

1578.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYA-
HOGA COUNTY, OHIO, \$18,000.00.

COLUMBUS, OHIO, December 6, 1937.

State Employes Retirement Board, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of City of Cleveland, Cuyahoga County, Ohio,
\$18,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated March 1, 1921. The transcript relative to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of September 26, 1935, being Opinion No. 4716.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1579.

SPECIAL INVESTIGATING COMMISSIONS CREATED UN-
DER JOINT RESOLUTION—SINE DIE ADJOURNMENT
—DIRECTOR OF FINANCE MAY NOT CERTIFY AVAIL-
ABILITY OF FUNDS.

SYLLABUS:

1. *The Special Investigating Commissions created under authority of Senate Joint Resolution No. 21, Senate Joint Resolution No. 30 and House Joint Resolution No. 50, have not had legal existence since May 10, 1937, the date of the sine die adjournment of the 92nd General Assembly of Ohio, such General Assembly being the legislative body that passed said resolutions.*

2. *These several commissions having died as a matter of law on May 10, 1937, the Director of Finance has no authority to certify as to the*

availability of funds to meet obligations incurred by them subsequent to May 10, 1937. An appropriation made for the use of a particular commission, cannot of itself operate to create a commission or prolong the life of a commission already created.

COLUMBUS, OHIO, December 7, 1937.

HON. M. RAY ALLISON, *Director of Finance, Columbus, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

"I respectfully refer to the syllabus and text of Attorney General's Opinion No. 4557, Volume 2, page 1041, A. G. O. 1935 bearing upon the general subject of the legal existence and validity of 3 special investigating committees appointed by authority of Resolutions of the Senate and House of Representatives and their status after sine die adjournment of the General Assembly creating them, and wish to submit the following questions on the subject matter herein recited.

During the regular session of the 92nd General Assembly there were adopted the following resolutions:

(a) Senate Joint Resolution No. 21, providing for the appointment of a Tax and Revenue Commission, and empowering it to make special investigation on matters of taxation.

(b) Senate Joint Resolution No. 30, providing for the appointment of a Commission to make a study of the delinquent tax situation in the state.

(c) House Joint Resolution No. 50, providing for a Commission for the rehabilitation of the Visual and Physical Handicapped.

Under Amended S. B. No. 369 there is appropriated —	
For the carrying into effect of Senate Resolution	
No. 21	\$15,000.00
For the carrying into effect of Senate Resolution	
No. 50	5,000.00
Under Amended S. B. No. 315, there is appropriated—	
For the carrying into effect of Senate Joint Reso-	
lution No. 30	5,000.00
For the carrying into effect of Senate Joint Reso-	
lution No. 50	10,000.00

The 92nd General Assembly adjourned sine die on May 10, 1937.

These special Investigating Commissions so created by authority of such Joint Resolutions are purportedly operating with a view toward carrying out the purposes of the resolution creating them.

QUESTION 1: Do the Special Investigating Commissions created under authority of Senate Joint Resolution No. 21, Senate Joint Resolution No. 30 and House Joint Resolution No. 50 have any legal existence since the sine die adjournment of the 92nd General Assembly on May 10, 1937?

QUESTION 2: What, if any, authority has the Director of Finance to make certification of availability of funds for obligations incurred by these Special Investigating Committees subsequent to May 10, 1937?

Your written opinion is respectfully requested on the questions above submitted."

I have examined Opinion No. 4557, Volume 2, Page 1041, O. A. G., and I can see no reason for departing from the law as therein expressed.

This opinion cites all the cases in which the question you submit, has been involved. In other words, it is a very complete brief of the subject. It is not necessary to travel far or labor hard to arrive at the conclusion reached therein.

Our legislative branch of government derives its power from Article II of the Constitution of Ohio, and I am frank to say that in my opinion, a complete answer to your inquiry is found therein.

This article lodges the legislative power of the state in a General Assembly consisting of a Senate and House of Representatives.

In Ohio, a proposed law is a "bill" and it remains a bill until it is enacted into law, then it becomes an Act of the General Assembly and when given its proper number it becomes a section of the General Code of Ohio.

The article provides that bills may originate in either house, prescribes the procedure that must be followed by the General Assembly in the enactment of law and it further provides that no law enacted by the General Assembly shall go into effect until ninety days after it has been filed by the Governor in the office of the Secretary of State, excepting only therefrom laws providing for tax levies, appropriations

for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, which laws shall go into immediate effect.

In this article the People of Ohio reserve to themselves the right of referendum, except as to the particular laws above referred to and the period of ninety days was given in order that the law could be submitted to the people of the state for their approval or rejection.

The right of referendum is seldom exercised by the people, but it remains with them and they can invoke it at their pleasure.

I find no provision in this article or in any other article for a House Resolution, a Senate Resolution or a Joint Resolution. A Resolution is in effect a formal statement of that which has been resolved or determined. It seems to have had its origin in municipal law.

Ballentine on Limitations, page 1130, defines it as follows:

“In the proceedings of a municipal board, a resolution is something less formal than an ordinance, and, generally speaking is a mere expression of the opinion or mind of the council concerning some matter coming within its official cognizance. No set form of words is essential if the requirement which calls for such expression is met.”

Ballentine, at page 692, defines a joint resolution as:

“A resolution adopted concurrently by both houses of a legislature.”

Joint resolutions have a great deal of virtue in some jurisdictions and none in others. I quote a part of Section 3, page 761, 25 Ruling Case Law, viz:

“Under the constitutions of some states, joint resolutions are recognized as the equivalent of laws enacted by a bill; and when the constitutional requirements have been complied with, such resolutions are accorded the force and effect of law. Joint resolutions of Congress are not distinguishable from bills, and, if approved by the President, or if duly passed without his approval, they have all the effects of Acts of Congress. But the general rule is that a joint or concurrent resolution adopted by the legislature, *will not have the force or effect of a law when the constitution under which the legislative body operates, requires the enactment of all laws to be in some prescribed form other than by resolution.* Under a con-

stitutional provision that no law shall be passed except by bill, a mere resolution is not a competent method of expressing the legislative will, if that expression is intended to have the *force of law and bind others than the members of the house or houses adopting it*. The requirements of the constitution are not met by that method of legislation. Nothing becomes law simply and solely because men who possess the legislative power will what it shall be, unless they express their determination to that effect in the mode appointed by the instrument which invests them with power, and under all the forms which that instrument has rendered essential." (Italics the writer's).

The cases cited bear out this text to the letter. The Constitution of Ohio provides for legislation by bill and sets out the specific procedure that must be followed by the General Assembly before a bill can become a law and it does not in any wise mention or even refer to a resolution or joint resolution.

The authority for the appointment of committees or commissions which are the same thing under a different name, is found in Section 8, Article II, Constitution of Ohio, viz :

"Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct, and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, *through committees* or otherwise, information affecting legislative action under consideration or under contemplation or with reference to any alleged breach of its privileges or misconduct of its members and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers." (Italics, the writer's.)

If the General Assembly has power "to obtain through committees or otherwise information affecting legislative action under consideration or under contemplation," it would necessarily follow that it would have the implied power to create such committee or commission, but when created its sole power would be to gather information for the benefit of the session affecting legislation which the session was considering or contemplating. This grant of power can not be stretched to include legislation that some future session of the General

Assembly might consider or contemplate. I quote again from 25 Ruling Case Law, Section 3, page 76, supra:

“Under a constitutional provision that no law shall be passed except by bill, a mere resolution is not a competent method of expressing the legislative will, if that expression is intended to have the force of law and bind others than the members of the house or houses adopting it.”

It may be insisted that the Constitution of Ohio, does not provide that no law shall be passed except by bill. True, it does not contain such inhibition in so many words, but it does provide that legislation shall come to the people of Ohio through the instrumentality of a bill and the doctrine of *expressio unius est expressio alterius* precludes legislation by resolution as effectively, thoroughly and completely as if the Constitution had provided flatly that there should be no legislation in Ohio by the process of resolution.

That is not all. There can be no law in Ohio, aside from the constitutional exceptions hereinbefore enumerated, without affording to the people of Ohio the opportunity for referendum and a resolution affords no such opportunity.

An appropriation made by the General Assembly for the use of these Commissions adds nothing to their existence.

Answering your questions specifically, these Commissions died with the sine die adjournment of the 92nd General Assembly and you, as Director of Finance, have no authority to certify as to the availability of funds to meet obligations incurred by such Commissions subsequent to the date of the sine die adjournment of such session.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1580.

APPROVAL—BONDS OF LUCAS COUNTY, OHIO, \$105,000.00.

COLUMBUS, OHIO, December 7, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Lucas County, Ohio, \$105,000.00.