

4155.

CLAIM—PERSONAL SERVICES RENDERED IN 1930—MAY NOT BE PAID FROM PRESENT APPROPRIATION TO DEPARTMENT OF PUBLIC WORKS—SHOULD BE PRESENTED TO SUNDRY CLAIMS BOARD.

SYLLABUS:

1. *A claim for personal services, performed in 1930 by an employe of the Division of State Buildings, Department of Public Works, may not, if found to be legal, be paid from funds appropriated to the Emergency Board by House Bill No. 624 of the 89th General Assembly.*

2. *Such claim should be presented to the Sundry Claims Board to be disposed of by such Board in the manner provided by section 270-6 of the General Code.*

COLUMBUS, OHIO, March 16, 1932.

HON. HOWARD L. BEVIS, *President, Emergency Board, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent letter which reads as follows:

“Attached herewith find copies of letters presented to the Emergency Board at its meeting of January 4th, 1932, and which the Board requested be referred to your office for instructions in regards to the handling of this matter.”

One of the two letters referred to in your communication was addressed to the Emergency Board by the Superintendent of Public Works and reveals the following facts:

One Jacob Lang, employed in the State House as a janitor by the Division of State Buildings, at a salary of thirteen hundred and eighty dollars a year, was dismissed on March 1, 1930. After several conferences with the State Civil Service Commission, said Jacob Lang was given a position on May 15, 1930, at forty-five cents per hour until March 1, 1931, when he was restored to his former position at the rate of thirteen hundred and eighty dollars a year. Mr. Lang having died about November 30, 1931, his widow has appealed for compensation due him for the period from March 1, 1930, to May 15, 1930—two and one-half months at \$1380.00 per year—\$287.50. As the Department of Public Works has no funds at the present time to pay 1930 obligations, it requested that your board make an allowance of \$287.50 to pay the above claim and that said allowance be credited to A-1, Salaries fund of the Division of State Buildings.

The other letter was addressed to the Superintendent of Public Works by the late Jacob Lang stating briefly his claim and requesting payment of the \$287.50 due him.

It is to be observed from the facts disclosed in the foregoing communications that any liability of the State for the salary of the late Jacob Lang from March 1, 1930, to May 15, 1930, would be an obligation incurred during the biennium beginning January 1, 1929, and ending December 31, 1930. It is also to be observed that any unexpended balances of appropriations made by the legislature for the biennium of 1929-1930 have long since lapsed to the general revenue fund of the State, since under Article II, Section 22, Ohio Constitution, appropriations cannot be made by the legislature for a longer period than two years.

In view of the fact that said Article II, Section 22, Ohio Constitution provides that:

“No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; * * * ”

the question now arises as to whether there are any funds appropriated by the legislature for the present biennium, 1931-1932, that can be used to pay this obligation which was incurred in 1930.

Section 1 of House Bill No. 624 of the 89th General Assembly provides in part:

“* * *

The sums herein named in the column designated ‘1931’ shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1931, nor to pay liabilities incurred subsequent to December 31, 1932; those named in the column designated ‘1932’ shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1932, or incurred subsequent to December 31, 1932.”

On page 181 of House Bill No. 624 appears an appropriation to your board as follows:

“EMERGENCY BOARD		
MAINTENANCE	\$1,000,000 00	\$1,000,000 00
	<hr style="width: 50%; margin: 0 auto;"/>	
Total Maintenance.....	\$1,000,000 00	\$1,000,000 00
Total Emergency Board.....		\$2,000,000 00”

Obviously, none of this appropriation is available to pay the obligation under consideration herein, should it be determined that funds appropriated to the Emergency Board could legally be used to pay a claim of this nature, a point which it is unnecessary to decide herein, as Section 1, supra, prevents any of the sums appropriated from being used to pay liabilities existing prior to January 1, 1931.

It appears to me that this claim is one that should be presented to the Sundry Claims Board, which is provided for by section 270-6, General Code. Said section provides in part:

“* * * In addition to any other duties that may by law devolve upon such board, it is hereby authorized and empowered to receive original papers representing claims against the state of Ohio for the payment of which no monies have been appropriated. Such claims shall be filed and properly designated either by number or short title or both. All such claims shall be carefully investigated by such board. The president of the sundry claims board shall, for the purposes contemplated by this section, have power to administer oaths, compel the attendance of witnesses, and the production of books and papers, and to punish for disobedience of subpoena, refusal to be sworn, or to answer as a witness, or to produce books and papers, as is conferred upon officers authorized to take depositions. After such investigation the board shall either approve, ap-

prove with conditions and limitations or disapprove of each such claim, and append to the original papers heretofore mentioned representing each claim, a concise statement of facts brought out in such investigation upon which its approval or disapproval is based. Such original papers and appended statements shall be filed in the office of the president of such board, and delivered to the chairman of the finance committee of the house of representatives of the next general assembly promptly upon the appointment of such chairman. A copy of the above-mentioned appended statement shall be kept on file in the office of the president of such board and, together with the original papers representing such claim and any other matters pertaining thereto, shall constitute a permanent claims' record.

* * *

You will note that under the provisions of the above section, the Sundry Claims Board carefully inquires into the merits of claims against the State and presents such claims as are approved by it to the legislature for appropriations to meet them.

A very similar situation to that presented here occurred in 1926. It seems that on April 28, 1925, one Charles F. Miller of Dayton, Ohio, who had been employed by the Department of Industrial Relations as branch office manager at Dayton, Ohio, a position under the civil service, was notified that his position had been abolished. He filed a mandamus action in the Supreme Court of Ohio on June 17, 1925, praying that he be restored to his position. On February 9, 1926, the court granted the writ and ordered that his position be restored to him, stating that the relator's position had never in fact been abolished. See *State ex rel., vs. Witter*, 114 O. S. 122. The question then arose as to whether or not all of Miller's salary for the time during which he was prevented from performing his duties could be immediately paid by the State. No warrant was issued to him for his salary from April 24, 1925, to June 30, 1925, because the obligation was one belonging to the biennium ending June 30, 1925. At that time the fiscal year of the State ended on June 30, (see section 260-1, General Code, since amended) whereas, now the fiscal year ends on December 31st. The General Appropriation Act for 1925-1927 (Amended House Bill 517), in Section 1 contained the provision that the sum appropriated therein could not be used to pay liabilities existing prior to July 1, 1925, which was analogous to the provisions of Section 1 of House Bill No. 624 of the 89th General Assembly.

A reference to the Sundry Claims Bill passed April 21, 1927, shows the following item therein:

"PAYMENT FOR SERVICES

* * *

Charles F. Miller, 211 Ludlow building, Dayton, Ohio, in full payment for services rendered from March 24, 1925 to June 30, 1925	\$372 21
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* * *

See page 227 of the Appropriation Acts of the 87th General Assembly of Ohio. From the above discussion, it may be readily seen that the situation which you present is identical in principle to that in the case of Charles F. Miller.

In view of the above discussion, I am of the opinion that the claim of Jacob Lang, presented to your board, should now be submitted to the Sundry Claims Board to be disposed of in such manner as said board sees fit.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4156.

POLITICAL SUBDIVISION—SALE OF PERMANENT IMPROVEMENT, OTHER THAN PUBLIC UTILITY, ON WHICH BONDS ARE OUTSTANDING—PROCEEDS MAY BE USED TO CONSTRUCT PERMANENT IMPROVEMENT.

SYLLABUS:

When a subdivision, as defined by section 5625-1, General Code, sells a permanent improvement, not a public utility, for the construction or acquisition of which improvement bonds have been issued and are unpaid, the proceeds of such sale may be used for the construction or acquisition of a permanent improvement or improvements.

COLUMBUS, OHIO, March 16, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“Section 3704 G. C., providing that the proceeds from the sale of property shall be paid to the sinking fund when such property was acquired by an issue of bonds and any amount of said bonds are still outstanding, was repealed in 113 O. L. 670, and section 5625-10 G. C., amended to read in part as follows:

‘If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision or into a special fund for the construction or acquisition of a permanent improvement or improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. * * *

In your Opinion No. 2704, page 1836 of the 1930 Opinions, branches two and three of the syllabus read as follows:

2. ‘A board of county commissioners may sell any tract of real estate belonging to the county and not needed for public use in parcels in the event it should appear to the best interests of the county so to do.

3. The proceeds of such sale should be paid into the sinking fund the bond retirement fund or into a special fund for the construction or acquisition of a permanent improvement or improvements.’

We are quoting further from this opinion at page 1838: