

413.

PUBLIC WELFARE DEPARTMENT—MUST PAY FOR WEARING APPAREL FOR INMATES OF STATE INSTITUTIONS WHEN GENERAL ASSEMBLY CHARGES APPROPRIATION FOR SAME TO MANUFACTURING AND SALES ROTARY FUND.

SYLLABUS:

1. *An appropriation act is a law of equal dignity during its existence with all other laws of the state.*

2. *By the provisions of Section 18, of Article I of the Constitution of Ohio only the General Assembly may exercise the power of suspending laws. The operation of a section of the General Code may be suspended by the terms of a provision properly included in an appropriation act during the life of such act, which cannot under the constitution exceed two years.*

3. *The moneys in the manufacturing fund provided for in Section 1866, General Code, while not in the state treasury are of the state treasury and are public funds and the legislature may in an appropriation act direct that proper expenditures be charged against such fund.*

4. *The inclusion in the appropriation item for wearing apparel for inmates of the state institutions (H. B. 502, page 122) of a provision that such appropriations should be charged against the Manufacturing and Sales Rotary Fund is a valid exercise of legislative power and the Department of Public Welfare is obliged to draw upon such fund to pay for wearing apparel furnished such inmates.*

COLUMBUS, OHIO, April 29, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of April 26, 1927, reading as follows:

"Section 1866 G. C., enacted May 11, 1911, and amended April 27, 1915, (106 O. L. 199) provided for the establishment of a Manufacturing Fund, and prescribes its uses and purposes as follows:

'For the purchase of material and machinery used in manufacturing industries, for payment of compensation to employes necessary to carry on said industries, and for providing a fund out of which prisoners confined in penal institutions may be paid a portion of their earnings in the manner hereafter provided, a special appropriation shall be made to be known as the manufacturing fund. Receipts from the sales of manufactured articles shall not be turned into the state treasury, but shall be credited to said fund, to be used for the purchase of further materials, machinery and supplies for such industries; for payment of compensation to employes necessary to carry on said industries, and for payments to convicts or their families as hereinafter provided, * * *

Under this authority the General Assembly, during the years 1910 to 1914, inclusive, made appropriations to the manufacturing fund for the establishment of industries in penal and reformatory institutions. Various industries have been established now giving employment to 2,100 prisoners. Section 1847 requires state, county and city institutions and departments to purchase needed articles produced by prison industries. As provided by Section 1866, the fund thus established has been handled as a rotary fund and receipts from the sales of manufactured articles have been credited to the fund and used in the manner specified by this law.

The 87th General Assembly in H. B. 502 'To make general appropriations' included an appropriation reading—(page 122, lines 3567-3577)

	Six Months	One Year
'Wearing Apparel -----	\$185,000	\$370,000

The amount herein appropriated to E-7, wearing apparel to be charged against the manufacturing and sales rotary fund.'

The Manufacturing Fund with a balance of approximately only \$700,-000.00 in the state treasury, is the only available working capital for the twenty-two prison industries and the upkeep of these industries and their expansion depends upon restricting the use of the fund to the purposes specified by Section 1866. To take the above mentioned amount from the Manufacturing Fund would cripple these industries to such an extent that we would be unable to function as intended by the law creating the manufacturing system, especially in the establishment of additional industries to give the needed vocational training and employment to the ever increasing population of our penal and reformatory institutions.

This appropriation is contrary to the provisions of Section 1866 G. C., and we respectfully ask your opinion on the obligation and the right of this department to draw upon the Manufacturing Fund in payment for wearing apparel furnished to inmates of the various state institutions."

Section 1866, General Code, to which you refer in your letter was originally enacted as Section 32 of an act, passed May 11, 1911, creating the Board of Administration, (102 v. 211). As originally enacted this section read:

"For the purchase of material and machinery used in manufacturing industries, a special appropriation shall be made to be known as the manufacturing fund. Receipts from the sales of manufactured articles shall not be turned into the state treasury, but shall be credited to said fund, to be used for the purchase of further materials, machinery and supplies for such industries, and the managing officer shall make a full monthly report of the products, sales, receipts and disbursements of said industries to the state auditor."

On April 16, 1913, the section under consideration was amended by an act "To amend Section 1866 of the General Code so as to provide for the application of earnings of prisoners," (103 v. 551). As amended the section read:

"For the purchase of material and machinery used in manufacturing industries, *and for providing a fund out of which prisoners confined in penal institutions may be paid a portion of their earnings in the manner herein-after provided*, a special appropriation shall be made to be known as the manufacturing fund. Receipts from the sales of manufactured articles shall not be turned into the state treasury, but shall be credited to said fund, to be used for the purchase of further materials, machinery and supplies for such industries, *and for payments to convicts or their families as hereinafter provided, and the board of administration shall make a full monthly report of the products, sales, receipts, disbursements and payments to and from said fund* to the state auditor.

The board of administration may place to the credit of each prisoner such amount of his earnings as it deems equitable and just, taking into consideration the character of the prisoner, the nature of the crime for which he was imprisoned and his general deportment. Such credit shall not exceed

the difference between the cost of maintaining such prisoner and the amount his labor, in the opinion of the board of administration, is reasonably worth. The earnings so credited to such prisoner shall be paid to him or his family out of said manufacturing fund at such time, in such manner and in such amounts as the board of administration directs. The board of administration may cancel all or any portion of the earnings credited to a prisoner, for violation of rules, want of propriety or any other reason which in its judgment justifies such action."

By this amendment the words in italics in the first paragraph and the entire second paragraph were added.

This section was again amended and made to read as it now reads, by an act passed on April 27, 1915, "To amend Section 1866 of the General Code to provide for payment of the compensation to employes." (106 v. 199). The only changes at this time were made in the first paragraph of the section and are indicated by the words in italics.

"For the purchase of material and machinery used in manufacturing industries, *for payment of compensation to employes necessary to carry on said industries*, and for providing a fund out of which prisoners confined in penal institutions may be paid a portion of their earnings in the manner hereinafter provided, a special appropriation shall be made to be known as the manufacturing fund. Receipts from the sales of manufactured articles shall not be turned into the state treasury, but shall be credited to said fund, to be used for the purchase of further materials, machinery and supplies for such industries, *for payment of compensation to employes necessary to carry on said industries*, and for payments to convicts or their families as hereinafter provided, and the board of administration shall make a full monthly report of the products, sales, receipts, disbursements and payments to and from said fund to the state auditor. * * * "

It will be observed that originally Section 1866 provided that a special appropriation to be known as the "manufacturing fund" should be made for "the purchase of materials and machinery used in manufacturing industries." The amendment first above referred to provided that a special appropriation should be made for the additional purpose of "providing a fund out of which prisoners confined in penal institutions may be paid a portion of their earnings," while by the last amendment the appropriation was to include the "payment of compensation to employes necessary to carry on said industries." The legislature has, therefore, by these two amendments of Section 1866, made provision for the payment of additional charges or expenses from the "manufacturing fund" as originally established, and there can be no question as to its power so to do.

The question presented by your letter is: May the legislature in an appropriation act direct that still further charges or expenses be paid from this "manufacturing fund," without first specifically again amending Section 1866, supra, that is, may a section of the General Code be in effect amended or the operation thereof suspended by the provisions of a general appropriation act, appropriating moneys for the ensuing biennium.

The legislative power of the state is by Article II, Section 1 of the Constitution of Ohio, vested in the General Assembly, subject to the initiative and referendum powers reserved by the people to themselves. Section 22 of the same article provides that:

"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."

However, by the express provisions of Section 1866, *supra*, receipts from a sale of manufactured articles are not turned into the state treasury but are credited to the manufacturing fund to be used for the three purposes provided in the act. That the legislature may provide that certain revenues of the state shall not be paid into the state treasury is well settled.

As stated in an opinion of the attorney general dated April 4, 1919, *Opinions of Attorney General, 1919, Vol. I, page 291* :

"Can the general assembly provide that revenues from the use of state property shall not be placed in the state treasury and subject to appropriation? This question has never been decided by the supreme court of this state. The legislature of the state has, however, acted for years upon the assumption of an affirmative answer to this question.

Until Section 24, G. C., was passed in its present form, which was quite recently, there were numerous funds belonging to the state, but held outside the treasury of the state and therefore not subject to appropriation. At the present time, by virtue of subsequent amendment of another section of the General Code, there is at least one fund which is so held. I refer to the manufacturing fund of the Ohio board of administration, consisting of receipts from the sales of articles manufactured at the institutions under the control of said board, * * *

The cumulative effect of the laws to which I have referred is very weighty. It tends to establish a legislative interpretation of the constitution to the effect that money collected for a state purpose is not in the state treasury in the first instance and does not come into the state treasury save in pursuance of a statute to that effect. As a corollary to this proposition, it necessarily follows that a law segregating the proceeds of a particular enterprise and keeping them outside of the state treasury may be constitutionally enacted."

While the moneys in the fund in question are not in the state treasury they are nevertheless moneys of the state, and the purpose for and the manner in which they are to be expended are proper subjects for the control and direction of the legislature. While the moneys are not in the treasury they are of the treasury.

Can the expenditure of the fund in question be directed in a general appropriation act? While I am unable to find any judicial discussion upon this question, the power of the legislature to specify how and for what purposes such a fund may be expended in an appropriation act seems to be clear both upon reason and by precedent. An appropriation act is as much a law of the legislature as any other act. True, under the constitution it cannot be effective for a longer period than two years but during such period it is as much an expression of the legislative will as any other act in the statute books. The mere fact that the act is temporary does not make it a law not of a general nature having uniform operation throughout the state. See *Railway Co. vs. Horstman*, 72 O. S. 93; *Assur vs. Cincinnati*, 14 O. N. P. (N. S.) 433; 88 O. S. 181. Nor can it be urged that the act contains more than one subject because it is clearly an appropriation act and it is the duty of the legislature in making an appropriation to specify from what funds the appropriation shall be made. Many examples might be cited where provisions of like nature to the one under consideration were included in an appropriation act.

With reference to the nature of an appropriation act, the Honorable John G. Price, Attorney General, in an opinion dated May 12, 1919, Opinions of Attorney General, 1919, Vol. I, page 513, used this language:

"An appropriation within its proper sphere is, of course, a 'law.' (See Article II, Section 22, of the constitution.) Its natural scope, however, does not go beyond authorizing the withdrawal of money from the treasury for the specific purposes mentioned in it. It is true that in many instances its effect is larger than this, as where an item in an appropriation law authorizes the withdrawal of money from the treasury for the payment of the salary of a clerk or other employe in a department the head of which is not authorized by permanent law to employ such clerk or other assistant. By long usage such an appropriation is regarded as including, by necessary implication, the authority to make the employment, though logically it might well be questioned whether it has that effect. Of course, such implied authority could not last longer than the appropriation itself, viz.: for the period of two years. * * * As stated, an appropriation act is a law of equal dignity during its existence with all other laws of the state, and it is not intended in this opinion to hold that a permanent law may not be temporarily suspended by an appropriation act. Such things can be done, with respect, for example, to the suspension of the state building code in the expenditure of certain appropriations. No reason is perceived why salary limits may not be similarly suspended if the intention to produce such a result is clearly expressed in the appropriation act. The general assembly has power to suspend laws (Constitution, Article I, Section 18). Indeed, the whole doctrine of implied repeals, so-called, rests upon this power as a foundation. As heretofore intimated, *an appropriation law would seem to be just as efficacious as a suspension of other laws as any other legislative act could be.*" (Italics the writer's.)

Your attention is also directed to an opinion of this department reported in the Annual Report of the Attorney General for 1913, Vol. I, page 156, where the effect of certain words in a general appropriation act, exempting an appropriation from the operation of Section 2314, General Code, relating to contracts for the construction or repair of public buildings, was under consideration. In that opinion it was held as follows:

"In House Bill No. 590, making general appropriations to the various departments, the following language appears in the Ohio board of administration appropriation:

'Ordinary repairs and improvements; balance and * * * \$326,000.00. Expenditures from the appropriation for ordinary repairs and improvements to be exempt from Section 2314 of the General Code of Ohio * * *.'

I think that under the language last quoted the expenditures for ordinary repairs and improvements form a temporary exception to the provision of Section 2314 of the General Code. This appropriation act, however, does not nullify the provisions of the general statute just cited, but merely holds it in abeyance during the life of the appropriation act, which is two years."

The effect of the language in the appropriation act quoted in your letter is to suspend the provisions of Section 1866, supra, until the end of the biennium for which the act in question makes appropriations. And undoubtedly the legislature has power to suspend the operation of a statute, Section 18, Article I of the Constitution of Ohio

providing that "no power of suspending laws shall ever be exercised, except by the general assembly."

It is, of course, fundamental that one general assembly cannot bind or control the action of another.

In *Milan, etc., Plankroad Co. vs. Husted*, 3 O. S. 578, 581, the court said:

"The legislature cannot, at one session, by the enactment of a law, in any manner, or to any extent whatever, limit or abridge the legislative power vested in this body, at any subsequent sessions."

And in *Toledo Bank vs. Bond*, 1 O. S. 622, it was said, page 688, that the legislative authority vested in the general assembly

"must remain the same in the general assembly at each session * * * If the legislature could, in the enactment of laws at one session, by contract or otherwise, abridge the legislative authority at a subsequent session, and thus provide against either the repeal or amendment of its enactments in future, this power would soon become absolute and dangerous. * * * The claim that the general assembly can, in the absence of any constitutional provision authorizing it, part with any legislative power, or by contract limit or restrain the future exercise of this high civil function, is, to say the least, grossly absurd."

Since as above pointed out, an appropriation act is as much a law as any other statute, if it were to be said that the present legislature could not in such an act direct for what purposes the moneys in the manufacturing fund should be expended, because it is specifically provided in Section 1866, supra, that the moneys in such fund shall be used for the purposes therein prescribed, it would be in effect saying that the action of the present general assembly was to be controlled by the former general assemblies which originally enacted and amended Section 1866, supra, at least, unless and until the present legislature expressly amended such section.

Specifically answering your question, for the reasons above set forth, I am of the opinion that the inclusion in the appropriation item for wearing apparel for inmates of the state institutions of the provision that appropriations made for such purpose should be "charged against the Manufacturing and Sales Rotary Fund" (H. B. 502, page 122) is a valid exercise of legislative power, and that in accordance with the terms of such item the Department of Public Welfare has the right and is obliged to draw upon the manufacturing fund provided for by Section 1866, General Code, to pay for wearing apparel furnished inmates of the various state institutions.

Respectfully,

EDWARD C. TURNER.

Attorney General.