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HOSPITAL—REIMBURSEMENT OF HOSPITALS FOR CARE GIVEN INDIGENT PERSONS INJURED IN MOTOR VEHICLE ACCIDENTS—AMENDED SENATE BILL NO. 43 SPECIAL APPROPRIATION—EFFECTIVE DATE—TRANSFER OF FUNDS—CERTIFICATE OF DIRECTOR OF FINANCE—"MOTOR VEHICLE" DEFINED.

SYLLABUS:

1. *The appropriation contained in Amended Senate Bill No. 43 for reimbursement of hospitals for the purpose of carrying out the provisions of House Bill No. 80 of the 90th General Assembly, is a specific appropriation within the meaning of the term as used in Article II, Section 22 of the Ohio Constitution.*

2. *Such appropriation went into effect on September 28, 1933, and expires March 1, 1935, and any unexpended moneys therein at the end of the calendar years 1933 and 1934 do not lapse.*

3. *Appropriations for personal service and for supplies and maintenance contained in said Senate Bill No. 43 are not to be deducted from the appropriation for reimbursement for hospitals.*

4. *Funds may not be transferred from the appropriation for "reimbursement for hospitals" as contained in Amended Senate Bill No. 43 to the items of personal service or supplies and maintenance contained in such appropriation act, but additional funds may be made available for such personal service or supplies and maintenance items by allowance by the Emergency Board from the contingent appropriation for the uses and purposes of such board contained in House Bill No. 699 of the 90th General Assembly.*

5. *The Auditor of State may draw no warrant on the Treasurer of State for the payment of any voucher drawn by the Registrar of Motor Vehicles to reimburse a hospital under the provisions of said House Bill No. 80 until the Director of Finance has certified as to the availability of funds to pay the same in the appropriation against which the warrant is drawn, in accordance with the provisions of Section 2288-2, General Code.*

6. *The term "motor vehicle", as used in House Bill No. 80, should be defined as set forth in Section 6290, General Code, as amended by the 90th General Assembly.*

COLUMBUS, OHIO, March 19, 1934.

HON. GLEN M. DAILY, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Your opinion is respectfully requested on the following questions which have arisen in connection with House Bill No. 80, which provides for the reimbursement to hospitals for care given indigent persons injured in motor vehicle accidents:

1. Does the Act make a *specific* appropriation of 19c per car for *each* of the years 1933, 1934 and 1935 (it will be in effect for only two months in both 1933 and 1935) or is the 19c per car merely the upward limit of the sum which may be paid from the *regular* M & R appropriation in any particular year? Regardless of whether it is an appropriation or merely an amount not to be exceeded, is the figure to be computed

in the full amount or the pro rata amount for the period the law is in effect?

2. S. B. 43 of the special session made an appropriation for personal service of \$3,000.00 and \$500.00 for supplies for administering this act. Are expenditures for this purpose deductible from the maximum allowable expenditure? If these appropriations are depleted will it be possible to increase them by transfer? If the appropriation were exhausted and could not be increased would the payment of claims have to cease because there were no funds for further proper investigation?

3. If the 19c per car is a specific appropriation should a like amount of cash be transferred from the M & R Fund to insure *cash availability*?

4. If it is not a separate and distinct appropriation should the Director of Highways officially set aside a portion of the regular M & R appropriation based on 19c times estimated registrations? If so, should this sum be at once encumbered with the Department of Finance to insure *availability* of estimated revenues? Or should the funds be set aside from time to time in anticipation of immediate needs?

5. In the event the sum available for hospitalization reimbursement for a particular period (1933, 1934 or 1935) is not depleted, will the amount remaining be carried over to the succeeding period or periods and be available for reimbursements?

6. If an appropriation is available for a particular period (1933, 1934 or 1935) only, what date will determine from what year's appropriation a given claim shall be paid? The following are some of the possibilities in this regard:

- a—Date of accident
- b—Date of admission to hospital
- c—Date of death or discharge of patient
- d—Date claim filed with Registrar
- e—Date approved for payment by Registrar
- f—Date funds encumbered with Finance Department
- g—Final date of Vouchers as submitted by Highway Auditor for payment.

7. For the purpose of this act, does the term 'motor vehicles' include trailers? Side-cars? Public-owned vehicles? Dealers' master plates? Dealers' extras?

It is quite possible that a just claim may not be eligible for payment until a period of from six months to a year has elapsed from date of accident."

Your first and fifth questions will be considered together and your remaining questions in the order in which they are presented.

House Bill No. 80 passed by the 90th General Assembly June 8, 1933, is an act "to provide reimbursement for hospitals on account of expenses of the care of indigent persons injured in motor vehicle accidents and to amend sections 6291 and 6309-2 of the General Code." Payment of claims of hospitals under this act for the care of indigent persons injured in motor vehicle accidents is provided by Section 6 thereof in the following language:

"When and if the registrar of motor vehicles shall have determined that a claim presented to him under the provisions of this act by a hos-

pital which has complied with said provisions is made in respect of an indigent patient as evidenced by his findings under section 5 of this act, he shall determine the amount of such claim in accordance with the per diem cost of such hospital as certified to him under the provisions of this act less any amount collected from the patient, and shall pay the amount so ascertained to the claimant from the 'state maintenance and repair fund' available for his use and appropriated for that purpose. The registrar of motor vehicles may make monthly payments to each hospital entitled to receive the same covering all claims audited and approved by him within the preceding month."

This act amends Section 6291, General Code, imposing an annual license tax upon motor vehicles so as to include in the purpose of such tax the cost of the administration of this law. Section 6309-2, General Code, relating to distribution of revenue from the motor vehicle license tax is also amended by this House Bill No. 80 so as to include in the purpose of the "state maintenance and repair fund" the administration of this act, the pertinent language of this section as amended reading as follows:

"The 'state maintenance and repair fund' provided for herein shall be available for the use of the registrar in defraying the expenses incident to carrying out and enforcing the provisions of this chapter and (to the extent of a sum equal to nineteen cents for each motor vehicle registered in the state for each year) in carrying out and enforcing the provisions of this act to provide reimbursement for hospitals on account of expenses for the care of indigent persons injured in motor vehicle accidents and for the use of the director of highways in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose."

A reading of the foregoing amendment of Section 6309-2, supra, would indicate that the legislature intended to appropriate from the state highway maintenance and repair fund a sum to carry out the provisions of the act not in excess in any of the years during which the act is effective of a sum equal to 19c for each motor vehicle registered in the state for each such year. In other words, as you indicate, the language of this amendment apparently discloses a legislative intent of using the number of motor vehicles registered in any such year multiplied by 19c as a yardstick by which to measure the maximum amount that shall be appropriated from the maintenance and repair fund for the purpose of administering this act.

After the passage of the foregoing act on June 8, 1933, the legislature made a specific appropriation for the purpose of effectuating the provisions of the act by the passage on September 19, 1933, of Amended Senate Bill No. 43. This act reads as follows:

"The following sums for the purposes hereinafter stated are hereby appropriated out of any moneys in the state treasury to the credit of 'the state maintenance and repair fund' for the purpose of carrying out and enforcing the provisions of the act passed by the General Assembly, June 8, 1933, and known as House Bill No. 80, to provide reimbursement for hospitals on account of expenses incurred for indigent persons in-

jured in motor vehicle accidents. The sums hereby appropriated may be expended to pay obligations lawfully incurred on and after the date when said act shall become effective, to-wit:

REGISTRAR OF MOTOR VEHICLES

Personal service	\$3,000.00
Supplies and maintenance	500.00
Reimbursement for hospitals.....	The balance of a sum equal to 19c for each motor vehicle registered in the state for the years 1933, 1934 and 1935, prior to March 1, 1935."

Your question number one is in effect two questions. Although your first inquiry might be construed as relating to House Bill No. 80 only, as inquiring as to whether that bill makes a specific appropriation, in view of your third question, I presume you desire to know whether or not, by virtue of House Bill No. 80 and Amended Senate Bill No. 43, a specific appropriation of a sum equal to 19c for each motor vehicle registered in the state for the years 1933, 1934 and 1935 has been made and also whether or not a separate appropriation for the proportion of the calendar year 1933 during which the act is in effect, for the year 1934 and the portion of the year 1935 during which the act shall be in effect, has been made.

With respect to whether or not the appropriation by Amended Senate Bill No. 43, supra, is a specific appropriation, your attention is directed to Article II, Section 22 of the Constitution requiring that an appropriation shall be "specific". The language of this section of the Constitution is as follows:

"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."

Amended Senate Bill No. 43 does not appropriate from the state maintenance and repair fund a definite sum which may be now determined, but it does not necessarily follow that the appropriation is therefore not "specific". The amount appropriated from the state maintenance and repair fund for reimbursement of hospitals is "the balance of a sum equal to 19c for each motor vehicle registered in the state for the years 1933, 1934 and 1935, prior to March 1, 1935." A sum equal to 19c for each motor vehicle registered in the state for the year 1933 was not possible of definite ascertainment until the close of the calendar year 1933, and of course, the same will be true as to the years 1934 and 1935 up to March 1 of that year.

The question as to whether or not this is a specific appropriation is analogous to a question which was under consideration by the Attorney General in the rendition of an opinion appearing in Opinions of the Attorney General for 1915, Vol. II, page 1871. The then Attorney General considered section 7 of Amended Senate Bill No. 304, 105 O. L. 466, which section appropriated "a sum not otherwise appropriated equal to such amount of money as may be received into the state treasury as interest accruing on state funds for and during the period of two years from and after the date on which this act becomes effective." In commenting upon this appropriation, the then Attorney General said:

"It is true that in form the section appropriates not the precise sums received into the state treasury from time to time as interest accruing on state funds during the period of two years therein mentioned, but 'a sum equal to' the amount of money received during the entire period. It is true, too, that the 'sum equal to such amount of money

as may be received * * * for and during the period of two years' cannot be ascertained until the end of the period. But for that matter, neither could the amount of the particular receipts designated themselves be ascertained until the end of the period. In substance, I do not see that it makes any difference as to the *validity* of the appropriation whether the legislature sees fit to use one form of words or the other; that is, whether verbally it appropriates 'a sum equal to' certain receipts for a certain period, or the receipts themselves. The effect may not be precisely the same in both cases; however that may be, the effect of the appropriation now in question may be described as follows:

The appropriation is to be regarded as 'made,' 'effective' and 'available' at the beginning of the period during which the designated receipts are to come into the treasury. The contracting power of the recipient of the appropriation is measured by the estimated amount of the appropriated income for the specified time. It is true that, strictly speaking, this is but a rough and dangerous method of appropriating in view of the statutes and fundamental principles condemnatory of the incurring of deficiencies. However, the question of power is not to be resolved negatively merely because its exercise may be attended by the risk of exceeding it. It is possible for the board, by exercising due caution, to be assured that the aggregate sums payable by the state under contracts entered into by it will not exceed the amount of the interest which the state will certainly receive during the two years.

In short, section 7 differs from an ordinary appropriation of 'receipts and balances,' formerly so usual in this state, in that it appropriates now a sum of money the amount of which will ultimately become certain, but which at the present time can only be estimated; while an appropriation of receipts does not appropriate anything until the receipts themselves come into the treasury. Section 7, then, is fully effective at the present time to an extent which may be estimated but not exactly ascertained at present; whereas an appropriation of receipts seizes upon the income from a designated source of revenue as it comes into the treasury, and nothing is appropriated until it is received. It seems to have been the deliberate purpose of the general assembly to make this distinction, and I know of no constitutional or other principle which will prevent this purpose from being carried into effect. The constitution requires that an appropriation shall be 'specific.' The appropriation now under consideration is specific, because that may be regarded as certain which may be made certain. The situation presents an administrative difficulty, in that the Auditor of State will not be able to set up the exact amount of this appropriation account at the present time. However, it is his duty, in my opinion, to set up an amount corresponding to the estimated receipts from state treasury interest for the two year period, which amount may be collected by him at the end of the period; or he may, if he sees fit, in addition to setting up the principal sum of the appropriation account in the manner herein described, keep a running account of income from this source, crediting the same to the appropriation. In any event, the appropriation is, in my opinion, valid and constitutes authority to incur obligations not in excess of the estimated amount thereof."

I concur in the position taken by this office in the rendition of the foregoing opinion and I am therefore of the opinion that the appropriation contained in

Amended Senate Bill No. 43 for reimbursement of hospitals for the purpose of carrying out the provisions of House Bill No. 80 of the 90th General Assembly is a specific appropriation.

You next inquire in your first question, and this inquiry is also contained in your seventh question, as to whether or not the appropriation under consideration is separable as to the calendar years during which it shall be in effect. I find nothing in this appropriation measure to the effect that expenditures from the appropriation during a portion of the year 1933 during which the act was in effect or during any other calendar year during which the act is in effect, shall be limited to a sum equal to 19c for each motor vehicle registered in that particular year. The legislature has used no language to indicate the intention to appropriate a determinable and separate sum for each calendar year, but has clearly appropriated a specific amount for the life of the appropriation.

It becomes necessary to comment upon the life of this appropriation. The act was passed September 19, 1933, and approved by the Governor September 28, 1933. Under Article II, Section 1d of the Constitution, laws providing for appropriations for the "current expenses of the state government and state institutions" shall not be subject to the referendum and shall go into immediate effect. In my judgment Amended Senate Bill No. 43 is a law providing for appropriations for the current expenses of the state government and was therefore in effect on September 28, 1933. This view is supported by the case of *State, ex rel. vs. Brown*, 112 O. S. 590, which held as set forth in the fourth branch of the syllabus:

"The phrase 'current expenses,' as used in Section 1d of Article II of the Constitution, in addition to including the expenses incident to the officering and maintaining of the state government, includes the expense of keeping in repair and maintaining the property of the state government, and, as applied to roads, includes the maintaining and repairing thereof as distinguished from new construction."

While this case is not directly in point, the rather liberal construction of the phrase "current expenses" adopted by the court in this case, supports the view that the act here under consideration is a law providing for appropriations for current expenses. The language of the court on this point is as follows:

"The question whether the appropriation of the fund to be raised for the period of two years is exempt from the referendum, under the provision 'appropriations for the current expenses of the state government and state institutions,' is answered when it is determined whether the act appropriates the fund or any portion thereof for purposes other than current expenses. If the fund be appropriated for expense other than current expense, the appropriation is subject to the referendum; if not, it is exempt from the referendum.

The phrase 'current expenses' does not seem to have been defined by this court, nor, indeed, satisfactorily defined by any court.

17 Corpus Juris, 408, defines it thus:

'Incidental expenses; ordinary expenses, running expenses; any continuing, regular expenditures in connection with the carrying on of business; continuing regular expenditures. As applied to a railroad, the term will include expense occasioned by repairs and the purchase of

materials for the improvement of the road; expenses incurred within a reasonable time.'

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Our conception of the phrase, as used in our Constitution, is that 'current expenses,' in addition to including the expenses incident to officering and maintaining the state government, includes the preserving in repair and maintaining of the property of the state government, and, as applied to roads, includes the maintaining and repairing thereof, as distinguished from new construction. We believe this is the commonly accepted definition of the phrase, and we hold that it was in this sense that the makers of the Constitution used it in Section 1d of Article II of the Constitution of Ohio."

Having determined that the appropriation here under consideration went into effect on September 28, 1933, it remains to be determined when this appropriation will expire. House Bill No. 80, supra, provides in section 12 thereof that "this act shall remain in full force and effect until March 1, 1935". It is obvious in view of this provision that any unexpended funds appropriated by Amended Senate Bill No. 43 will lapse on March 1, 1935, in the absence of any further amendment of House Bill No. 80. Were it not for the fact that House Bill No. 80 is not to remain in force and effect after March 1, 1935, it might be argued that in the absence of words to the contrary in Amended Senate Bill No. 43 the appropriation was made for a period of two years from its effective date. This office has heretofore taken the position that Article II, Section 22 of the Constitution, supra, does not limit the legislature in making appropriations to the biennium for which the members thereof were elected, but that the legislature may appropriate for a maximum period of two years from the effective date of any appropriation measure. Opinions of Attorney General for 1917, pages 1278, 1281 and for 1919, Vol. I, pages 519, 520.

It is accordingly my opinion that said appropriation is in effect from September 28, 1933, to March 1, 1935, and that any unexpended moneys so appropriated at the end of the calendar years 1933 and 1934 do not lapse.

In your question number two, you likewise ask two questions. You inquire first as to whether or not appropriations for personal service in the amount of \$3,000.00 and for supplies and maintenance in the amount of \$500.00 are deductible from the "maximum allowable expenditure". By this I presume you mean the appropriation for reimbursement for hospitals. It is apparent that Amended Senate Bill No. 43 makes three specific and separate appropriations from the state maintenance and repair fund. No one of these appropriations are provided to be deductible from any other appropriation therein contained. In this respect I find nothing in the act to construe and it necessarily follows that the appropriations for personal service and for supplies and maintenance are not deductible from the appropriation for reimbursement for hospitals.

With respect to whether or not these appropriations for personal service and for supplies and maintenance may be increased by transfer, there is no permanent statute in the General Code vesting in any state authority the power to transfer funds from one item in an appropriation measure to another. Your reference is obviously to the authority of the Controlling Board so to do. This board as now constituted is created by section 4 of the General Appropriation Act, House Bill No. 699 of the 90th General Assembly, which section sets forth the powers of the board. In so far as pertinent to your question, the section provides:

"The controlling board shall have power:

(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in section 1 of this act, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds within a department, division or agency for which appropriations are made, from any item to another within 'Personal Service,' 'Maintenance' or 'Additions and Betterments'; also to authorize transfers of funds from items entitled 'Personal Service' to items entitled 'Maintenance,' or vice versa, or to transfer to new classification items in cases where proper code items have not been provided by the legislature. However, the controlling board may, if it deems advisable, delegate to the director of finance authority to approve transfers of funds from any item to another within 'Personal Service' or 'Maintenance' during such period or periods as it might determine."

In passing upon the power of the Controlling Board, this office in an opinion appearing in Opinions of the Attorney General for 1927, Vol. II, page 1441, held as set forth in the first branch of the syllabus:

"Neither the Controlling Board nor the Emergency Board is vested with any legislative power and neither can appropriate money nor amend a statute so as to provide that moneys appropriated by the legislature can be spent for a purpose other than that authorized by law."

In view of the fact that the appropriations made by Amended Senate Bill No. 43 are not made in section 1 of the General Appropriation Act, the foregoing power to transfer is not applicable. It is accordingly my opinion that funds may not be transferred from the appropriation for "reimbursement for hospitals" as contained in Amended Senate Bill No. 43 to the items of personal service or supplies and maintenance contained in such appropriation act.

Should these appropriations for personal service and supplies and maintenance, or either of them, become depleted, as is very possible if any material investigation is to be made of the claims of hospitals for reimbursement under House Bill No. 80, the only way in which additional funds may be made available for this purpose would be pursuant to allowance of the Emergency Board. Section 2313, General Code, provides as follows:

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law. * * *"

Allowances are made for the foregoing purposes by the Emergency Board from a contingent appropriation for the uses and purposes of the Emergency Board which the legislature is authorized to make under Section 2313-2 of the General Code. The legislature made such an appropriation in House Bill No.

699, the General Appropriation Act. You ask if the payment of claims would have to cease in the event of the exhaustion of the appropriations for personal service and supplies and maintenance and if these appropriations could not be increased. I have pointed out how these appropriations might be increased and it is therefore not necessary to consider this matter.

Considering next your question number three, you inquire as to whether or not the amount appropriated for reimbursement for hospitals should be transferred from the maintenance and repair fund to insure cash availability. The act itself, in appropriating these moneys from the maintenance and repair fund, serves to transfer the same therefrom. There is no necessity for any encumbrance of these moneys in the maintenance and repair fund because the act itself serves this purpose. It was held in an opinion of this office reported in Opinions of the Attorney General for 1927, Vol. II, page 1242 that "it is not necessary in order to encumber an appropriation made by the General Assembly that an encumbrance certificate be filed in the office of the Auditor of State."

I presume, in view of your question number four, that the underlying question which is bothering you is the matter of how you are to determine at any given time whether or not there is actually any cash available for reimbursement for hospitals. The responsibility as to this matter is placed upon the Director of Finance. Section 2288-2, General Code, provides:

"It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations."

Under this section the Auditor of State may draw no warrant on the Treasurer of State until the voucher bears the stamp of the Director of Finance, certifying as to the availability of funds to pay the same in the appropriation against which the warrant is drawn.

Your question number six is predicated upon the condition that Amended Senate Bill No. 43 made separate appropriations for each of the calendar years 1933, 1934 and 1935 and hence requires no answer.

Finally, you inquire as to what is included within the term "motor vehicle" as used in House Bill No. 80. This act does not define the term as used therein. Section 1 of the act defines "motor vehicle injury" as follows:

"'Motor vehicle injury' means any personal injury suffered by a human being and caused by the operation of a motor vehicle, whether the injured person be the operator of such motor vehicle, a passenger in the same or in another vehicle, a pedestrian, or whatever be the relation of such injured person to the operation of such vehicle; and whether or not such motor vehicle is under the control of a human being at the time of such injury."

Since the reimbursement for hospitals provided by House Bill No. 80 is, under Section 6309-2, supra, which is part of House Bill No. 80 and under Amended Senate Bill No. 43, appropriated from the state maintenance and repair fund,

which fund is made up of a part of the proceeds of the motor vehicle license tax (Section 6309, General Code), and since the amount of the appropriation is based upon the number of motor vehicles registered in this state, it is my judgment that the term "motor vehicle" must be given the same meaning as is given to the term in the chapter relating to the registration or licensing of motor vehicles. The definition of this term contained in Section 6290, General Code, is therefore dispositive of this question. This last mentioned section, as amended by the 90th General Assembly, provides in so far as pertinent as follows:

"'Motor vehicle' means any vehicle propelled or drawn by power other than muscular power, except road rollers, traction engines, power shovels and power cranes used in construction work and not designed for or employed in general highway transportation, well drilling machinery, ditch digging machinery and farm machinery."

Summarizing, it is my opinion that:

1. The appropriation contained in Amended Senate Bill No. 43 for reimbursement of hospitals for the purpose of carrying out the provisions of House Bill No. 80 of the 90th General Assembly, is a specific appropriation within the meaning of the term as used in Article II, Section 22 of the Ohio Constitution.

2. Such appropriation went into effect on September 28, 1933 and expires March 1, 1935, and any unexpended moneys therein at the end of the calendar years 1933 and 1934 do not lapse.

3. Appropriations for personal service and for supplies and maintenance contained in said Senate Bill No. 43 are not to be deducted from the appropriation for reimbursement for hospitals.

4. Funds may not be transferred from the appropriation for "reimbursement for hospitals" as contained in Amended Senate Bill No. 43 to the items of personal service or supplies and maintenance contained in such appropriation act, but additional funds may be made available for such personal service or supplies and maintenance items by allowance by the Emergency Board from the contingent appropriation for the uses and purposes of such board contained in House Bill No. 699 of the 90th General Assembly.

5. The Auditor of State may draw no warrant on the Treasurer of State for the payment of any voucher drawn by the Registrar of Motor Vehicles to reimburse a hospital under the provisions of said House Bill No. 80 until the Director of Finance has certified as to the availability of funds to pay the same in the appropriation against which the warrant is drawn in accordance with the provisions of Section 2288-2, General Code.

6. The term "motor vehicle", as used in House Bill No. 80, should be defined as set forth in Section 6290, General Code, as amended by the 90th General Assembly.

Respectfully,

JOHN W. BRICKER,
Attorney General.