

an extreme degree. I have examined the statutes relative to the duties of the positions in question, and I am unable to say that one and the same person may not hold these positions.

Without further prolonging this discussion, it is my opinion in specific answer to your question, that a member of the city board of education may at the same time hold the office of the mayor of the said city.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2599.

U. S. EMPLOYMENT SERVICE—AUDITOR OF STATE AUTHORIZED TO DRAW WARRANTS FOR DISBURSEMENT OF MONEY OF WHICH TREASURER OF STATE IS CUSTODIAN UNDER AMENDED SENATE BILL NO. 402 90 GENERAL ASSEMBLY.

*SYLLABUS:*

*The Auditor of State has authority to draw warrants for the disbursement of money of which the Treasurer of State is custodian under the provisions of Amended Senate Bill No. 402 of the 90th General Assembly.*

COLUMBUS, OHIO, May 1, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter in which you request my opinion as to whether or not the Auditor of State has authority to issue warrants on money for which the Treasurer of State is custodian under the provisions of Amended Senate Bill No. 402, passed by the 90th General Assembly July 1, 1933.

Amended Senate Bill No. 402, to which you refer, is an act entitled "An act to enact supplemental sections 154-45a, 154-45b and 154-45c of the General Code, relative to accepting the provisions of the act of congress providing 'for the establishment of a national employment system and for co-operation with the states in the promotion of such system, and for other purposes,' and to designate a state agency for the purpose of carrying the same into effect, and to declare an emergency." This act accepts the provisions of the act of Congress referred to in the title and designates the Department of Industrial Relations as the state agency to co-operate with the United States Employment Service in the establishment and maintenance of a co-operative federal and state system of public employment offices. Section 154-45c, as enacted, provides as follows:

"The state treasurer is hereby designated and appointed custodian of all moneys received by the state from appropriations or apportionments made by the congress of the United States or by the director of the United States employment service, as provided for in said act of congress approved June 6, 1933, and is authorized to receive and provide for the proper custody of the same and to make disbursements therefrom in accordance with law upon the order of the director of the department of industrial relations of the state of Ohio."

An examination of the Act of Congress (48 Stat. 113) pursuant to which Amended Senate Bill 402 was enacted discloses, in my judgment, a clear intention to extend federal aid to the various states as such, rather than to an agency within the state separate and apart from the state government itself. This view is substantiated by the language of section 4 thereof, which provides as follows:

"In order to obtain the benefits of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act."

The following section provides for the apportionment of the amount appropriated by Congress "among the several states". In Section 7 provision is made for a determination of the amount of the payments "to which the State is entitled under the provisions of section 5" and a certification thereof to the Secretary of the Treasury. This section further provides that "Such certificate shall be sufficient authority to the Secretary of the Treasury to make payment to the State in accordance therewith." Throughout the act reference is made to the receipt of benefits thereunder by the state.

The language of Section 154-45c, supra, wherein it is provided that the Treasurer of State shall make disbursements "in accordance with law upon the order of the director of the department of industrial relations" is in my judgment somewhat ambiguous. A question arises as to the effect to be given to the phrase "in accordance with law". Disbursements made by the Treasurer "in accordance with law" ordinarily means disbursements made on the warrant of the Auditor of State. However, since this phrase is followed by the provision that the disbursement shall be made "upon the order of the director of the department of industrial relations", there is an ambiguity in the wording of this section on its face. Under such circumstances, courts have looked to administrative practice in construing statutes. *Industrial Commission vs. Brown*, 92 O. S. 309, 311; *State, ex rel. vs. Brown*, 121 O. S. 73.

The provisions of Section 367-7, General Code, relating to the disbursement of federal aid received for vocational education are, in so far as the question here under consideration is concerned, exactly parallel. This section provides as follows:

"The state treasurer is hereby designated as the custodian of all funds received from the United States treasury for vocational education under the terms of this act (G. C. §§367-1 to 367-7). All money so received or appropriated by the state of Ohio for the purposes contemplated in the act of congress and in this act, or in acts supplementary thereto, shall be disbursed in accordance with law, upon the order of the state board of education."

I am advised that for a period of more than fifteen years it has been the established practice under this section in making disbursements for vocational education, for the Auditor of State to draw a warrant for the entire amount to be disbursed in payment of any item notwithstanding the fact that a portion of the moneys so paid are payable from funds received from the federal government. In view of this long established administrative practice in making disbursements

under the provisions of Section 367-7, supra, which section is exactly parallel to Section 154-45c, supra, it is my opinion that the Auditor of State has authority to draw warrants for the disbursement of money of which the Treasurer of State is custodian under the provisions of Amended Senate Bill No. 402 of the 90th General Assembly.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

2600.

APPROVAL CONDITIONALLY—TRANSCRIPT OF PROCEEDINGS RELATING TO THE SALE AND CONVEYANCE OF ABANDONED OHIO CANAL LANDS IN NEWARK TOWNSHIP, LICKING COUNTY, OHIO.

COLUMBUS, OHIO, May 1, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a transcript of the proceedings of your office relating to the proposed sale and conveyance to John C. Miller and Ella M. Miller of Newark, Ohio, of a parcel of abandoned Ohio Canal lands located in Newark Township, Licking County, Ohio, which parcel is more particularly described as follows:

Beginning at the point of intersection of the easterly line of the said canal property and the line between the lands of L. E. Clark and the lands of the applicant herein, said point being opposite station 269+81.5, of W. H. Heiby's survey of the said abandoned canal, south of Newark, Ohio, and running thence southerly with the said easterly line of said canal property seven hundred seventy-three (773') feet, more or less, to the center line of Ramp Creek; thence westerly with the center line of Ramp Creek, seventy-eight (78') feet, more or less to the easterly line of State Highway No. 359 (being State Route No. 79) as relocated and constructed in 1932; thence northeasterly with the said easterly line of the said highway seven hundred fifty-nine (759') feet, more or less, to the said line produced between the lands of L. E. Clark, and the lands of the applicant herein; thence easterly with the said line produced sixty (60') feet, more or less, to the place of beginning and containing one and thirty-six hundredths (1.36) acres, more or less.

The proposed sale and conveyance of the above described parcel of Ohio Canal lands is under the authority of an act of the legislature passed March 21, 1917, 107 O. L. 741, which act was amended in part by an act of the legislature under date of May 8, 1919, 108 O. L., Part I, page 608. This act provided for the abandonment of certain portions of the Ohio Canal between Newark and the Village of Hebron, Licking County, Ohio, and for the lease or sale of the canal lands so abandoned; and the act as amended is now found in the General Code as sections 14203-20 to 14203-25, inclusive. Section 14203-23, General Code, the same being a part of the act above referred to, provides for the appraisal