

**OPINION**  
**47-12**

May 1, 1947           (OPINION)

APPROPRIATION

RE:   Limitation on - Expenditure - Exception

This will acknowledge your letter of April 29, 1947, in which you state that Commissioner C. W. McDonnell has requested you to write this office for an opinion with reference to the expenditure of \$1200.00 appropriated by the 30th legislative assembly for license plates, seals, etc., for the department of weights and measures. In your letter you state as follows:

Material purchased under this appropriation consists of metal license plates (required by law) for gasoline pumps and coin-operated weighing machines. There are approximately 5000 gasoline pumps and several hundred coin-weighing scales, and the license period begins July 1st of each year. Therefore nearly the entire two years' supply will be issued long before 18 months have expired of the incoming appropriation. Since these plates are rather expensive it has been our practice in the past to save considerable money by ordering a two years' supply at one time. With present prices such an order will cost at least \$1000.00. Since the State stands to lose by it, we are reluctant to place an order for a one year's supply now, and then the following year ask our supplier to furnish another year's supply and wait for the balance of his money after January 1, 1949.

The question then is: Does the prohibition in section 54-2710 apply to the appropriation in .S.B. 54 referred to and is the Commission thus prevented from expending more than 75% of the appropriation for the plates prior to January 1, 1949?"

Section 54-12710 of the 1943 Revised Code reads in part as follows:

Seventy-five percent of the total of all appropriations and of each separate item thereof made by the legislative assembly for the maintenance of any state institution, department, board, commission, or bureau for the biennium shall become available on the first day of July next succeeding the enactment by the legislative assembly. The remaining twenty-five percent of any such appropriation shall be available only at the beginning of the fourth quarter of the biennium.\* \* \*

Perhaps some discussion of the legislative history of section 54-2710 will assist in the interpretation thereof and the application thereof to the facts as stated in your letter. Chapter 12 of the 1937 Session Laws was adopted as an amendment and reenactment of section 635 of the 1913 Compiled Laws and passes as an emergency, and approved March 12, 1937. Prior to the reenactment, any appropriation for the ensuing biennium was available and there was no time limit upon the expenditure thereof by the official, or the department, for whom the appropriation was made. It was permissible to spend the

entire appropriation before the end of the biennium.

It had become a practice in certain departments of the state to spend the entire appropriation allowed by the legislature without regard to the needs of an incoming official at the end of the first eighteen months of the biennium. Consequently, officials elected and taking office six months before the end of the biennium were embarrassed in the administration of their proper functions because the appropriation had been depleted and no money was available for the functions of the office or department.

It was apparently with that background in mind that the legislative assembly enacted chapter 12 of the 1937 Session Laws, and amended and reenacted chapter 12 of the 1937 Session Laws, by chapter 22 of the 1941 Session Laws.

It was the undoubted legislative purpose by the enactment of chapter 12 of the 1937 Session Laws to prevent any department, board, bureau, or official, from spending any item in an appropriation for the biennium in total during the first 18 months and thus hampering, hindering, and preventing a newly elected official coming into office at the beginning of the last six months of the biennium from carrying on efficiently the functions of his office, or functions of the department, board, or commission. It might also have been the purpose of the legislature to thus prevent the possibility of deficiency appropriations and to discourage the same.

If the foregoing reasons were the background, purpose, and intent of the legislature in the enactment of chapter 12 of the 1937 Session Laws, then an item which when used almost in total for the purchase of supplies which will suffice for the biennium, the aim of the legislature is accomplished and no possible hindrance or embarrassment can result to a new official, in a department or any bureau, coming into office at the beginning of the six month period before the end of the biennium.

Under the circumstances set forth, I do not believe that the provisions of the statute hereinbefore quoted are applicable and that it is within the power and discretion of the board, commission, or officer, to use the entire item to effect a saving to the state, and supply the state with the necessary supplies for the entire biennium. In that manner, the ultimate purpose of the statute has been accomplished and at the same time the state has procured the benefit of a reduced price and should there be any change in the personnel of any official, board, or commission, the apparent aim of the statute would not be obviated. The supplies necessary for the biennium are in existence and take the place of the money.

It is, therefore, the opinion of this office that under the circumstances stated in your letter, section 54-2710 of the 1943 Revised Code is not applicable to the expenditure by the department of weights and measures of such amount of the \$1200 appropriation as is now necessary to purchase the license plates, seals, etc., needed for the next biennium, and that upon the purchase of the same for the next biennium by one order there will be no need to retain twenty-five percent of this item as the needs of the department for these particular supplies have been fully satisfied and no possible

detriment, embarrassment, or hindrance could result therefrom, in case of a change in the personnel of the department. The statute was never intended to eliminate the efficient functioning of a department to the extent of preventing considerable saving to the state where the expenditure of the appropriation would fulfill the requirements of the department for the entire biennium.

NELS G. JOHNSON

Attorney General