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OFFICE BUILDING COMMISSION, STATE—§§151.21, 151.22, 151.23 R.C.—COMMISSION TO BE “OWNER” OF BUILDING TO BE CONSTRUCTED—APPROPRIATIONS: CONSTRUCTION, H. B. 939, 102nd GA; ADMINISTRATIVE EXPENSES NOT RELATED TO CONSTRUCTION, H. B. 475, 102nd GA.

SYLLABUS:

1. The State Office Building Commission, organized pursuant to Sections 151.21, 151.22 and 151.23, Revised Code, as enacted by the 102nd General Assembly, for the purpose of constructing a new state office building, is the “owner,” with respect to such building, as that word is used in Chapter 153., Revised Code.

2. The State Office Building Commission, having been given by Section 151.22, Revised Code, all the powers of the department of public works and the director thereof, in the creation of a new state office building, is, to the limited extent thus specially provided, an independent arm of that department, and is authorized to issue vouchers, for the construction of such building, against the appropriation of \$15,000,000.00 for the cost thereof, made to the department of public works, as contained in House Bill No. 939, 102nd General Assembly.

3. The necessary expenses of organization of the State Office Building Commission and of administrative expense not directly related to construction of the state office building should be paid from the appropriation made to the commission in House Bill No. 475, 102nd General Assembly, from any funds which the state emergency board may make available as provided in Chapter 127., Revised Code, or from future legislative appropriations for such purposes.

Columbus, Ohio, May 5, 1958

Hon. Darold I. Greek, Chairman
State Office Building Commission, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Your attention is invited to Amended Senate Bill No. 129, under the terms of which there is created a commission for acquiring a site for and the construction of a new state office building. Your attention is particularly invited to the following language in paragraph (b) of Section 151.22, Revised Code, as enacted in this act:

“The construction of the building shall be pursuant to sections 153.01 to 153.20, inclusive, and sections 153.50 to 153.60,

inclusive, of the Revised Code; provided, that all powers and duties vested by such sections in the department of public works and the director thereof are vested in the commission. Expenditures for the construction of the building shall be made subject to the approval of the release of funds by the controlling board.'

"You will observe also that Section 151.21, Revised Code, provides the Director of Public Works is to serve as a nonvoting ex officio member of the commission.

"In House Bill No. 475, 102nd General Assembly, the general appropriation act for the current biennium, there is appropriated to the state office building commission an aggregate of \$10,000.00 for the two fiscal years 1957-1958 and 1958-1959.

"Section 151.22, supra, contains a provision that the total cost of construction and purchase price of the site shall not exceed \$15,000,000.00.

"An appropriation of \$15,000,000.00 appears to have been made in House Bill No. 939, 102nd General Assembly, to the Department of Public Works, the item being designated—

"State Office Building—Franklin County

To provide an office building ready for occupancy including site acquisition and preparation, utilities, equipment and professional fees . . . \$15,000,000.00"

"The last sentence of Section 151.23, Revised Code, states:

"The commission shall organize by choosing a chairman from among its own members, and all expenses of the commission shall be paid on vouchers signed by such chairman.'

"Our questions in view of the foregoing enactments are:

"(1) Is the state office building commission an 'owner' within the purview of Sections 153.13, 153.14, and 153.15, Revised Code, and if so, by virtue of being an owner, does the commission control the expenditure of the appropriation of \$15,000,000.00 made to the Department of Public Works in House Bill 939, supra?

"(2) May the said commission make expenditures from the said appropriation of \$15,000,000.00 for the purpose of (a) meeting the reasonable expenses of the members of the commission, (b) providing for the compensation of personnel employed by the commission and (c) other necessary administrative expenses, including provision for quarters, etc? In connection with the latter, your attention is invited to Section 153.23, Revised Code, and to paragraph J, Section 123.01, Revised Code.

"(3) What is meant by 'expense of the commission' which under the provisions of Section 151.23, Revised Code, shall

be paid by vouchers signed by the chairman? Are the expenses of the commission as used therein confined to 'reasonable expenses' incurred by individual members of the commission in carrying out the provisions of the act as suggested by the first sentence of Section 151.23, Revised Code, or do such 'expenses' include all of those incurred by and all expenditures of the commission in carrying out its duties?"

Before turning to the statutes under which your board is organized, Sections 151.21, 151.22 and 151.23, Revised Code, I think it well to refer to three sections of the Revised Code of earlier enactment, bearing the same numbers, but at no time repealed or amended. These earlier statutes were enacted by the General Assembly in 1953, 125 Ohio Laws, 714, creating the "state office housing commission," and defining its duties, which are, in brief, to "make a complete survey and study of the office space now occupied by the various state departments" * * * and further to "study the advisability of the state erecting, purchasing or leasing an office building or buildings in Franklin County for the purpose of providing the various state offices, departments, boards and commissions with adequate office space." The commission was required to make a complete report of its findings and recommendations to the General Assembly and Governor on or before January 15, 1955.

Assuming that this commission performed its duty as commanded by the statute, I think we may conclude that the general assembly, in enacting the new legislation, assumed that the original board is *functus officio*, and therefore did not think it necessary to repeal the former statute; and we may further conclude that the legislative service commission felt justified in permitting the later act creating your commission to carry the same section numbers as still appear in the older statutes above referred to. Further reference herein to these sections numbers will be to the more recent legislation.

By the enactment on May 28, 1957, Senate Bill No. 129, 102nd General Assembly, your commission was created. The provisions contained in said act are contained in Sections 151.21, 151.22 and 151.23, Revised Code. This act became effective September 13, 1957.

On the same day that the above mentioned act was passed, to-wit, May 28, 1957, the General Assembly passed House Bill No. 475, a general appropriation act, in which the sum of \$10,000.00 for the biennium was appropriated to the "state office building commission" such item being designated "F-9 maintenance."

On June 18, 1957, the General Assembly passed House Bill No. 939, making sundry appropriations "for capital improvements." This bill, passed as an emergency act, appropriated to the "department of public works" *inter alia*, the following:

"State Office Building—Franklin County To provide an office building ready for occupancy including site acquisition and preparation, utilities, equipment and professional fees \$15,000,00"

It will be observed that this appropriation was to the department of public works, your board not being mentioned. Both of the above appropriation bills were passed after the statutes creating your board had been enacted but before they were in effect.

We turn then to the provisions of Sections 151.21, 151.22 and 151.23, Revised Code. Section 151.21, *supra*, creates a commission of five members "to acquire a site and to construct a new state office building." It provides that in addition to the five members, to be appointed by the governor, "the director of public works shall serve as a non-voting *ex officio* member of the commission."

Section 151.22, Revised Code, reads as follows:

"The commission created in section 1 (R.C. Sec. 151.21) of this act shall have the following powers and duties:

"(a) The commission shall acquire a suitable site for the building of a new state office building. Such site shall be located in Franklin County.

"(b) The commission shall have the power and duty to construct a new state office building upon the site and in such construction shall give most careful consideration to plans and specifications for the building. The construction of the building shall be pursuant to sections 153.01 to 153.20, inclusive, and sections 153.50 to 153.60, inclusive, of the Revised Code; provided, that all powers and duties vested by such sections in the department of public works and the director thereof are vested in the commission. Expenditures for the construction of the building shall be made subject to the approval of the release of funds by the controlling board.

"(c) The commission shall have the power and duty to acquire by purchase, by gift, or by condemnation proceedings, the necessary land for establishment of a new state office building, and shall have suitable appraisals made of and take options on such sites as it deems advisable as provided in section 123.01 of the Revised Code. Expenditures for the purchase of such neces-

sary land shall be made subject to the approval of the release of funds by the controlling board. The total cost of construction and the purchase price of the site shall not exceed fifteen million dollars.

“(d) The commission shall make a full report of its actions in carrying out the provisions and purposes of this act to the governor and general assembly on or before January 15, 1959.”

Section 151.23, Revised Code, provides as follows:

“The members of the commission shall serve without compensation, but they shall be allowed their reasonable expenses incurred in carrying out the provisions and purposes of this act. The commission shall have full power to employ such personnel as may be necessary to carry out the provisions and purposes of this act. The commission shall organize by choosing a chairman from among its own members, and all expenses of the commission shall be paid on vouchers signed by such chairman.”

Of the sections enumerated which are to govern the construction of the state office building, Sections 153.01 to 153.20, inclusive, Revised Code, relate strictly to state buildings. Sections 153.50 to 153.60, Revised Code, relate to public buildings generally. Section 153.01, Revised Code, provides in part:

“Whenever any building or structure for the use of the state or any institution supported in whole or in part by the state or in or upon the public works of the state that is administered by the director of public works, *is to be erected* or constructed, * * * the aggregate cost of which exceeds *three thousand dollars, each officer, board, or other authority, upon whom devolves the duty* of constructing, erecting, altering, or installing the same, referred to in sections 153.01 to 153.60, inclusive, of the Revised Code, *as the owner*, shall cause to *be made, by an architect or engineer*”. (Emphasis added)

The reference in the above quoted section to a board which is charged with constructing a state building, as “owner,” appears clearly to answer your question as to the application of that word to your powers and duties under the various provisions relating to the construction of the building with which your board is charged. In my opinion your board is the “owner” within the purview of all the sections in Chapter 153., Revised Code, which confer powers or place duties upon the “owner” of a public improvement. These duties include those set out in Sections 153.13 *et seq.*, Revised Code, as to making out estimates for work finished

by the contractor, and presentation of the same to the auditor for payment.

A number of other sections in Chapter 153., Revised Code, refer to "the owner as defined in Section 153.01 of the Revised Code."

What has been said above has a direct bearing on your question as to the right of your commission to control the expenditure of the \$15,000,000.00 appropriation contained in House Bill No. 939, *supra*. This question doubtless arises because the general assembly saw fit to include that item in an appropriation to the department of public works, instead of making it directly to your commission.

It appears to me that the question presents no serious problem. Just three weeks before the passage of that appropriation act, the legislature had created your commission, commanding it to construct a new state office building at a cost not exceeding fifteen million dollars, and in the act creating your commission had provided that you should proceed under certain statutes which would ordinarily govern the powers and procedure of the department of public works, and that "*all powers and duties vested by said sections in the department of "public works and the director thereof are vested in the commission."*

The legislature, in placing the appropriation in question in the "*department of public works*" may be presumed to have considered that the commission was, in a sense, and to a limited degree, to function as an independent arm of that department. It would, in my opinion, be entirely in conflict with the entire spirit and intention of all of this legislation to give the director of public works the power of control over the expenditure of the fund in question, and it is accordingly my opinion that its expenditure is under the control of your commission.

As to the purposes for which you may draw on the fifteen million dollar appropriation, it appears to me that you would be limited to those items which directly enter into the construction of the building; these would include employment of architects, inspectors and other employees engaged directly in the building operation. Everything, in short, that is necessary to produce a completed building as said in *Jensen v. Door*. 159 Cal. 742, 116 P. 553:

"Everything originally done in making a vessel complete and ready for use as an instrument of commerce or navigation, is construction work."

Construction costs would not include the expense of organizing and maintaining the office of the commission itself, such as office clerical employees, office supplies and equipment and the expenses of the members of your commission. These expenses would manifestly be paid from the appropriation, in House Bill No. 475, *supra*. If office space must be leased, this should be arranged by the director of public works under the provision of Section 123.01 (J), Revised Code, but, of course, the rental expense thus incurred must be met by your commission from the funds appropriated to the commission under House Bill No. 475, *supra*, or from funds otherwise made available to the commission for administrative expense. Such further funds may be given the commission in subsequent legislative appropriations, or, if the need is currently critical, it is possible that the state emergency board may act as provided in Chapter 127., Revised Code, to authorize the expenditure by the commission of further funds from the appropriation made to that board in House Bill No. 475, *supra*.

Upon consultation with the State Auditor, and examination of the records relating to the building of the present state office building, I find that the division of funds and their application which I have indicated above is precisely that which was employed in the erection of that building.

In specific answer to your questions it is my opinion, and you are advised:

1. The State Office Building Commission, organized pursuant to Sections 151.21, 151.22 and 151.23, Revised Code, as enacted by the 102nd General Assembly, for the purpose of constructing a new state office building, is the "owner," with respect to such building, as that word is used in Chapter 153., Revised Code.

2. The State Office Building Commission, having been given by Section 151.22, Revised Code, all the powers of the department of public works and the director thereof, in the creation of a new state office building, is, to the limited extent thus specially provided, an independent arm of that department, and is authorized to issue vouchers, for the construction of such building, against the appropriation of \$15,000,000.00 for the cost thereof, made to the department of public works, as contained in House Bill No. 939, 102nd General Assembly.

3. The necessary expenses of organization of the State Office Building Commission and of administrative expense not directly related to construction of the state office building should be paid from the appro-

priation made to the commission in House Bill No. 475, 102nd General Assembly, from any funds which the state emergency board may make available as provided in Chapter 127., Revised Code, or from future legislative appropriations for such purposes.

Respectfully,
WILLIAM SAXBE
Attorney General