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THE FUNDS REAPPROPRIATIONED BY SENATE BILL NO. 592 OF THE 104TH GENERAL ASSEMBLY ARE NOT SUBJECT TO THE TERMS, CONDITIONS, OR RESTRICTIONS OF THE PREVIOUS BILL ON THOSE OF BILL 592—S. B. 592, 104, INFORMAL OPINION 380, OAG, 1961, SUBSTITUTE H. B. 390, 104, OPINION 3937, OAG, 1954.

SYLLABUS:

Where Amended Senate Bill No. 592 of the 104th General Assembly makes reappropriations, such reappropriations are not subject to the terms, conditions or restrictions which may have governed the expenditure of the funds concerned under a previous bill which is no longer in existence, but such reappropriations are subject only to those terms, conditions and requirements contained in Amended Senate Bill No. 592 itself.

Columbus, Ohio, March 13, 1962

Hon. James H. Maloon, Director
Department of Finance
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion asks the following question:

> "Where the word 'Reappropriation' in parentheses appears after any appropriation description in Amended Senate Bill No. 592, are any terms, conditions, or restrictions which may have been appended to the particular appropriation item by a previous General Assembly applicable to such item as appropriated by the 104th General Assembly in Amended Senate Bill No. 592?"

Amended Senate Bill No. 592 of the 104th General Assembly, making appropriations for capital improvements and other general purposes, became effective December 1, 1961. In some instances the bill makes reappropriations of funds appropriated by previous bills which are no longer in existence. For example, part of the appropriation to the department of public works reads as follows:

	"DEPARTMENT OF PUBLIC WORKS	
	"Division of Real Estate and State Buildings	
"132-001	Rehabilitation of State Buildings (Reappropriation)	$ 50,000
"132-020	Construct an Office Building in Franklin County (Reappropriation)	11,000,000
	"To employ the necessary consulting engineers to make preliminary engineering designs and estimates of the cost for the proposed State Underground Parking Garage	55,000
	"Total Division of Real Estate and State Buildings	$11,105,000"

Thus, the bill reappropriates $50,000 and $11,000,000 to the department of public works for the respective purposes noted in the bill. Other reappropriations in the bill are shown in the same manner. The funds thus reappropriated had been appropriated previously by Amended House Bill No. 1124 of the 103rd General Assembly, effective August 1, 1959 to July 1, 1961, and by other previous bills which have gone out of existence.

The question is whether any of the terms, conditions or restrictions which under the 1959 bill, or previous bills, had governed the expenditure of such funds, now apply to expenditures under the reappropriations contained in Amended Senate Bill No. 592.

In my Informal Opinion No. 380, which I issued to you on October 24, 1961, I considered a similar question as to the part of Amended Substitute House Bill No. 390 of the 104th General Assembly which reads:

> " 'Unexpended balances of all appropriations and reappropriations made by the 103rd General Assembly, against which liabilities have been lawfully incurred are, to the extent of such liabilities, hereby reappropriated from the funds from which they were originally appropriated or reappropriated, and made available for the purpose of discharging such liabilities for a period of six months, provided, however, that at the request of any department, office or institution, the department of finance may extend such six month period for such additional time as may be required. Such six month limitation shall not apply to appropriations made for capital improvements or made to the department of highways.
>
> " '* * * * * * * * *' "

Informal Opinion No. 380 dealt with the question of the reappropriation of the unexpended balance of the appropriation provided by Amended House Bill No. 1124, *supra,* for the purpose of carrying out the provisions of Chapter 3318., Revised Code, the state classroom facility construction assistance program, to the extent that the state had incurred lawful liabilities against such appropriation.

In said Informal Opinion No. 380, I concluded that the terms and conditions formerly applying to the appropriation under Amended House Bill No. 1124 no longer applied, since that bill had ceased to exist and its terms and conditions had not been reenacted to apply to the reappropriation.

Also, in Opinion No. 3437, Opinions of the Attorney General for 1954, page 20, one of my predecessors had occasion to consider a like question. At pages 25 and 26 of that opinion, it is stated:

> "I am also informed by your office that the sum of $550,000 so specifically reappropriated constituted the approximate unexpended balance of the original appropriation made by the 97th General Assembly. It is apparent that by the language of this

last reappropriation, those provisions which had previously (1) restricted expenditures to those projects benefiting publicly owned property and (2) limited agreements to those concluded with conservancy districts, have been significantly eliminated. Of like import is the fact that the amendment providing a formula for expenditures benefiting privately owned littoral property was passed one day prior to the passage of this reappropriation. It may reasonably be assumed that the Legislature passed this bill in contemplation of the amendatory legislation which had been the subject of such recent consideration and reenactment. The elimination of the restrictive provisions which had previously obtained is indicative of a legislative intent to devote the funds to the objectives of the amendment effected by Amended House Bill No. 433, *supra.*

"The language of State, ex. rel. Hoeffler, et al., vs. Griswold, 35 Ohio App. 354, 356, is pertinent at this juncture.

> "'* * * Without extended discussion, suffice to say that we are of opinion that the appropriation under consideration as it appears in House Bill No. 203 is not in violation of the State Constitution, that it is a specific appropriation, and that the purpose is sufficiently defined. The power of the Legislature to reappropriate is as broad as it is to appropriate originally.
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> "'The fact that the money set apart had, by the former Legislature, been itemized as to its distribution, was not compelling upon the General Assembly in the act of reappropriation. The history incident to this legislation establishes that the General Assembly acted with knowledge when it took from House Bill No. 203 the items theretofore appearing in the former appropriation. The form of appropriation under consideration has many times during a period covering a number of years been accepted as proper procedure, and, while this is not controlling, it is to be weighed in judicial determination * * *'
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> "It would thus appear that the reappropriation made by the 100th General Assembly may be devoted to improvements designed for the sole benefit of privately owned littoral land, in the manner prescribed by Chapter 1507, Revised Code, as amended."

It will be noted that Amended Senate Bill No. 592, *supra,* does not re-enact Amended House Bill No. 1124, *supra,* or any capital improvements bill previous thereto, or any of the provisions of such bills—it merely reappropriates the funds remaining in the prior appropriations. It does not limit the expenditure of those funds by any of the provisions

previously contained in Amended House Bill No. 1124, or any other previous bill which is now non-existent.

I note, however, that Amended Senate Bill No. 592 does contain its own terms, conditions and requirements as to appropriations made therein, and such terms, conditions and requirements apply to the reappropriations here concerned.

In view of the foregoing, therefore, it is my opinion and you are advised that where Amended Senate Bill No. 592 of the 104th General Assembly makes reappropriations, such reappropriations are not subject to the terms, conditions or restrictions which may have governed the expenditure of the funds concerned under a previous bill which is no longer in existence, but such reappropriations are subject only to those terms, conditions and requirements contained in Amended Senate Bill No. 592 itself.

Respectfully,
MARK MCELROY
Attorney General