

1987.

GENERAL ASSEMBLY—COMPENSATION OF MEMBERS THEREOF MAY NOT BE CHANGED DURING TERM OF OFFICE — ALLOWANCES OR PERQUISITES IN ADDITION TO FIXED COMPENSATION—PERSONAL EXPENSES OF MEMBERS MAY NOT BE PAID FROM APPROPRIATION FOR GENERAL EXPENSES OF GENERAL ASSEMBLY.

**SYLLABUS:**

1. *The compensation of members of the General Assembly can not lawfully be changed during their term of office.*
2. *Members of the General Assembly may not lawfully be granted allowances or perquisites in addition to their fixed compensation.*
3. *The payment of personal expenses of members of the General Assembly incurred for board or lodging, while attending the regular or special sessions of that body may not lawfully be paid from an appropriation made for the purpose of meeting the necessary cost of conducting the business of the two houses of the General Assembly, such as clerk hire, stationery, office supplies, printing and the like.*

COLUMBUS, OHIO, December 11, 1933.

HON. GEORGE WHITE, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR WHITE:—You have requested my opinion with respect to the legality of a proposed appropriation to be made by the General Assembly for the purpose of paying the expenses incurred by members of the 90th General Assembly, for board and lodging, while in attendance at special sessions of the legislature called and now in session or which may be called at any time during the remainder of the biennium of 1933 and 1934.

Accompanying your inquiry is a copy of a bill which it is proposed shall be introduced in the present special session of the General Assembly, after the call therefor, is properly supplemented so as to permit the enactment of such legislation, providing for an appropriation of funds from the general revenue fund of the state, and the payment in pursuance thereof of the expenses for board and room, within prescribed limits, of members of the 90th General Assembly while in attendance upon special sessions of the legislature. Your specific question is whether or not the provisions of the proposed bill will, if enacted into law, transgress constitutional limitations. The bill is entitled:

“A BILL

To make an appropriation for paying the expenses of the members of the Ninetieth General Assembly, incurred in attending special sessions of the General Assembly, held during 1933 and 1934.”

Section 1 of the bill reads in part, as follows:

“There is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated a sum sufficient to pay the expenses of the members of the Ninetieth General Assembly incurred in attending special sessions of the Ninetieth General

Assembly, at a rate, not to exceed four dollars per day for room and board, for each legislative day. Such expenses shall be allowed in attending such special sessions of not to exceed ten legislative days in length, during the remainder of the year 1933, and in attending special sessions of not to exceed thirty legislative days in length during the year 1934."

Sections 2 and 3 of the bill provide for the manner of allowing and paying the expense bill of \$4.00 per day for each member in attendance and expressly limit such allowances for those members only whose attendance "shall be evidenced by an answer to seventy-five per cent or major portion thereof, of the roll calls on any legislative day, as shown by the journal for that day, and allowed by the clerks of the Senate and House of Representatives."

It is further provided that the expense account of each member of the Senate and House of Representatives shall be signed by the member and filed by him with the clerk of the Senate or House, as the case may be, at the end of each week of each special session.

Section 31 of Article II of the Constitution of Ohio provides as follows:

"The members and officers of the general assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office."

The "fixed compensation" which has been prescribed by law for members of the General Assembly, is provided for by Section 50 of the General Code of Ohio. This compensation consists of a salary of \$1,000.00 per year and mileage to and from the member's place of residence. Said Section 50, General Code, reads as follows:

"Every member of the general assembly shall receive as compensation a salary of one thousand dollars a year during his term of office. Such salary for such term shall be paid in the following manner: two hundred dollars in monthly installments during the first session of such term and the balance of such salary for such term at the end of such session.

Each member shall receive the legal rate of railroad transportation each way for mileage once a week during the session from and to his place of residence, by the most direct route of public travel to and from the seat of government, to be paid at the end of each regular or special session. If a member is absent without leave, or is not excused on his return, there shall be deducted from his compensation the sum of ten dollars for each day's absence."

The mileage spoken of in the above statute is not regarded as an "allowance or perquisite" but is a part of the compensation of the member as the term "compensation" is used in the Constitution (See Opinions of the Attorney General for 1916, page 66 and for 1919, page 587.)

Clearly, if provision is made by law, by the 90th General Assembly, whereby its members are to be reimbursed for the expense incurred by them for board and lodging or for any other item of expense incurred in the prosecution of their official duties as members of the General Assembly, it would either be a change in com-

pensation during their term or an "allowance or perquisite" as the expression is used in Section 31 of Article II of the Constitution, neither of which is permitted.

From the way this bill is drawn, it is not entirely clear whether the person who framed it intended to provide by its terms that the members of the legislature were to be reimbursed for expenses incurred by them for board and room during their attendance on special sessions of the legislature or whether it was the intent to provide for the payment of these expenses as an expense of the General Assembly itself.

It is of course, perfectly proper for the General Assembly to provide from public funds for the payment of the cost of its sessions, and within proper limits it is the judge of what are legitimate expenses of the General Assembly itself. If the cost of board and room for the members of the legislature may properly be regarded as an expense of the legislature itself, the bill would no doubt be construed, if enacted into law, as providing for such an expenditure, inasmuch as courts always endeavor to give to a legislative enactment a construction which will make it constitutional if possible, in preference to an interpretation which would render the statute unconstitutional and inoperative. I cannot subscribe to the view that the personal expenses of members of the legislature, incurred for board and lodging while attending sessions of the legislature, may be classed as proper expenses of the General Assembly itself, on a parity with the furnishing of heat, light, desks, stationery and other conveniences and necessities intended for the more prompt and efficient discharge of its duties. In my opinion, such expenditures are purely personal expenses of the individual members.

I am therefore of the opinion that the bill in question, if enacted into law under any view that may be taken of it would be held to be unconstitutional.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1988.

CITY—FUNDS THEREOF DEPOSITED IN TREASURY INVESTMENT ACCOUNT AND NOT NEEDED FOR SIX MONTHS OR MORE MAY NOT BE INVESTED IN NOTES OF SUCH CITY ISSUED UNDER AUTHORITY OF AM. S. B. No. 382.

**SYLLABUS:**

*When a city has established a treasury investment account, in accordance with the provisions of sections 4296-1 to 4296-4, inclusive, of the General Code, funds not needed for a period of six months or more may not be invested in notes of such city issued under authority of Amended Senate Bill No. 382, passed by the 90th General Assembly.*

COLUMBUS, OHIO, December 11, 1933.

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

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