

1173.

APPROVAL BONDS OF MARSHALL TOWNSHIP RURAL SCHOOL DISTRICT, IN AMOUNT OF \$2,500 TO INSTALL HEATING SYSTEM.

COLUMBUS, OHIO, April 20, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*

1174.

CONTROLLING BOARD—ITS AUTHORITY AS PROVIDED IN HOUSE BILL 536 (108 O. L. 736) INTERPRETED—WHERE IN CONFLICT WITH CLASSIFICATION AND RULES OF STATE CIVIL SERVICE COMMISSION AS PROVIDED IN SECTION 9 OF SAME ACT.

*The granting of authority by the controlling board to expend moneys otherwise than in accordance with classifications of detailed purposes, as provided for in section 4 of the general appropriation act passed May 28, 1919, (H. B. No. 536; 108 O. L. 736), and the making of allotments so as to enable departments, institutions, boards and commissions to pay salaries and compensation in accordance with the classification and rules of the state civil service commission, etc., as provided for in section 9 of the act, rests solely in the discretion of the board; and in either case action by the board must be invoked by filing a written application for such authority or allotment with the president of the board.*

COLUMBUS, OHIO, April 21, 1920.

*The State Civil Service Commission, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date relative to the duty of the controlling board under the general appropriation act passed May 28, 1919 (H. B. 536; 108 O. L. 733, Part I), was duly received.

The question submitted is whether or not section 9 of the act imposes an absolute duty on the controlling board to allot to departments, institutions, boards or commissions money sufficient to enable them to pay compensation and salaries in accordance with the classification and rules of the state civil service commission, in cases where the personal service appropriations made in section 2 of the act are insufficient in amount?

Section 4 of the act creates a board known as the controlling board, consisting of the governor, or the budget commissioner, if appointed by the governor for that purpose, the chairman of the house and senate finance committees, the attorney-general and the auditor of state, and provides that authority to expend the moneys appropriated in sections 2 and 3 of the act otherwise than in accordance with the classification of detailed purposes therein provided

“may be granted to any department, institution, board or commission for which appropriations are made in said sections,” etc.

It is also provided in the same section that

“application for such authority shall be made to the president of the controlling board in writing, and the consent of not less than four members of the controlling board shall be required for the granting of such authority.”

Section 9 of the act, after providing rate of annual salaries for certain groups and grades of the classified civil service of the state, and that the appropriations made for personal service may be expended only in accordance with the classifications and rules of the state civil service commission and at the rates therein set forth, further provides that:

"In case any personal service appropriation made in section 2 of this act is insufficient in amount to enable the department, institution, board or commission, for which the same is made to comply with the provisions of this section in the payment of the compensation of its employes, the controlling board may from the appropriation made to such controlling board, allot to such department, institution, board or commission a sum sufficient to enable such department, institution, board or commission to comply with this section. Such allotment shall be made on application and all the provisions of section 4 of this act, so far as consistent herewith, shall apply. A written order signed by the president and secretary of the controlling board and specifying the amount of such allotment, shall be issued to the auditor of state, who shall thereupon deduct the amount of such allotment from the appropriation made to such controlling board, and add the same to the amount available to such department, institution, board or commission for personal service."

After a careful consideration of the act as a whole, and of sections 4 and 9 in particular, the conclusions have been reached, first, that the granting of authority under section 4 to any department, institution, board or commission to expend moneys appropriated by the act otherwise than in accordance with the classification of detailed purposes therein set forth, and, second, that the making of allotments under section 9 to departments, institutions, boards and commissions of sums sufficient to enable them to pay compensation and salaries according to the classifications and rules of the state civil service commission, and at the rates of annual salaries for the respective groups and grades therein mentioned, rests solely in the discretion of the board.

The claim is made, as I understand it, that the provision of section 9 that such allotment "shall be made on application," imposes upon the controlling board an absolute duty to make allotments in cases therein provided for, but in my opinion such is not the purpose or effect of that provision of the section. On the contrary, the meaning of the clause just quoted is, not to impose an absolute duty on the controlling board to make the allotment on application, but rather to prescribe the procedure to be followed in invoking the action of the controlling board, namely, that before an allotment can be made an application therefor must first be filed with the board by the particular department, institution, board or commission desiring the allotment. That this conclusion is correct, is made apparent by the further provision of section 9 that all the provisions of section 4 of the act, so far as consistent with section 9, shall apply.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*