

731.

EMERGENCY BOARD—NO AUTHORITY TO ALLOT ITS APPROPRIATED MONEY FOR THE PURPOSE OF CONTINUING THE OHIO STATE LIBRARY—NEITHER A DEFICIENCY NOR AN EMERGENCY.

SYLLABUS:

1. *The Emergency Board has no authority to allot any part of the money appropriated to it for the purpose of continuing the work of the Ohio State Library from July 1, 1927, to January 1, 1929.*

2. *The act of the Governor in vetoing appropriations to carry on the work of the Ohio State Library does not create a "deficiency in any of the appropriations for the expense of an institution, department or commission of the state for any biennial period", nor does it constitute an "emergency requiring the expenditure of money not specifically provided by law."*

COLUMBUS, OHIO, July 12, 1927.

HON. VERNON M. RIEGEL, *Chairman, Ohio State Library Board, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication of recent date signed by yourself and the Honorable L. J. Taber, a member of the board, requesting my opinion as follows:

"At a meeting of the Library Board yesterday, it was decided to ask your opinion relative to the possibility of securing a deficiency appropriation to continue the work of the Ohio State Library.

In view of your opinion that the veto did not destroy the Board and did not relieve the Librarian of responsibility, it seemed to some members of the Board that this plainly created a deficiency in appropriations in accordance with the language and intent of the Revised Statutes of Ohio.

Your opinion in this matter is requested, and would ask that if possible it be forwarded to the Secretary of the Board, or to the President, Mr. Riegel, before our next Board meeting which will be 10:00 A. M., July 13th."

The power and authority of the Emergency Board to act are found in Sections 2313, 2313-1 and 2313-2 of the General Code, said sections respectively reading as follows:

"Sec. 2313. In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law. Such applicant shall fully set forth to the secretary in writing the facts in connection with the case. As soon as can be done conveniently, the secretary shall arrange for a meeting of the board, and shall notify the applicant of the time and place of the meeting and request his presence. No authority to make such expenditures shall be granted with the approval of less than two members of the board, who shall sign it."

"Sec. 2313-1. The written authority provided for in Section 2313 shall specify the amount in which and the purposes for which obligations may be

created as therein provided. It shall be filed with the auditor of state and he shall open an account in his office in accordance therewith for the payment of any obligation authorized as provided in Section 2313. The applicant receiving such authority shall issue proper vouchers to the auditor of state, as provided by section two hundred and forty-four of the General Code. Upon receipt of such vouchers the auditor, if satisfied as provided in said section that the claim presented is due and payable, shall draw his warrant on the treasurer of state against any appropriation for the uses and purposes of the emergency board."

"Sec. 2313-2. The General Assembly may provide at the time of making the appropriations for the expenses of the various institutions, commissions and departments of state a contingent appropriation for the uses and purposes of the emergency board. Such appropriations unless otherwise specifically provided by law shall be applied exclusively to the payment of deficiencies in other current appropriations as provided by Sections 2312, 2313, and 2313-1. Except as provided in said sections, no officer, board, commission or department of state shall have authority to create any deficiency, nor to incur any indebtedness on behalf of the state. The emergency board provided for in said sections may not in any biennial period authorize the expenditure of any sum or sums of money exceeding in the aggregate the amount appropriated for its uses and purposes as hereinbefore provided."

These sections were construed in a former opinion of this department addressed to Honorable A. V. Donahey then Auditor of State reported in Opinions, Attorney General, 1915, Volume II, p. 1744. The syllabus of said opinion reads as follows:

"The fact that an act providing for the rendition of gratuitous services by the members of a commission authorizes them to be reimbursed for their actual and necessary expenses, but fails to appropriate therefor, together with the failure of the general assembly to make provision for such expenses in the regular appropriation bills, does not constitute an 'emergency requiring the expenditure of money not specifically provided by law' within the meaning of Section 2313, G. C., as amended, 106 O. L., 182; consequently, the emergency board may not set aside a part of its appropriation for the payment of such expenses."

I still adhere to said opinion and the conclusions therein stated.

It is apparent that before there can be a "deficiency in any of the appropriations for the expense of \* \* \* (a) department," an appropriation must first be made. No appropriation was made for your Board. Therefore, there is no deficiency "in any of the appropriations for the expense" of your Board.

In the opinion above referred to, I had before me for consideration the fact that the legislature had failed to make an appropriation for the expenses of the commission appointed to select a site for a normal school. The act creating the commission provided that the members should receive no salary but should be reimbursed for their actual and necessary traveling expenses.

In the situation before me at this time, the legislature made provision for the funds necessary to carry on the activities of the State Library, but the Governor by his veto rendered such provisions void. In the exercise of the Governor's veto power and the failure of the legislature to override such veto, we have an expression of part of the law-making body of the state that no money should be expended for State Library purposes during the present eighteen months' period. Such intent can not be

defeated by the Emergency Board authorizing an expenditure of money for a purpose for which the law-making body expressed a contrary intent.

It is therefore my opinion that:

(1) The Emergency Board has no authority to allot any part of the money appropriated to it for the purpose of continuing the work of the Ohio State Library from July 1, 1927, to January 1, 1929.

(2) The act of the Governor in vetoing appropriations to carry on the work of the Ohio State Library does not create a "deficiency in any of the appropriations for the expense of an institution, department or commission of the state for any biennial period", nor does it constitute an "emergency requiring the expenditure of money not specifically provided by law."

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

732.

LIBRARY BOARD—NO AUTHORITY TO DISTRIBUTE BOOKS OF STATE  
LIBRARY TO VARIOUS STATE NORMAL SCHOOLS.

*SYLLABUS:*

*The State Library Board has no authority to distribute to the various state normal schools and universities and the Ohio Archaeological and Historical society for the purpose of management and control the books and property of the Ohio State Library.*

COLUMBUS, OHIO, July 12, 1927.

HON. HERBERT S. HIRSHBERG, *State Librarian, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

"I am transmitting herewith an inquiry of Mr. L. J. Taber, a member of the Ohio State Library Board, and should be glad to have you answer the questions asked.

Will you please supplement your opinion by answering also the following questions:

Have the Normal Colleges, through action of their Boards of Trustees, the power to establish and maintain Traveling Library services in the same manner now carried on by the State Library?

Has the Ohio State University, through action of its Board of Trustees, power to carry on Traveling Library Service, Legislative Reference service or Advisory service, such as is now carried on by the Ohio State Library?"

The inquiry made by Mr. Taber reads as follows:

"As a member of the Ohio State Library Board, appointed under Section 154-51 I am asking your opinion on the following matter:

1. Has our Library Board the authority to distribute the books and property and to reassign the services of the Ohio State Library in accordance with the suggestions of Governor Donahey? (See attached statement.)