

2524

APPROPRIATIONS — WELFARE DEPARTMENT — HOUSE BILL 205, 98TH GENERAL ASSEMBLY—BY ITS OWN SPECIFIC PROVISION DOES NOT AUTHORIZE INCURRENCE OF LIABILITIES AFTER DECEMBER 31, 1950.

SYLLABUS:

House Bill No. 205, 98th General Assembly, by its own specific provision, does not authorize the incurrence of liabilities thereunder after December 31, 1950.

Columbus, Ohio, November 20, 1950

Hon. Herbert D. Defenbacher, Director of Finance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“House Bill No. 205, An Act ‘To make appropriations for addition and betterment purposes to the welfare department for the biennium ending December 31, 1950, and to declare an emergency,’ was passed by the 98th General Assembly March 30, 1949 and filed in the office of the Secretary of State, April 7, 1949, and being an emergency act became effective April 7, 1949.

“Section 1 of the act reads as follows:

“‘The sums set forth in section 2 of this act, designated “additions and betterments” for the purposes therein specified, are hereby appropriated for the biennium ending December 31, 1950, out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated.’

“House Bill No. 10, amending sections 260-1 and 260-2 of the General Code, providing that the fiscal year of the state shall end on June 30th instead of December 31st, beginning July 1, 1949, and having the effect of ending the present biennium, as to appropriations, on June 30, 1951 instead of December 31, 1950, was passed as an emergency, effective March 11, 1949.

“Considering these two acts, and the provisions of Art. II, Section 22, of the Constitution of Ohio, which reads as follows:

“‘No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.’

will you please advise this department on what date House Bill No. 205 legally expires?”

It is to be observed that Section 1 of House Bill No. 205, quoted above in your letter, in plain, specific and unambiguous language provides that the sums appropriated by the act “are hereby appropriated for the biennium ending December 31, 1950.” Such language leaves no room for doubt as to the legislative intent and where such is the case there is neither need nor authority to interpret or construe it otherwise.

There is, however, the question of whether an implied repeal of Section 1 of this act has been effected by House Bill No. 10, 98th General Assembly. This act amended Sections 260-1 and 260-2, General Code, so that, as amended, these sections now read in part as follows:

Section 260-1:

“Beginning with July 1, 1949, the fiscal year of the state shall begin on the first day of July of each calendar year and end at the close of the thirtieth day of June of the succeeding calendar year * * *.”

Section 260-2:

“The general appropriation act enacted by the general assembly in 1949 shall cover the fiscal years beginning July 1, 1949 and ending June 30, 1951.”

With respect to the new provisions of Section 260-1, General Code, it must be noted that it purports only to change the *fiscal year* of the state. While it would obviously facilitate this change in the fiscal year to make the several appropriation acts cover a biennium comprising two of the new fiscal years, it does not appear that it would be impossible to make the first change without making the second as to all appropriation acts. I must therefore conclude that nothing in Section 260-1, General Code, as amended, could effect an implied repeal of Section 1 of House Bill No. 205.

Section 260-2, General Code, as amended, plainly purports to apply only to the *general* appropriation act enacted in 1949 and clearly could not be construed to apply to a special appropriation act such as House Bill No. 205.

Two additional considerations support this conclusion. The first of these is the fact that House Bill No. 205 is the later expression of the legislative will, having been approved by the Governor on April 5, 1949, while House Bill No. 10, which effected the amendments to Sections 260-1 and 260-2, General Code, was approved by the Governor on March 10, 1949. The fact that House Bill No. 205, as an emergency act, went into effect before House Bill No. 10, which carried no emergency clause, is of no moment since the date of the passage of an act is determined by the date of approval and signature by the Governor. (State, ex rel. Bishop v. Board of Education, 139 O. S. 427). Accordingly, the later act, House Bill No. 205, will prevail to the extent that they are in irreconcilable conflict, over House Bill No. 10. (State ex rel. Guilbert v. Halliday, 63 O. S. 165.)

The second consideration is the fact that the provisions of House Bill No. 205 are particular and specific while those of House Bill No. 10 are general. This is an appropriate situation for the application of the legal maxim, "Expressio unus est exclusio allerius". The expression of one thing is the exclusion of another—and of its corollary "That which is implied and general is restricted by that which is expressed and is particular and specific."

Accordingly, in specific answer to your inquiry, it is my opinion that House Bill No. 205, 98th General Assembly, by its own specific provision, does not authorize the incurrence of liabilities thereunder after December 31, 1950.

Respectfully,

HERBERT S. DUFFY,

Attorney General.