

1064.

APPROVAL—BONDS OF MARION CITY SCHOOL DISTRICT,
MARION COUNTY, OHIO.

COLUMBUS, OHIO, August 25, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

IN RE: Bonds of Marion City School District, Marion
County, Ohio, \$6,500.00.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise part of an issue of school bonds in the aggregate amount of \$250,000, dated December 1, 1919, bearing interest at the rate of $5\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1065.

RESOLUTION TO PROVIDE FOR EXPENSES OF SPECIAL
SESSION—DOES NOT ALLOW FOR COMPENSATION
AFTER DATE OF ADJOURNMENT.*SYLLABUS:*

The authority contained in Article III, Section 8 of the Constitution to provide for the expenses of a special session and for other matters incidental thereto, does not empower the General Assembly to appoint

employees to serve after such session has been adjourned under Article III, Section 9 of the Constitution and has terminated its business.

COLUMBUS, OHIO, August 26, 1937.

HON. DWIGHT L. MACHETTE, *Clerk of the Senate, Columbus, Ohio.*

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

"The Senate of the 92nd General Assembly of Ohio, on July 13, 1937, being in extraordinary session, pursuant to the call of the Governor issued under authority of Article III, Section 8 of the Constitution of Ohio, adopted the following resolutions directing the employment of certain help during the remainder of the 1937-1938 biennium. •

S. R. No. 87—Mr. Campbell

Relative to a secretary and employees of Senate Finance Committee.

WHEREAS, The chairman of the Senate Finance Committee has certified that the business of the Senate Finance committee will require throughout the year the services of a secretary, capable of handling accounting work, as well as serving in a secretarial capacity; also an assistant and attendant at full or part time; therefore be it

RESOLVED, That upon the adoption of this resolution, the chairman of the Senate Finance committee is authorized to appoint such secretary, assistant and attendant; and that be it further

RESOLVED: That their terms of office shall be continuous with that of the clerk and members of this, the 92nd General Assembly, and they shall receive as compensation six dollars (\$6.00) per day, to be paid from the appropriate funds of the Senate.

Such appointees shall be subject to removal at the discretion of the chairman of the Finance Committee, who may designate their successors.'

'S. R. No. 90—Mr. Matthews

Relative to the appointment of assistant custodian.

RESOLVED, That P. L. Stafford be appointed as assistant custodian of the Senate of the 92nd General Assembly, and be it further

RESOLVED, That his term of office shall be continuous with that of the clerk and members, and that he shall receive

compensation at the rate of five dollars per day for five days per week, to be paid from the appropriated funds of the Senate.'

'S. R. No. 95—Mr. Morris

Relative to the employment of Dan Parkinson.

RESOLVED, That Dan Parkinson, second assistant sergeant-at-arms of the Senate, be elected as assistant custodian of the Senate, and shall perform such other duties as may be assigned him by the officers of the Senate and he shall receive as compensation the sum of \$5.00 per day for five days per week payable semi-monthly.'

Our attention has been brought to an opinion of the Attorney General (No. 978) issued August 5, 1937, which held that a resolution adopted in the same special session, as to an investigation of the Civil Service Commission, was valid only so far as it came within the Governor's messages pursuant to his call under Article III, Section 8 of the Constitution.

In view of this opinion and the constitutional provisions and judicial decision upon which it was based, I would like to respectively request your opinion as to whether or not I would be authorized by the laws and Constitution of Ohio in issuing vouchers for the wages of officers or employees created by the above resolutions for the remainder of the biennium in the absence of a message from the Governor authorizing such resolution."

The authority to issue vouchers for the wages of the officers or employes in question is dependent upon a determination of the power of one house of the General Assembly to appoint such employes to serve and be compensated during the entire biennium—this in view of the fact that I am advised that the legislature has now been adjourned by the Governor until December 31, 1938, under Article III, Section 9 of the Constitution.

Considering first Senate Resolution No. 87 as quoted in your letter, the preamble of the resolution, authorizing the appointment of a secretary, assistant and attendant whose terms shall be continuous with that of clerk and members of this assembly at a per diem of \$6.00, such preamble contains the statement that the chairman of the Senate Finance Committee "has certified that the business of the Senate Finance committee will require throughout the year the services of" a secretary, an assistant and attendant. If no constitutional authority existed for such employment for the entire biennium, it, of course, follows that no obligation is incurred on the part of the state to pay for the same.

Opinion No. 978, to which you refer, held as set forth in the syllabus:

“The committee authorized by Senate Resolution No. 81, passed by the 92nd General Assembly in special session July 12, 1937, has no power or authority at this time to investigate the Civil Service Commission.”

The foregoing opinion is based upon Article III, Section 8 of the Constitution limiting the business which shall be transacted at a special session of the legislature to that included in the Governor's call. The opinion also cited and followed *State, ex rel. vs. Baden*, 125 O. S. 307.

Article III, Section 8, of the Constitution, in addition to limiting the business which shall be transacted at a special session to that named in the proclamation of the Governor or in a subsequent message to such special session, also provides that “The General Assembly may provide for the expenses of the session and other matters incidental thereto.” It is perfectly apparent in my judgment that although the employment of a secretary and an assistant and attendant as referred to in Senate Resolution No. 87, supra, might properly be a necessary expense of the special session during the time the Senate is acting in the transaction of its business, it may not be said that after the assembly has been adjourned by the Governor under Article III, Section 9 of the Constitution such expenses are authorized under Article III, Section 8 of the Constitution. The session has at this time concluded its business and this condition will prevail unless and until the Governor should see fit to again call the Assembly in session. It is my judgment that payment of per diem compensation to such employes may not be construed as an expense of the session which has been, for the time being at least, terminated. In so far as this resolution purports to authorize payment of compensation to employes of the Senate Finance Committee on a per diem basis for services rendered at this time, it is of no effect and completely void, since the Governor has not authorized such action.

You also inquire as to Senate Resolution No. 90, appointing an assistant custodian for the entire biennium upon a per diem basis of \$5.00 for five days per week, and also you inquire as to Senate Resolution No. 95, appointing another assistant custodian upon a per diem basis of \$5.00 for five days per week who “shall perform such other duties as may be assigned him by the officers of the Senate.” The comments hereinabove made as to Senate Resolution No. 87 are clearly applicable as to the power to compensate persons appointed under these two provisions at the present time.

Specifically answering your question, it is my opinion that the authority contained in Article III, Section 8 of the Constitution to provide for the expenses of a special session, and for other matters incidental thereto, does not empower the General Assembly to appoint

employes to serve after such session has been adjourned under Article III, Section 9 of the Constitution and has terminated its business.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1066.

APPROVAL—BONDS OF FRANKLIN COUNTY, OHIO,
\$75,000.00.

COLUMBUS, OHIO, August 26, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

IN RE: Bonds of Franklin County, Ohio, \$75,000.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise part of an issue of "addition to Tuberculosis Hospital Bonds" in the aggregate amount of \$66,000, dated March 15, 1937, bearing interest at the rate of $2\frac{1}{2}\%$ per annum. Unlimited.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.