

Finding that Jessie S. Bartlett and H. E. Gaffin have a good and merchantable title in and to said premises, except as above set out, and finding said encumbrance certificate in proper form, I hereby approve the same and return the same to you herewith, together with all other papers submitted in this connection. The deed above referred to is also returned herewith for correction, in accordance with the suggestions made above.

Respectfully,
EDWARD C. TURNER,
Attorney General.

966.

APPROPRIATIONS—APPLICATION OF SECTION 8 OF HOUSE BILL NO
502, 87TH GENERAL ASSEMBLY—WILBERFORCE UNIVERSITY.

SYLLABUS:

Section 8 of House Bill No. 502, passed by the 87th General Assembly, applies only where an appropriation is made to pay the salaries of a specified or fixed number of employes, whose salaries are not fixed by law, and has no application to the appropriation made to the Combined Normal and Industrial Department of Wilberforce University, for the purpose of paying the salaries of the directors, instructors and other employes hired by the board of trustees of such institution.

COLUMBUS, OHIO, September 8, 1927.

HON. WILBUR E. BAKER, *Secretary Controlling Board, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of August 30, 1927, in which you request my opinion in the following language:

“At the meeting of the Controlling Board on the above date it was resolved to ask the Attorney General for an opinion on the following:

Does Section 8 of H. B. No. 502 apply to the C. N. & I. Department of the Wilberforce University?”

House Bill No. 502, passed by the 87th General Assembly, in the act making general appropriations for the period July 1, 1927, to December 31, 1928. Section 8 thereof, to which you refer, provides as follows:

“Each department, board or commission for which an appropriation is made in this act and for the salaries of a specified number of employes where salaries are not fixed by law, shall, not less than ten days prior to the date on which such appropriation becomes effective apportion such appropriation account and file the same with the president of the controlling board. Said board may change such apportionment and shall certify such apportionment with any modifications it may make to the auditor of state, with the approval of the board endorsed thereon.”

Such a section and in the exact language has been included in the general appropriation acts of the different General Assemblies for the past several years.

On pages 124 et seq. of House Bill No. 502, are contained the appropriations for the "Combined Normal and Industrial Department of Wilberforce University," including the following:

	6 Months	Year
Personal Service—		
A I. Salaries—		
* * *		
Directors, Instructors and Other Employees—		
Student Fees and -----	\$57,600.00	\$115,200.00
* * *		
A S. Unclassified -----	1,000.00	1,000.00
Extension Teaching-----	5,000.00	10,000.00

Whether or not the Combined Normal and Industrial Department of Wilberforce University is included in that phrase of Section 8, supra, reading, "Each department, board or commission for which an appropriation is made in this act," is not free from doubt. However, in view of the conclusions reached herein on other grounds it is unnecessary to decide this question. Suffice it to say that, if it were the intention of the Legislature to include such institutions as the one here under consideration within the terms of Section 8, broader language than that above quoted should have been used.

The question to be determined turns on the meaning of the words in Section 8, supra, "and for the salaries of a *specified number* of employes where salaries are not fixed by law."

In the instant case, the salaries of the directors, instructors and other employes and of those engaged in extension teaching are not fixed by law, but are determined by the Board of Trustees of the Combined Normal and Industrial Department, created pursuant to the provisions of Sections 7976, 7977 and 154-50 of the General Code. The first sentence of Section 7976 reads:

"The government of such department shall be vested in a board of nine trustees to be known as 'the board of trustees of the combined normal and industrial department of Wilberforce University'."

And the first paragraph of Section 7961, General Code, provides that:

"The board of trustees shall take, keep and maintain exclusive authority, direction, supervision and control over the operations and conduct of such combined normal and industrial department, so as to assure for it the best attainable results with the aid secured to it by the state. The board shall determine the branches of industry to be pursued, select a superintendent whose selection shall be approved by the state controlling board and who shall not be removed except for cause after due hearing before said controlling board."

In the appropriation items above set forth, the number of directors, instructors or other employes to be hired is not specified, the number of such employes, as well as the amount of salary to be paid to each being left to the discretion of the board of trustees.

The word "specify," of which "specified" is the past participle, is defined by the Century Dictionary as follows:

"To mention specifically or explicitly; state exactly or in detail; name distinctly; as, to specify the persons concerned in a given act; to specify one's wants, or articles required."

Some of the synonyms of the word "specify" given in Soule's Dictionary of English Synonyms are :

"Designate, particularize, indicate, * * * detail, show clearly, name with precision."

As used in Section 8, supra, the word "specified" means fixed or stated or determined. Many examples may be found in House Bill No. 502 where a sum of money to pay salaries for a specified or fixed number of employes is appropriated in one item. For example, on page 32 an appropriation of \$4,000 for the six months' period is made to the Department of Commerce, Division of Securities, for *four* examiners. On page 60, an appropriation of \$42,000 for the six months' period is made to the Department of Agriculture, Division of Fish and Game, for *sixty-five* protectors. On page 94, an appropriation of \$13,500 for the six months' period is made to the Department of Public Welfare, Division of Charities, for *eighteen* field agents. Many other examples might be given and it seems clear that it is only to an appropriation of this kind that Section 8 applies. To hold otherwise, would require that the word "specified" be completely ignored.

That the conclusion herein reached is the correct one, seems the more apparent when the reason for the enactment of Section 8 is considered. Where an appropriation is made by the General Assembly to a department for the purpose of paying certain employes therein and the authority is vested in such department to determine the number of such employes and the amount of salary to be paid, no reason would exist for the application of Section 8. In such case, complete discretion is vested in the department to determine how many employes shall be hired and at what salary. Where, on the other hand, an appropriation is made to a department for the purpose of hiring certain employes and the number of such members is definitely fixed in the appropriation item, in order that the will of the General Assembly may be carried into effect, that body has vested in the controlling board power to review and modify the apportionment of the amount appropriated among the specified number of employes by the department head, to the end that the legislative will may not be defeated by paying a merely nominal sum to one or more of the specified number of employes and dividing the balance of the appropriation among the remainder of such number.

In passing, I deem it proper to point out that the interpretation here given to the section in question is that heretofore given by the controlling board and all the universities and normal schools, supported in whole or in part by the state, with the exception of the Combined Normal and Industrial Department of Wilberforce University. No schedule was submitted this year, or in past years, by Ohio State University, Ohio University, Miami University, Kent State Normal School or Bowling Green State Normal College.

For the reasons stated, it is my opinion that Section 8 of House Bill No. 502, passed by the 87th General Assembly, applies only where an appropriation is made to pay the salaries of a specified or fixed number of employes, whose salaries are not fixed by law, and has no application to the appropriation made to the Combined Normal and Industrial Department of Wilberforce University, for the purpose of paying the salaries of the directors, instructors and other employes hired by the board of trustees of such institution.

Respectfully,
EDWARD C. TURNER,
Attorney General.