

60.

APPROPRIATION BILL—MAJORITY VOTE IN EACH HOUSE OF GENERAL ASSEMBLY NECESSARY TO PASS SAME—EXCEPTION—ITEMS MENTIONED IN ARTICLE II, SECTION 29, CONSTITUTION OF OHIO, WHEN TWO-THIRDS VOTE IS NECESSARY—“CURRENT EXPENSES”—WHEN APPROPRIATION BILL SUBJECT TO REFERENDUM.

SYLLABUS:

1. *A majority vote only in each house of those elected thereto is necessary to pass an appropriation bill, unless such appropriation bill contains items mentioned in Section 29 of Article II of the Constitution, in which event a vote of two-thirds of the members elected to each branch of the General Assembly is necessary.*

2. *Section 1d of Article II of the Constitution does not change the vote necessary to pass an appropriation bill.*

3. *An appropriation bill for current expenses of the state government and state institutions is not subject to the referendum.*

4. *An appropriation bill covering items other than those for the current expenses of the state government and state institutions is subject to the referendum unless passed as an emergency measure.*

COLUMBUS, OHIO, February 10, 1927.

HON. THOS. EDW. BATEMAN, *Clerk of the Senate, Columbus, Ohio.*

DEAR MR. BATEMAN:—I am in receipt of your letter under date of February 9th, reading as follows:

“The question has arisen before our body as to the number of votes required to pass a bill carrying an appropriation.

It has been our practice in recent years to require two-thirds of all members elected to pass a bill carrying an appropriation. I understand that some years ago a ruling was made from the office of the Attorney General, and that the Supreme Court has since ruled that it only requires a majority vote.

I would like your opinion on this subject.”

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

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

Except appropriations made for purposes mentioned in Section 29 of Article II, hereinafter set forth, I beg to advise you that the foregoing section governs and that a majority only in each House of those elected thereto is necessary to pass an appropriation bill.

Section 29 of Article II of the Constitution provides:

“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.”

In your telephone conversation, you referred to Section 1d of Article II of the Constitution, which provides:

"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. Such emergency laws upon a ye and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reason for such necessity shall be set forth in one section of the law, which section shall be passed only upon a ye and nay vote upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum."

I beg to advise that this section of the Constitution does not change the vote necessary to pass an appropriation bill. What this section does do is to permit, among other things, appropriations for the current expenses of the state government and state institutions to go into immediate effect.

This section further permits emergency laws receiving a two-thirds vote of all the members elected to each branch also to go into immediate effect.

Therefore, if the Legislature has before it an appropriation bill covering items which are not for the current expenses of the state government or state institutions, and it is desired that such law shall go into immediate effect, it must be passed as an emergency measure.

Again answering your question, 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.

Where by an appropriation bill extra compensation is provided for any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; or where money is authorized to be paid on any claim, the subject matter of which shall not have been provided for by pre-existing law, then before such bill can be passed, it must receive the affirmative vote of not less than two-thirds of the members elected to each branch of the General Assembly.

If all items in an appropriation bill are for current expenses of the state government or state institutions, such appropriation bill is not subject to referendum provisions of the Constitution.

If such appropriation bill is not for the current expenses of the state government or state institutions, it is subject to the referendum provisions of the Constitution, unless each branch of the Legislature shall pass it as an emergency measure.

Respectfully,

EDWARD C. TURNER,

Attorney General.