charge the various departments and divisions, boards and commissions of the state government with the cost of auditing the same. Section 6064-10, General Code, contains such authorization but such section relates only to auditing expense of the Department of Liquor Control. Sections 287 and 288, General Code, provide for charging such auditing cost to the various taxing districts of the state and provide the machinery whereby the various county auditors shall remit to the state for such charges. The moneys so received are, of course, payable into the state treasury under the provisions of Section 24, General Code. These sections, however, make no reference to auditing other than the various taxing districts of the state and the authority to charge the various state departments for auditing cost is found in the General Appropriation Act rather than in the permanent sections of the General Code. This authority is set forth in clear and unmistakable language in the second paragraph of Section 1 of such act quoted in your letter.

I do not find upon examination of the General Appropriation Act that any appropriation is made to your department or to any division therein for the purpose of paying the expense of the Auditor of State

of state examiners in auditing your department or its divisions. There is an appropriation made to your Division of Banks under the heading of "H 8 Contributions" in the amount of \$40.00 for each of the years 1937 and 1938. There is a similar "H 8" appropriation item made to the Division of Insurance in the amount of \$675.00 for each of the years 1937 and 1938, as well as to the Division of State Fire Marshal in the amount of \$10.00 for each of such years. While there would be some justification for holding that such auditing expense could be properly paid from such "H 8" items, such a holding is precluded by a consideration of the fact that elsewhere in the General Appropriation Act where the legislature sought to make specific appropriations for State Auditor examiners, it has so provided under the classification "F 9." I refer to the appropriation to the Bureau of Motor Vehicles, Division of State Highway Patrol, designated as follows: "F 9 Expense of Auditor of State examiners \$3,000.00" for each of the years 1937 and 1938. Similarly, in making appropriations to the Division of Hospital Claims of the Department of Highways, I find that the legislature appropriated as "F 9 State Auditor examiners" \$1,500.00 for each of the years 1937 and 1938, which latter appropriation was however vetoed by the Governor. Under these circumstances, a consideration of the well established doctrine "*Expressio unius est exclusio alterius*" precludes me from taking the position that the expense of Auditor of State examiners may be paid from the appropriations made to your divisions as above noted under the classification of "H 8 Contributions."

The position that such appropriations under the classification "H 8 Contributions" may not be expended for reimbursing the office of the Auditor of State for examining your divisions, is further strengthened by consideration of the fact that in the enactment of the General Appropriation Act at the end of the second paragraph of the first section, quoted in your letter, the General Assembly specifically appropriated moneys to cover such cost, thus carrying out the provision of such paragraph that such cost shall be charged against said special funds. The language of the General Assembly in so appropriating such special funds was as follows: "There is hereby appropriated from said special funds the necessary amounts to cover the costs of such examinations." This specific appropriation item was, however, vetoed by the Governor so that the conclusion would appear to be inescapable that no provision is made whereby the Auditor of State may be reimbursed for the cost of examining your department or any of its divisions.

In view of the foregoing and in specific answer to your question, it is my opinion that there is now no authority whereby the cost of examinations by state examiners of the office of the Auditor of State may

be charged to the Department of Commerce or the various divisions therein.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1302.

APPROVAL—BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$5,000.00.

COLUMBUS, OHIO, October 14, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Akron, Summit County, Ohio,
\$5,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated October 1, 1935. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of June 7, 1937, being Opinion No. 704.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1303.

APPROVAL—BONDS OF BEDFORD VILLAGE SCHOOL DIS-
TRICT, CUYAHOGA COUNTY, OHIO, \$2,000.00.

COLUMBUS, OHIO, October 14, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Bedford Village School District, Cuya-
hoga County, Ohio, \$2,000.00.