

1017.

APPROVAL, BONDS OF JEFFERSON COUNTY, OHIO, IN AMOUNT OF
\$68,500 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, February 24, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1018.

STATE BOARD OF OPTOMETRY—MONEYS RECEIVED PAYABLE INTO
STATE TREASURY—SPECIFIC APPROPRIATION FOR EXPENDITURE
OF SAME.

All moneys received by the Secretary of the State Board of Optometry under the act of March 20, 1919, (108 O. L., Part I, p. 73) must be paid monthly into the state treasury, and no part thereof can be drawn therefrom except in pursuance of a specific appropriation made by law. See section 22 of Article II of the state Constitution.

COLUMBUS, OHIO, February 25, 1920.

The Ohio State Board of Optometry, Columbus, Ohio.

GENTLEMEN:—Your letter of February 13, 1920, was duly received, and reads as follows:

“The budget that was fixed for this Optometry Board is not enough to defray the expenses and the board requests that you interpret Section 6 of the law regulating the practice of optometry, known as House Bill 240 (108 O. L. Part I, p. 73), and see if this fund is for our use regardless of the budget, provided that the funds paid out do not exceed the amount paid in, and furthermore, should this fund be not available for this purpose, will your department advise us how to proceed so that the budget may be increased to take care of the expenses of this department.”

Section 5 of the act referred to (section 1295-25 G. C.), provides, among other things, that:

“Each month all moneys received by the secretary shall be paid by him into the state treasury to the credit of a fund for the use of the state board of optometry.”

Section 6 of the act (section 1295-26 G. C.), after providing that each member of the board shall receive ten dollars for each day actually employed in the discharge of his official duties, and his necessary expenses incurred, and that the secretary shall receive an annual salary to be fixed by the board, and his necessary expenses incurred in the discharge of his official duties, further provides that:

“The compensation and expenses of the secretary and members of the board, and the expenses of the board necessary in carrying out the provisions of this act, shall be paid from the fund in the state treasury for use of the

board on the requisition signed by the president and the secretary of the board and the warrant of the auditor of the state; provided, however, that said compensation and expenses shall not exceed the amount paid into the state treasury under the provisions of this act."

All moneys received under the act referred to are received by the secretary, and under section 5 of the act, *supra*, must be paid by him into the state treasury. Since section 22 of Article II of the State Constitution expressly provides that

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law,"

it must necessarily follow that no part of the fund in the state treasury to the credit of the state board of optometry can be drawn therefrom except such amounts thereof as have been specifically appropriated by the general appropriation act of the 83rd general assembly (House Bill 536; 108 O. L. Part I, pp. 784, 785, 866 and 867).

The foregoing conclusion is supported by 1916 Opinions of Attorney-General, Vol. I, page 220, and 1918 Opinions of Attorney-General, Vol. I, page 317. The statutes involved in the first opinion provided that "each week all moneys received by the secretary shall be paid by him into the state treasury to the credit of a fund for the use of the State Dental Board," and the statute involved in the other opinion provided that certain fines and penalties "shall be paid into the state treasury and shall constitute a special fund for the uses and purposes of the State Board of Health." In both instances it was held that no specific appropriation had been made as required by section 22 of Article II of the Constitution.

The provision of section 6 of the optometry act (1295-26 G. C.) that the compensation and expenses therein referred to "shall be paid from the fund in the state treasury for the use of the board on the requisition signed by the president and the secretary of the board," etc., is not a specific appropriation of the fund, but rather a legislative direction of the procedure to be followed in withdrawing the fund from the treasury after it shall have been specifically appropriated.

The conclusion is also supported by the provision contained in section 1 of the general appropriation act (108 O. L., Part I, p. 733), that the appropriations therein enumerated for departments, boards, etc., for the uses and purposes of which specific fund in the state treasury are provided by law, are made from such specific funds.

In the event your board desires to expend the money appropriated by the general appropriation act above referred to otherwise than in accordance with the classifications and detailed purposes therein specified, application for such authority should be made to the controlling board as provided for in section 4 of that act (108 O. L., Part I, pp. 912, 913; see also section 9, at pp. 915, 917).

Your attention is also directed to section 2312 et seq. G. C., creating the state emergency board and providing, among other things, that in case of any deficiency in certain appropriations, or in case of an emergency requiring the expenditure of money not specifically provided by law, application may be made to the board for authority to create obligations within the scope for the purpose for which appropriations have been made, or to expend money not specifically provided for by law.

You will understand, of course, that the granting of your application in either case is a matter to be determined solely by the respective boards referred to.

Respectfully,

JOHN G. PRICE,

Attorney-General.