

1800

1. TRAVELING EXPENSES—DIRECTOR OF FINANCE—MAY LEGALLY CHARGE VOUCHERS FOR TRAVELING EXPENSES AGAINST ROTARY FUND OF DEPARTMENT, SECTION 6064-10 G. C., REGARDLESS OF TIME EXPENSES INCURRED—1945 O.A.G., OPINION 284, PAGE 302, APPROVED AND FOLLOWED.
2. DIRECTOR OF FINANCE—MAY CERTIFY VOUCHERS TO AUDITOR OF STATE FOR PAYMENT.

SYLLABUS:

1. The Director of Finance may legally charge vouchers for traveling expenses of a member of the Board of Liquor Control against the rotary fund of the department established pursuant to Section 6064-10 of the General Code, regardless of the time when such expenses were incurred. 1945 Opinions of the Attorney General, Opinion 284, page 302, approved and followed.

2. The Director of Finance may certify the vouchers referred to in above paragraph to the Auditor of State for payment.

Columbus, Ohio, May 25, 1950

Hon. Herbert D. Defenbacher, Director, Department of Finance  
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“Following the decision of the Supreme Court in the case of State ex rel Leis v Ferguson, Auditor, 149 O. S. 555, decided early in 1949, vouchers representing expenses incurred by Mr.

Wm. E. Hess, in attending meetings of the Board of Liquor Control, during the period Mr. Hess was a member of the board, have been presented to the Director of Finance for certification and payment.

These expense accounts cover travel from the home of Mr. Hess in Cincinnati, Ohio, to Columbus, Ohio and return, for each of the years 1939 to the time of his death, on June 10, 1947, inclusive, and are for railroad fare between the two cities and for taxicab charges from the railroad station in Columbus to the offices of the Liquor Board and return, and from Mr. Hess' home in Cincinnati to the railroad station there.

Appropriations made by the Legislature for the operation of the Board of Liquor Control, during the years these obligations were incurred, have expired, and at the time of such expiration, sufficient funds in the classification from which these vouchers were payable, were available for their payment, if they had been presented at that time.

May we respectfully request your opinion on the following question:

‘May the Director of Finance legally charge the amount of these vouchers against unused Liquor Department appropriations and certify same to the Auditor for payment?’ ”

The Ferguson case, referred to in your request, held that a member of the Board of Liquor Control is entitled to traveling expenses and that such expenses are part of his statutory compensation. Thus, it follows that traveling expenses of a member are lawful obligations of the department.

The Attorney General in 1945 rendered an opinion on the question of whether a lawful obligation incurred by the Department of Liquor Control in 1938 could be paid in 1945. See 1945 Opinions of the Attorney General, Opinion 284, page 302. The syllabus of that opinion reads as follows:

“The department of liquor control is authorized to pay out of the rotary fund of such department established pursuant to Section 6064-10 of the General Code, lawful obligations of the department, regardless of the time when they were incurred.”

The then Attorney General based his reasons for said opinion on the provisions of Section 6064-10, General Code, relating to the custody and deposit of moneys coming into the hands of the department of liquor

control. In that section of the Code the department is to pay "To the treasurer of state all moneys, checks, and drafts received for the department or for the state, at the time and in the manner provided by sections 24, 24-3, and 24-4, of the General Code." The sentence preceding this requires the department by regulation to "provide for the custody, safe-keeping, and deposit of all moneys received by it or any of its employes or agents on its behalf; \* \* \*" The then Attorney General reasoned that these provisions suggest the proposition that the law intends the payment to the treasurer of funds belonging to the department to be for a different purpose and to have a different effect from the payment to the treasurer of funds which belong to the state. The next following provision of the statute is for an emergency or petty expenditure fund for the use of the department and in respect to that it is provided that the Auditor of State shall issue to the department of liquor control a warrant for petty cash "from the funds in the custody of the treasurer of state for the use of the department." As the Attorney General said on page 305 of the opinion :

"Plainly, the legislature did not contemplate that this petty cash fund was to be drawn from moneys belonging to and in the treasury of the state but as stated, from funds belonging to the department and in the custody of the treasurer."

The then Attorney General points out that the further provisions of the statute bear out this distinction. Continuing on page 306 of the opinion, the then Attorney General reasons as follows :

"While Section 22 of Article II of the Constitution requires that no money shall be drawn from the treasury except in pursuance of a specific appropriation, that provision is by its terms limited to money in the treasury of the state, and has no application to a rotary fund such as is provided by Section 6064-10 supra. It is worth noting that the appropriation act now in effect appropriates all of the rotary fund revenues of your department without naming any amount and without limitation as to the expenditure of such revenues, with respect to the time when the obligation or liability was incurred.

In the latter portion of said Section 6064-10 I find a provision that whenever the amount of the rotary fund in the custody of the treasurer is determined by the director of finance to be 'in excess of that needed to meet the maturing obligations of the department and as working capital for its further operations,' the director of finance shall certify the amount of such excess to the department of liquor control and to the auditor of state,

and the auditor of state shall thereupon issue an order on the treasurer of state as custodian of moneys collected under the liquor control act for the amount thereby determined in favor of the general revenue fund of the state. When this has been done, this money for the first time becomes a fund of the state and enters the state treasury.”

Following the above the then Attorney General discusses Section 24, 24-3 and 24-4 of the General Code, and then reaches the conclusion disclosed by the syllabus.

In view of the 1945 opinion, *supra*, and the language of the appropriation act now in effect, Amended House Bill No. 654, 98th General Assembly, which appropriates all of the rotary fund revenues of the department of liquor control without naming any amount and without limitation as to the expenditures of such revenues, with respect to the time when the obligation or liability was incurred, it is my opinion that you, as Director of Finance, may legally charge vouchers for traveling expenses of a member of the board of liquor control against the rotary fund of such department established pursuant to Section 6064-10 of the General Code, regardless of the time when such expenses were incurred. Further, it is my opinion that you may certify said vouchers to the Auditor for payment.

In passing, I might point out that there is serious doubt in my mind as to whether the taxicab fares referred to in your letter are proper matters for payment, in view of the language in the Ferguson case, *supra*, which states that “traveling expenses” as that term is used in Section 6064-5, General Code, do not embrace expenditures for local transportation after said member has arrived at his destination.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.