

July 22, 1975

M E M O R A N D U M

TO: Members of the Legislative Council

Speaker Dale M. Cochran, Chairman
Senator Minnette F. Doderer
Senator George R. Kinley
Senator Clifton C. Lamborn
Senator William D. Palmer
Senator Lucas J. DeKoster
Senator James E. Briles
Senator Willard R. Hansen
Senator Eugene M. Hill
Senator Steve Sovern
Senator Bass Van Gilst
Representative Jerome Fitzgerald
Representative Floyd D. Millen
Representative Keith H. Dunton
Representative Elmer H. Den Herder
Representative Donald V. Doyle
Representative William J. Hargrave
Representative James I. Middleswart
Representative Delwyn Stromer
Representative Andrew Varley
Lt. Governor Arthur A. Neu

FROM: House and Senate Legal Counsel

RE: Legislative Interest in Turner v. Ray and Selden Lawsuit

At the meeting of July 16, 1975, the Legislative Council adopted a resolution directing us to "determine the extent of legislative interest" in the Turner v. Ray & Selden lawsuit and consider "whether intervention by the General Assembly in any such suit would be appropriate" and report to the Council at its next meeting. This memo is our response to that resolution.

In order to keep the report more concise, reference to authorities have been footnoted rather than incorporated within the text of this letter. The footnotes are appended at the end of the letter. Also appended is a proposed resolution in accordance with the recommendations we have herein made for consideration by the Legislative Council.

FACTS

In order that we may properly base our advice upon the situation as it actually occurs, and to advise the Council so you may make an informed judgment, we have investigated and determined the following facts.

On January 25, 1973, Governor Robert Ray submitted to the Sixty-fifth General Assembly his budget report for the 1973-1975 biennium in accordance with Chapter 8, Code 1973. In regard to the office of Attorney General, the budget report shows¹ a departmental asking for 1973-1974 of \$1,098,504.00 for "salaries, support, maintenance and miscellaneous". The Governor recommended \$630,980.00 be appropriated. The departmental asking for 1974-1975 was for an appropriation of \$1,179,625.00 for "salaries, support, maintenance and miscellaneous". The Governor's recommendation was for \$668,160.00. Recorded in the budget report as a separate item, the Attorney General requested in the 1973-1974 biennium \$142,500.00 be expended for "aircraft and equipment". The amount² is classified in the budget report as "general fund-capitals".² In neither biennium did the Governor recommend to the General Assembly that an amount for the aircraft be appropriated.

In the course of the Sixty-fifth General Assembly, the Attorney General appeared before the Joint State Departments Subcommittee of the Appropriations Committees and requested \$117,000 for the purpose of purchase of an airplane be included in his³ appropriation. The request was approved by the Subcommittee.³ The request⁴ was, however, apparently disapproved by the entire Committee.⁴

House File 783 of the Sixty-fifth General Assembly contains the Attorney General's appropriation.⁵ It shows an appropriation, consistent with the Governor's budget report recommendation, of \$630,980.00 for 1973-1974 and \$668,160.00 for 1974-1975. In neither the House nor the Senate was an amendment proposed to increase the appropriation for the purpose of buying an airplane for the Attorney General. The Act did specify that none of the funds appropriated could be used for capital expenditures.

In the Second Session of the Sixty-fifth General Assembly the appropriation for the Attorney General for 1974-1975 was increased by House File 1483⁶ from \$668,160.00 to \$795,180.00. It was stated in the bill that it was the "intent of the General Assembly" that the additional \$127,020.00 was to be used by the Attorney General for "criminal appeals", "civil rights", "consumer protection" and "upgrading staff resources" each in certain specific amounts. An additional \$100,000.00 was also appropriated

for "salaries, support, maintenance and miscellaneous purposes for consumer credit administration". This Act also specified that none of the funds appropriated would be used for capital expenditures.

On June 24, 1975, the Attorney General filed with the Comptroller a claim for the purchase of a used 1973 Cessna 310 airplane for \$58,627.00. A voucher and retail purchase order were attached. The claim also indicated that a 1966 Bellanca aircraft worth \$19,273.00 would be given in trade in addition to the cash in the claim. The claim was refused by the Comptroller, apparently a few days later.

On July 9, 1975, the Attorney General filed in Polk County District Court a petition in equity for a writ of mandamus and for declaratory judgment. The writ was to be directed to the Comptroller and the Governor commanding the issuance of a warrant in the requested amount. The time is still running, and the Governor and Comptroller have not yet appeared in the suit and filed their answer.

Examination of the records of the Comptroller show that on June 30, 1975, a balance in the Attorney General's appropriation remaining to be spent was \$148,783.36. This amount will apparently be reduced to \$100,000.00 by the last payroll and other authorized claims which have not yet appeared in the totals expended. In both the Governor's budget message and the Comptroller's record the amount spent for "salary, support, maintenance and miscellaneous have been subdivided into various subcategories which include "salary", "travel", "supplies and expenses", "books and periodicals", etc. A comparison of the amounts allocated in budgeting and the actual expenditures as shown by the Comptroller shows that a surplus of allocations over actual expenditures in all categories. In essence, the Attorney General has underspent his appropriation in all categories and proposes to spend most of the excess by purchasing an airplane.

Inquiry with the Attorney General's office disclosed that the various programs referred to in House File 1483 have been undertaken although since the original appropriation is comingled with the supplemental appropriation, it is impossible to tell how much has been spent for the purposes enumerated in the bill.

INTERESTS OF THE GENERAL ASSEMBLY

Examination of the above facts would seem to disclose three conceivable interests of the General Assembly in the disputed issue.

1. Whether the Comptroller possesses the power to control the use of an appropriation to a department by the mere refusal to issue requested warrants.

2. How broad of a use may a department make of an appropriation made by the General Assembly.

3. Whether a department may refuse to expend an appropriation made by the General Assembly.

We will separately discuss each of these conceivable issues, and at the end of this memorandum we will give our recommendation.

THE AUTHORITY OF THE COMPTROLLER

The stated facts show that the Comptroller has refused to issue warrants for a purchase authorized by the Attorney General. The question then arises whether the Comptroller possesses the power to refuse to issue warrants for an authorized purchase by any department of the government. The Comptroller is a statutory officer whose functions are controlled by the statutory law creating the office.⁹ The question arises whether his duties are ministerial or discretionary. If ministerial, the Comptroller may not refuse to exercise them. If granted a discretion, he may properly refuse to carry out an action if doing so is within his discretionary authority.¹⁰ The chapter of the Code which creates the office of Comptroller provides for the manner in which claims are to be paid. It provides in pertinent part:

"The State Comptroller before approving a claim shall determine:

1. that the creation of the claim is clearly authorized by law.

5. that the charges are reasonable, proper and correct, and no part of said claim has been paid."¹¹

This section clearly gives discretionary authority to the Comptroller since determination of whether a claim is "authorized" or "reasonable, proper and correct" allows the use of his judgment as to whether the claim is authorized and reasonable.

Also, the Iowa Supreme Court has held¹² that the Comptroller is bound by Article III, Section 24 of the Iowa Constitution which provides:

"No money shall be drawn from the treasury but in consequence of an appropriation made by law."

The Comptroller must determine whether the money for the requested expenditure has been appropriated before he can permit its expenditure.

Case law indicates that ordinarily the Comptroller is bound to issue a warrant for a claim ordered and allowed.¹³ However, he is not an automaton and must refuse to issue it if the claim is not authorized particularly where the claim is not conclusive by law.¹⁴ He may not refuse to issue a warrant for a legal and valid claim.¹⁵

Succinctly stated, the Comptroller is ordinarily obliged to issue warrants for claims presented to him. If he refuses to do so and is wrong in doing so, the Court will merely order him to issue the warrant. If he is right in concluding that the claim was not legal or valid, the Court effectively sustains his action by refusing to issue the writ of mandamus.

The issue regarding the Comptroller's authority seems to be who has (or should have), the burden of going to Court to determine whether a claim is legal and valid. At present, this burden is upon the person or department filing the claim. The Comptroller may refuse to issue a warrant and the worse he might expect is that if the claimant takes the case to Court and if the Court determines he is wrong, the Court will merely order him to issue the warrant.

The General Assembly might consider whether it wishes this burden to lie with the claimant. The General Assembly may, by statutory law, change the burden to the Comptroller, requiring him to issue upon request either warrants for another branch of the government or all warrants. He may not refuse to issue a warrant unless he initiates a lawsuit to restrain the issuance as illegal or improper. The burden of going to court would then be upon him. The decision to do this is a policy matter for the General Assembly to decide.

If the General Assembly enters the lawsuit, the sole issue which could be determined by the court is whether the Comptroller was correct in refusing to issue the warrants. Win or lose, no permanent change would result in determining the Comptroller's authority since it is a creature of statutory law. If the General Assembly is disturbed by the Comptroller's refusal to issue a requested warrant, it should change the statutory burden and not go to court.

WAS THE EXPENDITURE AUTHORIZED?

The issue of whether the purchase of an airplane was authorized by the General Assembly is of importance, both because it determines the outcome of whether the Comptroller could refuse to issue the warrant and also because the General Assembly has a constitutional interest in whether the money it has appropriated is used in accordance with that appropriation. The General Assembly did not appropriate money for the Attorney General to purchase an airplane, and since the Constitution prevents expenditures unless appropriated by the General Assembly, the General Assembly may have an interest in publicly having its constitutional rights defended.

As shown earlier, the State Constitution requires that no money be expended from the treasury except upon an appropriation by the General Assembly. The General Assembly has spoken with regard to how definite an appropriation must be when it enacted Section 8.14 of the Code which states that the Comptroller may only issue a warrant to expend the money in the treasury if it was "clearly" authorized by law. The word "clearly" shows an intention that the expenditure of public funds was not to be permitted unless the General Assembly had obviously authorized it.

The Iowa Supreme Court has spoken to the issue. In 1894 the Court found that if it was doubtful that the General Assembly made an appropriation, they would not construe it to be an appropriation. Only if the legislature "clearly" indicated its intention to appropriate, would it be held as such.¹⁶ The court cited this holding with approval in 1938¹⁷ and again in 1966.¹⁸ This view¹⁹ is consistent with case law with many other jurisdictions.¹⁹

It is clear that all doubts on whether the General Assembly made an appropriation are resolved in the negative. There is no specific appropriation in any bill for the purchase of an airplane, so the Attorney General can only argue that it is implied within another appropriation but still clear.

The Attorney General asserts in his pleadings²⁰ that the purchase of an airplane was included in the appropriations for "salaries, support, maintenance and miscellaneous purposes". This contention however, does not seem tenable.

First of all, since the Attorney General himself requested that Senate State Departments Subcommittee for an additional amount to be appropriated for an airplane, he cannot say now that the purchase of the airplane was included in the appropriation as it stood at that time.

Second, since the Appropriations Committee refused to add funds to the Attorney General's appropriation to purchase an airplane, it is arguable that the purchase of an airplane was specifically denied by the General Assembly.

Thirdly, some "legislative history" can be gleaned from the fact that the legislature appropriated exactly the same amount as proposed in the Governor's budget report and he disapproved of the purchase of an airplane. Also, budget report explains the meaning of "salaries, support, maintenance and miscellaneous". This report shows the following line items under that category:

- Salaries and wages.
- Travel.
- Office supplies and expense.
- Postage.
- Maintenance.
- Books, periodicals and publications.
- Printing and binding.
- Telephone and telegraph.
- Rental equipment.
- Equipment.
- Insurance.
- Unemployment insurance.
- Office rental and utilities.

These items and associated itemized figures were those that directly lead to the Attorney General's appropriation. Nowhere does it say anything about an airplane.

Four, the airplane was the sole item in the budget report which was classified as "capital". Both House File 783 and House File 1483 prohibited expenditures of any of the funds appropriated upon capital improvements. Again, purchase of the airplane was specifically prohibited.

Lastly, the Attorney General cannot rely upon the words "miscellaneous purposes" as permitting virtually any use of the appropriated funds. An accepted doctrine of statutory interpretation is the doctrine of *Ejusdem Generis*.²¹ Under that doctrine, when specific words are followed by a general word, the general word is restricted in meaning to the things similar to the specific terms. Here, the terms "salary, support and maintenance" seem to refer to the personnel needed to run the department and associated office supplies, equipment, travel, etc. An airplane is arguably not within the meaning of those specific words so it is not within the meaning of the general term.

In view of all of these factors, from the Attorney General's point of view, the appropriation for an airplane was, at worst, specifically not provided for, and, at best, doubtful. As noted, the Iowa Supreme Court has held that in case of a doubtful appropriation, it will find against the appropriation.

In the lawsuit at issue, then, it may be desirable to protect the interests of the General Assembly by preventing the expenditure of money which was not appropriated by the General Assembly. It should be noted, however, that the apparent position of Governor Ray and Comptroller Selden will probably be consistent with the General Assembly's interest. Only if it is believed that the issue is of sufficient import to publicly join the Governor on the issue should the General Assembly intervene in the case. The decision on whether to do so is a matter of policy.

There are reports of other agencies and departments filling out a year by purchasing equipment or starting new programs not contemplated when the appropriation was made. If the Attorney General is successful in maintaining his position in the lawsuit at issue, it may lead to blatant use of this technique by other agencies which would limit the legislature's traditional and constitutionally provided for power of the purse.

Since the issue of the scope of an appropriation originates in the use of indefinite terms in appropriation Acts, the Legislative Council may give consideration to modifying the drafting style of appropriations bills to make them more specific or strengthen oversight functions.

WHETHER A DEPARTMENT MAY IMPOUND FUNDS

The General Assembly appropriated funds in House File 1483 and earmarked them for specific uses. Without these additional funds, the excess appropriations over actual expenses would not have occurred. The question arises whether the funds were spent on intended purposes. If not, it could be found that the Attorney General has impounded funds appropriated by the General Assembly and proposes to use them for another purpose.

The Attorney General's office has represented that they have engaged in the activities enumerated in House File 1483 and we have no reason to doubt this. Unfortunately, the additional funds appropriated by House File 1483 are not segregated from the original appropriation so that it is impossible to tell whether they were used for the specific uses or could have been handled within the original appropriation.

The issue of impoundment, while corollary to the issue in the Attorney General's lawsuit, is broader than that issue. For that reason, intervention to raise the broader issue would probably be rejected by the District Court.

In any case, since the Attorney General has not refused to undertake a program authorized by the General Assembly, the case at issue would be a poor one in which to raise an issue of impoundment.

CONCLUSION AND RECOMMENDATION

We have herein reviewed possible issues concerning the legislature in the Turner v. Ray & Selden lawsuit. We find three possible issues:

1. The authority of the Comptroller to refuse to issue a requested warrant.
2. Whether the General Assembly appropriated public funds to the Attorney General to purchase an airplane.
3. Impoundment of appropriated funds.

We have found that on the first of these issues, nothing is likely to be resolved by the General Assembly's intervention in the lawsuit.

The second issue is of sufficient import to warrant the General Assembly's intervention since it involves a challenge to the General Assembly's right to appropriate public funds. The General Assembly might, however, rely on the Governor to state its position since the Governor's position will probably be consistent with the General Assembly's interest. Close monitoring of the lawsuit should be undertaken particularly to determine if the suit takes a turn that might change this recommendation.

In regard to the last issue, the facts do not show that the Attorney General has impounded funds as that term is usually meant. The issue could not be effectively raised by intervening in the suit.

Some study should be given by the Council to legislation changing the burden of going to court when the Comptroller believes an expenditure to be improper. Study should also be given by the Council to revising the wording of appropriations

bills and to overseeing the expenditure of public funds after they are appropriated.

A resolution consistent with this recommendation is attached.

FOOTNOTES

- 1 1973 Budget Report, Parts (I and II), For the Biennium Beginning July 1, 1973, and ending June 30, 1975 to the Sixty-fifth General Assembly by Hon. Robert D. Ray, Governor, p. 50.
- 2 1973 Budget Report, op. cit., p. 51.
- 3 Minute Book of the Joint Appropriations Subcommittee for State Departments, entries for March 11, 1974 and March 14, 1974. The book is in the custody of the Secretary of the Senate and another with the Chief Clerk of the House.
- 4 The minute book of the full Senate Appropriations Committee fails to disclose any action on the request. Oral reports indicate there was a refusal and no committee amendment was subsequently filed by the Committee regarding the airplane.
- 5 Acts, Sixty-fifth General Assembly, First Session, Chapter 9.
- 6 Acts, Sixty-fifth General Assembly, Second Session, Chapter 1009.

7 ATTORNEY GENERAL'S OFFICE

Resources:

Appropriation 1974-1975	\$	952,510.00
Receipts		302,872.62
Inter-fund transfers		51,150.00
TOTAL		<u>\$1,306,532.62</u>

Disbursements:	<u>Budgeted</u>	<u>Actual*</u>	<u>Surplus</u>
Salaries	\$1,079,359.00	\$957,576.44	\$121,753.66
Travel	56,234.00	21,735.58	34,498.42
General office supplies and expense	37,751.00	15,345.32	
Airplane expense	-----	5,065.11	
Postage	-----	6,685.45	
Insurance	-----	447.00	
Bond premium	-----	127.58	10,080.54

FOOTNOTES (Continued)

-2-

	<u>Budgeted</u>	<u>Actual*</u>	<u>Surplus</u>
Maintenance	\$ 4,757.00	\$ 1,429.51	\$ 3,327.49
Books, periodicals	13,787.00	6,339.67	7,447.33
Printing, binding	21,057.00	3,148.97	17,908.03
Telephone & telegraph	39,571.00	15,031.64	24,539.36
Rentals-equipment	16,061.00	11,418.73	4,642.27
Equipment	20,000.00	15,520.70	4,479.30
TOTAL	\$1,288,577.00	\$1,059,891.70	\$228,676.40
Inter fund transfers		97,857.57	
Total Disbursements		<u>\$1,157,749.27</u>	

CASH ON HAND (6/30/75) \$148,783.35

*As of June 30, 1975

(Source: Comptroller's Office)

- 8 Telephone conversation between Steven C. Cross, Senate Legal Counsel and Richard E. Hasemeyer, Solicitor General, on July 22, 1975.
- 9 Sections 8.4 through 8.20 of the Code of Iowa, 1975.
- 10 Charles Gabus Ford, Inc. v. Iowa State Highway Commission, 224 N.W. 2d 639 (Iowa, 1974); Arrow Exp. Forwarding Co. v. Iowa State Commerce Comm., 256 Iowa 1088, 130 N.W. 2d 451 (1964), and cases cited therein; Welch v. Borland, 246 Iowa 119, 66 N.W. 2d 866 (1954); See also: State Highway Commission of Missouri v. Volpe, 479 F.2d 1099 (CAMo.,1973)
- 11 Sec. 8.14, Code 1975.
- 12 O'Connor v. Murtagh, 225 Iowa 782, 281 N.W. 455 (1938).
- 13 State v. Hinkson, 7 Mo. 353 (1842); State ex rel. R. Newton McDowell, Inc. v. Smith, 334 Mo. 653, 67 S.W. 2d 50 (1933); State ex. rel News Corp. v. Smith, 353 Mo. 845, 184 S.W. 2d 598 (1945); Florida Development Commission v. Dickinson 229 So. 2d 6 (Fla. 1969).
- 14 State V. Miser, 50 Ariz. 244, 72 P. 2d 408, 415 (1937); Florida Development Commission v. Dickinson, supra.; Prime v. McCarthy, 92 Iowa 569, 61 N.W. 220 (1895); 72 Am. Jur 2d, States, §65; §76 & §77; 81 C.J.S., States, §169.

- 15 Cates v. Knapp, 104 Kan. 184, 178, p. 447 (1919); Florida Development Comm. v. Dickenson, supra.; See also: Sims v. United States, 359 U.S. 108, 79 S. Ct. 641 (1959).
- 16 Prime v. McCarthy, supra.
- 17 O'Connor v. Murtagh, supra.
- 18 Graham v. Worthington, 259 Iowa 845, 146 N.W. 2d 626 (1966).
- 19 Commonwealth ex. rel. Meredith v. Johnson, 292 Ky. 288, 166 S.W. 2d 409 (1942); State v. Weatherby, 168 S.W. 2d 1048 (Mo., 1943); Parker v. Bates, 56 S.E. 2d 723 (S.C., 1949).
- 20 Petition, Page 1, para. 3.
- 21 Sutherland Statutory Construction [§]47.17.

1 WHEREAS, the Legislative Council has been
2 informed that a lawsuit has been instituted by
3 Attorney General Richard Turner against Governor
4 Robert D. Ray and Comptroller Marvin R. Selden, Jr.,
5 and finding that it raises issues of interest to the
6 General Assembly, NOW THEREFORE

7 BE IT RESOLVED, that the Senate and House Legal
8 Counsel are not at this time authorized to intervene
9 in the lawsuit but are directed to closely monitor
10 the progress of the suit and report to the Council
11 any change in the present standing of the case, and
12 the results of the suit together with any
13 recommendations.

14 A staff study is authorized to advise the
15 Council upon the desirability of modifying by statute
16 the Comptroller's powers and the desirability of
17 modifying the standard wording of appropriations
18 bills and strengthening legislative oversight of
19 appropriations.

20

21

22

23

24

25