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APPROVAL, NOTES OF VAN BUREN TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY—\$435,000.00.

COLUMBUS, OHIO, July 23, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

655.

EXAMINER—BUILDING AND LOAN DEPARTMENT—ENTITLED TO SALARY PROVIDED BY GENERAL APPROPRIATION BILL—RATE ESTABLISHED BY PREVIOUS STATUTE SUPERSEDED TEMPORARILY.

SYLLABUS:

In view of the provisions of House Bill No. 510 of the 88th General Assembly, being an act to make general appropriations, examiners employed in the building and loan division of the Department of Commerce who have been rated by the State Civil Service Commission as "Examiner Gr. III. Rate A" should be paid a salary at the rate of \$2,800.00 per annum during the biennium for which the appropriations were made in the act.

COLUMBUS, OHIO, July 24, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion which reads as follows:

"Section 677 of the General Code of Ohio provides, "The superintendent of building and loan associations may employ from time to time, subject to the provisions of civil service laws, the necessary deputies, assistants, clerks and examiners, to assist him in the discharge of the duties imposed upon him by law. * * * "

Section 677-2 of the General Code of Ohio provides, "The superintendent of building and loan associations shall fix the salaries and prescribe the duties of the deputies, assistants, clerks and examiners. Salaries of deputies and examiners shall be not more than \$2,700.00 per annum and salaries of clerks and assistants not more than \$1,800.00 per annum to be determined upon a graduated scale based upon qualifications and length of services. * * * "

The General Appropriation Bill passed by the 88th General Assembly, known as House Bill No. 510, provides: "Section 10. So much of the appropriation herein made for personal service as pertains to the compensation of employes in the following groups and grades of the classified civil service of the state, save and except employes in such groups and grades in the state universities, normal schools, and the Ohio agricultural experiment station may be expended only in accordance with the classification and rules of the

state civil service commission and at the following rates of annual salaries for the respective groups and grades :

Examiner Gr. III Rate A..... \$2,800.00'

A number of the examiners employed in the building and loan division of the department of commerce have been rated by the state civil service commission as follows :

Examiner Gr. III Rate A.....

Will you please advise what is the maximum salary which may be legally paid examiners in the building and loan division having the civil service rate of Examiner, Gr. III, Rate A? Specifically, I desire to know whether such examiners may be paid \$2,800.00 per annum, the maximum salary rate as fixed in the appropriation bill, or whether the maximum salary of examiners in the building and loan division is \$2,700.00 as provided for in Section 677-2 of the General Code."

A somewhat similar question to that presented by your inquiry has been before this department on several previous occasions. In 1908 the Legislature of Ohio passed an act "to make partial appropriations for the last three quarters of the fiscal year ending November 15, 1908, and the first quarter of the fiscal year ending February 15, 1909." It was provided in Section 1 thereof, "That the following sums for the purposes hereinafter specified, be, and the same are hereby, appropriated out of any money in the state treasury to the credit of the general revenue fund not otherwise appropriated to-wit: * * * Insurance Department * * * salary of actuary -----\$2,400.00 * * * ." (99 Ohio Laws, page 40.)

The same Legislature in a later act entitled "an act to make appropriations for the last three quarters of the fiscal year ending November 15, 1908, and the first quarter of the fiscal year ending February 15, 1909" (99 Ohio Laws 546) made an appropriation for the salary of the actuary in the insurance department, of \$600.00.

In view of the appropriation so made and of the fact that the statute then in force, Section 1284b of the Revised Statutes, fixed the annual salary of the actuary in the insurance department at \$2,400.00, the then Attorney General was asked whether or not the said actuary had a legal right to receive \$600.00 in addition to the annual salary of \$2,400.00 fixed by statute. In an opinion rendered by W. H. Miller, Assistant Attorney General, it was held that the amount fixed by the statute governed rather than the amount of the appropriation and it was said in the opinion :

"I am forced to conclude that the \$600.00 appropriation, as carried in the general appropriation bill, can only be regarded as a legislative error and is not available as an increase in salary to the actuary of your department." See Annual Report of the Attorney General for 1908 at page 176.

In 1919 there was submitted to the then Attorney General for answer the following question :

"May the Legislature legally increase a salary or per diem fixed by statute in the appropriation bill simply by appropriating a greater amount than is authorized by statute?"

The Attorney General in replying to the inquiry stated in the syllabus of his opinion, found in the Opinions of the Attorney General for 1919 at page 513 :

"A mere item in a bill appropriating money is not sufficient authority for the payment to an officer or employe of a greater amount of salary than that authorized by permanent law."

It seems that the Attorney General in rendering this opinion, predicated his direct answer to the question submitted, on the assumption that the appropriation bill under consideration carried "a mere item * * * appropriating money * * * " and in the course of the opinion the following comment was made:

"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.)

In an opinion of my predecessor reported in the Opinions of the Attorney General for 1927, Vol. I, page 718, it was held as stated in the 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."

Inasmuch as it seems to be well settled that an appropriation act is a law of equal dignity during its existence, to all other laws, and that by force of an appropriation act, as well as any other act, the General Assembly may suspend the operation of a section of the General Code during the life of the act, it becomes important in the present inquiry to determine whether or not the action of the General Assembly, by the passage of the appropriation act in question, suspended the operation of Section 677-2 of the General Code, referred to in your inquiry, during the biennium for which the appropriations were made, and provided that the examiners in the department of the superintendent of building and loan associations should be paid a salary of \$2,800.00 per annum instead of \$2,700.00 as fixed by the statute.

The said appropriation act (House Bill No. 510) after making a lump sum appropriation in Section 1 of the act for "personal service" in the several departments of

state, including the division of building and loan associations in the department of commerce, provided in Section 10 of said act as follows :

“So much of the appropriation herein made for personal service as pertains to the compensation of employes in the following groups and grades of the classified civil service of the state, save and except employes in such groups and grades in the state universities, normal schools, and the Ohio agricultural experiment station may be expended only in accordance with the classification and rules of the state civil service commission and at the following rates of annual salaries for the respective groups and grades :

* * * * Examining * * * *
 Examiner Gr. III. Rate A-----\$2,800.00.”

Inasmuch as the act provides in Section 10 thereof, above quoted, that the appropriations made for personal service “may only” be expended at the rates fixed therein, it will be necessary to expend the money at those rates, else there is no authority for its expenditure at all.

It follows, therefore, that since certain examiners employed in the building and loan division of the department of commerce have been rated by the state civil service commission as “Examiner Gr. III. Rate A” the only authority for the expenditure of the appropriations made for the payment of their salaries is at the rate of \$2,800.00 per year, and if they are not paid at that rate there is no authority in the appropriation act to pay them at all.

It is my opinion that the effect of the provisions of Section 10 of the appropriation act above referred to is to suspend the provisions of Section 677-2 of the General Code of Ohio during the life of the appropriation act in so far as the salaries of examiners in the building and loan division of the department of commerce, who have been rated by the state civil service commission as Examiners, Gr. III, Rate A, are affected.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

656.

APPROVAL, LEASES TO LAND AT BUCKEYE LAKE.

COLUMBUS, OHIO, July 24, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval three certain leases in triplicate, executed by the State of Ohio through you as Superintendent of Public Works, whereby there is leased and demised to the respective lessees therein named for terms of fifteen years each, certain parcels of state reservoir lands located along and adjacent to Buckeye Lake, which parcels of land are fully described in said leases. Said leases designated with respect to the lessees therein and the valuations of the parcels of land covered by said leases, are as follows :

<i>Lessees</i>	<i>Valuations</i>
Gertrude Holtsberry -----	\$600.00
S. A. Luster-----	200.00
Esther L. Plant-----	500.00