

this lease as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3036.

DEPARTMENT OF PUBLIC WELFARE—INTERPRETATION
AMENDED HOUSE BILL 829 SECTION 3 AND AMENDED
SENATE BILL 369—OHIO STATE PENITENTIARY PERSONAL
SERVICE—A-1—SALARIES—GUARDS—SALARIES
APPROPRIATION—SUPPLEMENTARY—AMOUNT MAY
BE USED FOR PURPOSE OF APPROPRIATION ITEM.

SYLLABUS:

The appropriation contained in Section 3 of Amended House Bill 829 of the 92nd General Assembly is a supplementary appropriation to augment the amount appropriated in and by the General Appropriation Act, Amended Senate Bill 369, under the heading "Ohio State Penitentiary Personal Service—A 1. Salaries" and the amount therein appropriated may be used for the purpose of such appropriation item.

COLUMBUS, OHIO, September 29, 1938.

Department of Public Welfare, State Office Building, Columbus, Ohio.

GENTLEMEN: Your letter of recent date reads as follows:

"Amended H. B. 829, enacted by the 92nd General Assembly, in special session, provides for a \$20.00 per month increase in salary, effective March 1, 1938, for the guards employed at the Ohio Penitentiary, and also provides a new schedule of working hours and leaves of absence. Copy of amended H. B. 829 is attached.

Section 3 of the Act appropriates the sum of \$102,500.00 to provide for the increases set forth in Section 1. No direct mention is made, however, regarding payment of the 45 additional guards employed since March 1, 1938, to carry out the provisions of Section 2 of this Act. Since the effective date of this Act it has been generally accepted that the \$102,500.00 appropriated was available to cover both the increases in salary and pay the salaries of the additional guards employed.

Recently, however, a question has been raised by the State Auditor's office whether or not the salaries of the additional guards could be made a proper charge against the appropriation carried in H. B. 829. It is our contention that the intent and purpose of this appropriation was to provide for the increases in salaries of the guards and also to pay for the additional guards, who were necessarily hired to carry out the provisions of Section 2 of the Act. To support this contention, 200 guards were increased \$20.00 per month on March 1st, which would require only \$40,000.00 for the ten months' period from March 1, 1938, to December 31, 1938. The Legislature certainly must have had in mind when this appropriation was enacted, that the additional guards required to carry out the provisions of Section 2 would be paid from this appropriation, otherwise they would not have appropriated the sum of \$102,500.00. Therefore, we are asking your opinion on the following questions.

- 1—Is the \$102,500.00 appropriated in Amended H. B. 829 available to pay both the increases in salaries and the additional guards that were employed to carry out the provisions of Section 2?
- 2—If the \$102,500.00 appropriated is available to pay both the increases of the guards then employed and the additional guards that were later employed, can it be considered as a supplementary salary appropriation for the Ohio Penitentiary and credited to the amount appropriated in S. B. 369 for the year 1938?
- 3—If not a supplementary appropriation, what part of the \$102,500.00 would be available for the Ohio Penitentiary to carry out the intent and purpose of Amended H. B. 829?

An early opinion on these questions will be greatly appreciated. If it is decided that the \$102,500.00 is available only for the increase in salaries, then it will be necessary to immediately dismiss the 45 additional guards employed since March 1st, inasmuch as the appropriation made in S. B. 369 for the year 1938 will not permit this additional expense, thereby preventing the Department of Public Welfare from complying with the provisions of Section 2 of H. B. 829."

Amended House Bill 829 passed as an emergency measure by

the General Assembly February 28, 1938, and approved by the Governor March 15, 1938, after providing for an increase in salaries of guards of the Ohio Penitentiary and a reduction of working hours, in the first two sections thereof, contains an appropriation in Section 3, which reads as follows:

"In order to provide for the increase in salary for Class A, B, C guards at the Ohio penitentiary according to the schedule set forth in Section 1 of this act for the period commencing March 1, 1938, and ending December 31, 1938, there is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated the sum of one hundred and two thousand five hundred dollars."

There is little doubt but that the General Assembly had constitutional power to create a specific item of appropriation to be used solely for the payment of such portion of the salaries of penitentiary guards as was occasioned by the increase provided in and by such House Bill 829, but an examination of the language of Section 3 of such House Bill, *supra*, does not disclose any intention on the part of the General Assembly to set up a new appropriation item for such limited purpose. The General Appropriation Act, Amended Senate Bill 369, at page 110 contains an appropriation item designated as "Ohio State Penitentiary Personal Service—A 1. Salaries" and it would appear in the absence of apt language to indicate a contrary legislative intent, that the appropriation for payment of salaries of employes of the Penitentiary as contained in House Bill 829, *supra*, is but a supplementary appropriation to the item hereinabove referred to in the General Appropriation Act.

It should be observed that under the Constitution it is incumbent upon the General Assembly to itemize appropriations. This is apparent in view of the provisions of Article II, Section 16 of the Constitution wherein it is provided that "The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassing of a bill."

The conclusion would appear to be inescapable that the appropriation contained in such House Bill 829 is nothing more nor less than an additional and supplementary appropriation under the heading "Ohio State Penitentiary Personal Service—A 1. Salaries." It must follow, therefore, that the language as to providing for the increase of salaries provided in Section 1 of the Act is but explanatory of the reason for the appropriation. This view is strengthened by

a consideration of the amount of the appropriation as pointed out in your letter as indicative of the legislative intent.

Specifically answering your first and second questions, it is my opinion that the appropriation contained in Section 3 of Amended House Bill 829 of the 92nd General Assembly is a supplementary appropriation to augment the amount appropriated in and by the General Appropriation Act, Amended Senate Bill 369, under the heading "Ohio State Penitentiary Personal Service—A 1. Salaries" and the amount therein appropriated may be used for the purpose of such appropriation item.

In view of my opinion as to your first and second questions, it is unnecessary to consider your third question.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3037:

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$50,000.00, PART OF TWO ISSUES DATED SEPTEMBER 1, 1938.

COLUMBUS, OHIO, September 29, 1938.

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

RE: Bonds of City of Cleveland, Cuyahoga County,
Ohio, \$50,000.00.

The above purchase of bonds appears to be part of two issues of bonds of the above city dated September 1, 1938. The transcripts relative to these issues were approved by this office in an opinion rendered to the Industrial Commission under date of September 17, 1938, being Opinion No. 2986.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.