

OPINION
48-8

December 16, 1948 (OPINION)

APPROPRIATION

RE: National Guard

Your letter of December 13, 1948, addressed to this office, has been received and contents noted.

You make reference to subsection 25 of chapter 16 of the 1947 Session Laws, which appropriated \$150,000.00 for the maintenance of the national guard for the biennium beginning July, 1947 and ending June 30, 1949.

You refer to section 37-0603 of the 1943 Revised Code, which directs the paymaster general from time to time to file with the state auditor a written requisition, approved by the adjutant general, for such amount of money standing to the credit of the national guard on the books of the state auditor or state treasurer as it may be deemed necessary to draw in order to pay indebtedness incurred or about to be incurred.

Section 37-0604 of the 1943 Revised Code provides that from funds available to him the paymaster shall make such payments for and on behalf of the national guard as the law and regulations thereto permit. Such payments shall be made upon such pay rolls, vouchers, or other statements of account as the transaction requires.

You refer to section 54-2710 of the 1943 Revised Code, which provides that no state institution, department, board, commission, or bureau for which an appropriation is made shall disburse more than seventy-five percent of the appropriation during the eighteen months of the biennium, etc.

You request an opinion as to whether or not said section 54-2710 applies to the following situation:

In August, 1947, the paymaster general requisitioned \$37,500.00 of the appropriation. Likewise in January, 1948, he requisitioned another sum of \$37,500.00, and in May and July of 1948, he requisitioned amounts totaling \$37,500.00. The total of said amounts so requisitioned covered the entire appropriation of \$150,000.00. However, an examination of the affairs of the national guard discloses that the paymaster general actually has on hand a balance of \$73,350.42, practically one-half of the amount appropriated.

It is my opinion that neither section 54-2710 nor section 54-2711 applies to this situation for the reason that the amount appropriated has not been expended beyond the twenty-five percent to be kept intact for the last quarter. In fact, there is still unexpended nearly one-half of the appropriation.

The law specifically authorizes the paymaster general to requisition such amounts as may be needed, and while he has requisitioned all of

the funds, nevertheless, they have not been expended, and more than twenty-five percent is still intact.

The purpose of section 54-2710 of the 1943 Revised Code is to prevent an outgoing officer from exhausting the funds and crippling the activities of an incoming officer. That situation does not exist here, since, as I have pointed out, nearly one-half of the funds appropriated are still intact.

While there is on hand more than twenty-five percent of the appropriation, it is my opinion, that in future transactions the state auditor should retain twenty-five percent in accordance with the provisions of section 54-2710 of the 1943 Revised Code.

P. O. SATHRE

Attorney General