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GENERAL ASSEMBLY—CAN APPROPRIATE FUNDS FOR STATE DEPARTMENT TO PURCHASE EQUIPMENT—MAY DESIGNATE PARTICULAR MANUFACTURED ITEM OR SYSTEM OF EQUIPMENT TO BE PURCHASED BY TRADE NAME.

SYLLABUS:

The General Assembly can appropriate funds for a state department for the purchase of equipment and designate in the appropriation act the particular manufactured item or system of equipment by trade name to be so purchased.

Columbus, Ohio, August 14, 1950

Hon. Joseph T. Ferguson, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office is in receipt of Voucher No. 201, in the sum of \$23,982.52, issued by the Secretary of State, payable to the Activisible Corporation, for the purchase of various quantities of corporation cards, charge-out cards, and assemblies. Such proposed expenditure is charged against the following account code: 'E-1. Activisible,' payable from appropriation for E-1 Activisible Corporation Method, Am. H. B. 655, 1950.

"It is my information that the corporation cards, charge-out cards, and assemblies purchased, as noted by the foregoing voucher, are a part of what is known as the Activisible Corporation Method. Such items were purchased directly from the Activisible Corporation without competitive bidding had, or proposals received or invited from other firms or companies supplying corporation methods.

"It is my further information that the Activisible Corporation is the only source of supply or manufacture of the particular corporation cards purchased as a part of the Activisible Corporation Method by the Secretary of State. It is my further information that the State Controlling Board authorized the purchase of such cards without competitive bidding being required.

"In the light of the foregoing, does the above voucher represent a lawful and valid claim against moneys in the State Treasury as appropriated by Am. H. B. No. 655, and is there, in fact, a

proper and constitutional appropriation of funds against which such proposed expenditure may lawfully be charged?

“Does the General Assembly have the constitutional power to appropriate funds to a state department for the purchase of equipment and designate in the appropriation act the particular manufacturer or system of records from whom the equipment is to be purchased.”

Your inquiry concerns an appropriation of funds by the General Assembly for the purchase of a specific type and named office machinery system for the office of the Secretary of State.

The power to appropriate funds by the General Assembly comes from Article II, Section 22, of the Constitution of the State of Ohio. This section 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.”

Section 26 of Article II of the Constitution of the State of Ohio designates what laws shall have uniform operation in this state. This section of Article II reads as follows:

“All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except as otherwise provided in this constitution.”

Your inquiry regards the power of the General Assembly to appropriate funds for a department of state for the purchase of a particular item. A review of the above quoted sections of the Constitution of Ohio appears to put no constitutional limitation on such action by the General Assembly. The only mention in the Constitution of Ohio of the letting of contracts to bidders is contained in Article XV, Section 2, relative to public printing. This section reads as follows:

“The printing of the laws, journals, bills, legislative documents and papers for each branch of the general assembly, with the printing required for the executive and other departments of state, shall be let, on contract, to the lowest responsible bidder, or done directly by the state in such manner as shall be prescribed by law. All stationery and supplies shall be purchased as may be provided by law.”

A review of the court opinions in this state fails to disclose a court opinion or interpretation on this subject. There are many opinions and decisions relative to subdivisions of the state complying with legislative requirements for bidding on local contracts. None of these decisions, however, would affect the sovereign power of the General Assembly to appropriate money for whatever purpose it should see fit, limited only by the Constitution of the State of Ohio.

Unlike the powers of the Congress of the United States, whose authority is limited to those grants given it by the Constitution of the United States, the General Assembly of Ohio has all the law-making power of a sovereign, limited only by the Constitution of the United States and the Constitution of the State of Ohio.

A review of the powers and duties of the Secretary of State as defined in the Constitution of Ohio fails to disclose any inhibition to his ability to comply with the appropriation act of the General Assembly in appropriating money for his department to purchase a specific type of office machinery. The fact that the machinery is of a special type and name, being made only by one manufacturer, should have no bearing on this situation as long as it is so set out in the appropriation act of the General Assembly. As I stated above, the General Assembly is all powerful in its law-making capacity except as limited by the Constitutions of the United States and the State of Ohio. I find no provision in either document forbidding the type of purchase mentioned in your inquiry.

Therefore, it is my opinion that the General Assembly can appropriate funds for a state department for the purchase of equipment and designate in the appropriation act the particular manufactured item or system of equipment by trade name to be so purchased.

Respectfully,

HERBERT S. DUFFY,
Attorney General.