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THE ADMINISTRATIVE AGENCIES DO NOT HAVE THE POWER TO MAKE APPROPRIATIONS—THE GENERAL ASSEMBLY CAN AUTHORIZE TWO STATE AGENCIES TO MAKE BINDING CONTRACTS WITH EACH OTHER—THE DIRECTOR OF FINANCE MAY NOT ADD ON TO AN ORIGINAL APPROPRIATION—EFFECTIVE DATE OF HOUSE BILL NO. 1123, 104TH GENERAL ASSEMBLY — THE AUTHORITY OF THE AUDITOR OF STATE TO DRAW WARRANTS DOES NOT CONFLICT WITH HIS JOB AS AUDITOR—AMENDED HOUSE BILL NO. 1123, §21, 104TH GENERAL ASSEMBLY.

SYLLABUS:

1. The 104th General Assembly in enacting Section 21 of Amended House Bill No. 1123 has not delegated to administrative agencies the power to make appropriations.

2. It is within the power of the general assembly to authorize two agencies or departments of state government to enter into a contract with each other, and to provide that such a contract be binding upon other agencies or departments of state government.

3. The director of finance may not "add on" to an original appropriation made by the legislature, but he may determine, in accordance with legislative standards, the cost of certain services, which cost the legislature has, by an additional appropriation, authorized to be paid.

4. The legislature in Sections 13 and 21 of Amended House Bill No. 1123 has authorized charges to be made to the various departments affected by the bill for services rendered prior to the effective date of the bill.

5. The duty imposed upon the auditor of state in Section 21 of Amended House Bill No. 1123 to draw warrants is imposed by law and does not conflict with other duties of the auditor.

Columbus, Ohio, March 21, 1962

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Appropriations Act for the fiscal year beginning July 1, 1962, and ending June 30, 1963, being Amended House Bill No.

1123, has made a provision for a method of payment for certain payroll processing and related personnel reports and services for departments, offices and institutions of the State of Ohio. These provisions are contained in Section 21 of the bill, to which reference is made for further details. In addition to Section 21, the last paragraph of Section 13 is as follows:

“The appropriations made by Section 21 of this Act and the appropriations to the Department of State Personnel, Administration-Maintenance, shall be available for expenditure between July 1, 1961, and June 30, 1963, without regard to quarterly restrictions.’

“The Department of State Personnel and the Director of Finance apparently have entered into the contract referred to in Section 21 of Amended House Bill No. 1123, and have established the cost of payroll processing and other data processing services which they believe should be charged against the various funds described in said Section 21. The Department of Finance has prepared an outline of procedures and interpretations designed to implement Section 21 of said bill. A copy of this memorandum is enclosed for your use and consideration of the questions herewith submitted:

“1. Has the legislature unlawfully delegated to administrative agencies the power, in effect, to make appropriations?

“This question is raised since Section 21 provides for a blanket appropriation from each fund, to be charged in an unspecified amount to be determined by the terms of the ‘contract’ between the Department of State Personnel and the Department of Finance.

“2. Is it within the power of the legislature to authorize two agencies or departments of State Government to enter into a ‘contract’; and, if so, is it within the power of the legislature to provide that such a ‘contract’ be binding upon other agencies and departments of State Government not parties to said ‘contract’?

“3. Is it lawful for the Director of Finance to ‘add on’ to the original appropriation made by the legislature for various departments subject to this charge, the cost of services rendered?

“4. Does Section 21 and that part of Section 13 of Amended House Bill No. 1123 referred to authorize charges to be made to the various departments affected by the bill, for services rendered prior to the effective date of the bill?

“5. Is the purported grant of authority to the Auditor of State of Ohio to draw a warrant on funds appropriated for the various departments without a voucher, in accordance with the duties of the Auditor, as required by law?”

Section 21 of Amended House Bill No. 1123, 104th General Assembly, reads as follows:

“The cost of centralized payroll processing and related personnel reports and services for departments, offices and institutions *supported in whole or part by special funds and rotary accounts* shall be borne by such special funds and rotary accounts where these services are included in a contract for data processing services between the department of state personnel and the department of finance. *The cost borne by each special fund or rotary account shall be determined by the terms of the contract and shall include heat, light, and rent. There is hereby appropriated from said special funds and rotary accounts the necessary amounts to cover the above cost* notwithstanding limitations on expenditures from said special funds and rotary accounts set forth elsewhere in this act. The director of finance shall certify annually the cost of such services to the auditor of state. The auditor of state shall thereupon issue warrants against the various funds and rotary accounts in the amounts designated by the director of finance. Such warrants shall be paid into the Reimbursement Rotary Account, department of state personnel, which account is hereby appropriated to pay the above cost in accordance with the established contract. The director of finance shall have authority to exempt special funds or rotary accounts from the above requirements.” (Emphasis added)

Under the provisions of Section 21, *supra*, the legislature has appropriated the “necessary amounts” to cover the cost of centralized payroll processing and related personnel reports and services, but the determination of such cost has been left to the departments of personnel and finance. By leaving the matter of the determination of the cost up to these executive departments, has the legislature unlawfully delegated its legislative power?

In this regard, it is provided in 1 Ohio Jurisprudence, 2d, Administrative Law, 429, Section 27, as follows:

“Whenever the question of delegation of legislative power is raised it will be determined by considering the provisions of the act itself without regard to extrinsic facts. The nature of the subject matter in regard to which powers are exercised and the extent to which it has been customary for administrative agencies to exercise such powers are an important factor in determining the difficult matter of drawing a line between powers which constitute an unlawful delegation of legislative power and powers which may lawfully be vested in administrative agencies. *Other important factors are the impracticability of the legislature’s doing the work which it places in the hands of administrative agencies*

and the provision for judicial review of the administrative action.”
(Emphasis added)

Under the circumstances in the case, it would appear to be impractical for the legislature, itself, to determine the cost of payroll processing, personnel reports and services. Undoubtedly, legislation must often be adapted to complex conditions involving a host of details with which the legislature cannot deal directly. *Matz v. J. L. Curtis Cartage Co.*, 132 Ohio St., 271 (1937). It is not necessary that expenditures be minutely described in an appropriation act. It is only necessary that provision be made in the act that the funds be specifically applied to the item in question. *Long v. Board of Trustees of Ohio State University*, 24 Ohio App., 261, appeal dismissed, 116 Ohio St., 738 (1927).

The item in question in the instant case is the cost of certain services. The legislature has specifically provided that such cost shall be borne by the special funds and rotary accounts to which such cost is attributable. Rather than delve into a host of details in order to minutely describe the expenditures for this cost-item, the legislature has contented itself with establishing a policy while directing the departments of personnel and finance to determine the cost. In determining the cost, the legislature has set up certain standards for the departments to follow, e.g. cost shall include heat, light, and rent. Considering all the factors in the instant case, I cannot say that the legislature has unlawfully delegated legislative power to the executive departments in question.

Regarding your second question, it has been held that the legislature may confer executive powers on agencies or departments of state government. *The State, ex rel. The S. Monroe & Co. v. Baker*, 112 Ohio St., 356 (1925). Certainly, the power of one department to contract with another is an executive power. Thus, it is within the power of the legislature to authorize two agencies or departments of state government to enter into a contract. Furthermore, it is my opinion that the legislature may prescribe what effect such a contract will have on other departments of state government.

In regard to your third question, Section 21, *supra*, provides in pertinent part as follows:

“There is hereby appropriated from said special funds and rotary accounts the necessary amounts to cover the above cost *notwithstanding limitations on expenditures from said special*

funds and rotary accounts set forth elsewhere in this act. The director of finance shall certify annually the cost of such services to the auditor of state.” (Emphasis added)

Thus, in addition to the original appropriation made by the legislature for the various departments subject to the charge for services, the legislature has also appropriated (added on) the necessary amounts to cover the cost of such services. The director of finance merely certifies the cost of such services to the auditor of state.

Amended House Bill No. 1123, *supra*, was effective December 1, 1961. Under the provisions of Section 13 of such bill, however, the appropriations made under the provisions of Section 21 of the bill are “available for expenditure between July 1, 1961, and June 30, 1963. Has the legislature by these provisions authorized charges to be made to the various departments affected by the bill for services rendered prior to the effective date of the bill?

There would be no point in the legislature making appropriations available for expenditures made prior to the effective date of the bill, unless the legislature intended to authorize charges to be made against such appropriations for services rendered prior to the effective date of such bill. Section 28 of Article II of the Ohio Constitution provides that the general assembly shall have no power to pass retroactive laws. Do the provisions of Section 28 of Article II, *supra*, apply to appropriation laws affecting departments of state government?

The syllabus in *The State of Ohio ex rel Guilbert v. Shumate*, 72 Ohio St., 487 (1905) reads as follows:

“The act of May 10, 1902, entitled ‘An act to create a bureau of inspection and supervision of public offices, and to establish a uniform system of public accounting, auditing and reporting, under the administration of the auditor of state’ (95 O.L., 511), is not rendered unconstitutional by the ninth section thereof providing that the expense of maintaining and operating the bureau of inspection shall be paid by the counties of the state out of the general county fund in proportion to their population, nor by the tenth section thereof providing that each taxing body be chargeable with the expense of auditing the accounts under its jurisdiction.”

In the opinion per Shanck, J., it is stated as follows:

“The warrant which the relator demands of the defendant, the auditor of Jackson county, is for the expense of an exami-

nation made prior to the amendment of section 10 of the statute ; and it is objected that such an application of the amended act would make it retroactive, and that the application is therefore forbidden by section 28 of article 2 of the constitution. But the objection is without merit, for the county is the taxing district or body having jurisdiction of the accounts which were examined in this instance, and it was, by the terms of the original section, liable for the expense of the examination. *If, therefore, it were made to appear that a political division of the state is within the protection of the section of the constitution referred to it would be unavailing. * * ** (Emphasis added)

It is questionable, therefore, whether a department of state government is within the protection of Section 28 of Article II, *supra*. Since I must presume that acts of the legislature are constitutional, I am constrained to conclude that the legislature has properly authorized charges to be made to the various departments affected by the bill for services rendered prior to the effective date of the bill.

Regarding your fifth question, Section 21, *supra*, provides in pertinent part as follows :

“The director of finance shall certify annually the cost of such services to the auditor of state. The auditor of state shall thereupon issue warrants against the various funds and rotary accounts in the amounts designated by the director of finance.”

Although there is no provision made in Section 21, *supra*, for a “voucher,” as such, there is a requirement that a certificate be furnished. One of the synonyms for “voucher” is “certificate.” See Merriam-Webster’s New International Dictionary, 3rd Edition. Further, I have been unable to find where the duty given the auditor of state in Section 21, *supra*, to draw warrants conflicts with any other duties of the auditor as required by law ; and even if there were a conflict, the appropriation act being a special act, would take precedence over the general laws relating to the auditor’s duties.

It is my opinion, therefore, and you are accordingly advised :

1. The 104th General Assembly in enacting Section 21 of Amended House Bill No. 1123 has not delegated to administrative agencies the power to make appropriations.

2. It is within the power of the general assembly to authorize two agencies or departments of state government to enter into a contract with

each other, and to provide that such a contract be binding upon other agencies or departments of state government.

3. The director of finance may not "add on" to an original appropriation made by the legislature, but he may determine, in accordance with legislative standards, the cost of certain services, which cost the legislature has, by an additional appropriation, authorized to be paid.

4. The legislature in Sections 13 and 21 of Amended House Bill No. 1123 has authorized charges to be made to the various departments affected by the bill for services rendered prior to the effective date of the bill.

5. The duty imposed upon the auditor of state in Section 21 of Amended House Bill No. 1123 to draw warrants is imposed by law and does not conflict with other duties of the auditor.

Respectfully,

MARK McELROY

Attorney General