

130 Ohio St. 127
 Supreme Court of Ohio.

STATE ex rel. PUBLIC UTILITIES
 COMMISSION OF OHIO
 v.
 CONTROLLING BOARD OF OHIO et al.

No. 25529. | July 10, 1935.

Mandamus by the State, on the relation of Public Utilities Commission of Ohio, against the Controlling Board of Ohio and others.—[Editorial Statement.]

Writ denied.

The relator, the Public Utilities Commission of Ohio, has instituted this action in mandamus in this court against the

Controlling Board of Ohio and the individual members of such board, and seeks a writ of mandamus commanding the respondents to vote upon the application of the relator for the transfer of certain funds pursuant to relator's application heretofore filed. Issue was made by demurrer. The facts set forth in the petition essential to a consideration and decision of the legal question presented may be concisely stated as follows:

The General Assembly of Ohio duly passed House Bill No. 531, making appropriations for the biennium beginning January 1, 1935, and ending December 31, 1936. Among its provisions were those appropriating funds to the Division of Public Utilities Commission and Public Utilities Commission—Division of Investigation, for the year 1935, the pertinent items of which are as follows:

1935

Division of Public Utilities Commission.

Personal Service—

A 1.	Salaries.....	\$145,000.00
A 2.	Wages.....	13,500.00
A 3.	Unclassified.....	8,000.00

Public Utilities Commission—Division of Investigation

Personal Service—

A 1.	Salaries.....	\$111,500.00
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Maintenance—

E Equipment—

E 1.	Office.....	1,500.00
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F Contract and Open

Order Service—

F 7.	Communication.....	2,000.00
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F 8. Paper, Printing and

	Binding.....	6,000.00.
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Martin L. Davey, as Governor of Ohio, vetoed certain items in Bill No. 531, including the following, as set forth in relator's petition:

'Division of Public Utilities Commission

Personal Service——

A 2 Wages, \$13,500.00 for the year 1935. * * *

A 3 Unclassified, \$8,000.00 for the year 1935. * * *

'Public Utilities Commission——Division of Investigation

Maintenance——

E Equipment——

E 1 Office, \$1,500.00 for the year 1935.

F Contract and Open Order Service——

F 7 Communication, \$2,000.00 for the year 1935. * * *

F 8 Paper, Printing and Binding, \$6,- 000.00 for the year 1935. * * *

to another within 'Personal Service' or 'Maintenance' during such period or periods as it might determine. * * *

The provisions of section 4 of the Appropriation Act creates the Controlling Board and defines its powers, the pertinent portion thereof being as follows: '(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in section 1 of this act, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds within a department, division or agency for which appropriations are made, from any item to another within 'Personal Service,' 'Maintenance' or 'Additions and Betterments'; also to authorize transfers of funds from items entitled 'Personal Service' to items entitled 'Maintenance,' or vice versa, or to transfer to new classification items in cases where proper code items have not been provided by the legislature. However, the controlling board may, if it deems advisable, delegate to the director of finance authority to approve transfers of funds from any item

'The consent of not less than four members of the controlling board shall be required for any action of the board. * * *'

The relator filed a written application with the respondents, wherein it requested that certain transfers be made in the administration division appropriation of the Public Utilities Commission for the year 1935, as follows:

\$3,800.00 from A-1 Salaries to A-2 Wages

1,700.00 from A-1 Salaries to A-3 Unclassified

'Total \$5,500.'

Also, transfers in the investigation division appropriation as follows:

'\$500.00 from A-1 Salaries to E-1 Office Equipment

1,500.00 from A-1 Salaries to F-7 Communication

2,000.00 from A-1 Salaries to F-8 Paper, Printing and Binding.

'Total \$4,000.00'

Two of the members of such board refused to consider or vote upon the proposition of the allowance of such transfer upon the ground that the respondent Controlling Board had no power, jurisdiction, or authority in law to consider the question of granting the transfers requested by the relator, and such two members still refuse to consider or vote upon such application.

West Headnotes (3)

[1] **Statutes**

🔑 Disapproval of portion; line-item veto

Where Governor vetoed certain items of appropriation of money made by Legislature to Public Utilities Commission, the items vetoed became void where not repassed by Legislature in manner provided by Constitution. Const. art. 2, § 16.

[2] **Statutes**

🔑 Disapproval of portion; line-item veto

Where Governor vetoed certain items of appropriation of money made by Legislature to Public Utilities Commission, provisions of appropriation act authorizing controlling board to transfer "to new classification items in cases where proper code items have not been provided by the Legislature" held not to authorize controlling board to transfer moneys to vetoed items since those items were made void by the veto. Const. art. 2, § 16.

[3] **Constitutional Law**

🔑 Veto power

Legislature cannot confer on any administrative board authority that would result in thwarting or circumventing veto power of the Governor. Const. art. 2, § 16.

Attorneys and Law Firms

*130 **130 Donald C. Power, of Columbus, for relator.

John W. Bricker, Atty. Gen., and William S. Evatt, of Columbus, for respondents.

Opinion

BY THE COURT.

The court has before it for consideration but one question; that is not one of governmental policy, but only one of the power of the Controlling Board to grant or to consider the matter of transferring moneys from items specified in the appropriation bill, for which appropriation of moneys has been made, to items for which no moneys have been appropriated by reason of the veto of such items by the Governor.

It is provided by section 16, article II, of the Constitution that 'the governor may disapprove any item or items in any bill making an appropriation of money *131 and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.' The manner of the repassage of a bill, notwithstanding the Governor's veto, prescribed in section 16 of Article II is as follows: 'If three-fifths of the members elected to that house vote to re-pass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to re-pass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage.'

[1] The Governor, pursuant to the authority thus vested in him by the State Constitution, expressly disapproved certain items of the appropriation of money made to the relator, the Public Utilities Commission. Under the clear and specific provisions of the Constitution, the items so disapproved became void unless repassed in the manner prescribed by the State Constitution. That has not been done. Hence, the items disapproved by the Governor are void.

[2] The provisions of section 4 of the Appropriation Act authorizing the Controlling Board 'to transfer to new classification items in cases where proper code items have not been provided by the legislature' can have no application here for the reason that such code items were provided by the *Legislature*, but were vetoed by the Governor. Under the law, as approved by the Governor and filed in the office of **131 the secretary of state, there is no appropriation for the items to which transfers are sought to be made. The veto of the Governor entirely and absolutely removed them. There are no such items left in the bill. If the transfers requested were made, that would be tantamount to the enactment of an appropriation by the Controlling Board. If section 4 of the Appropriation Act were *132 construed otherwise than as above indicated, that section would thereby be rendered unconstitutional, for it would result in overriding the Governor's constitutional right of veto by a board created by the Legislature.

[3] The Legislature itself can override the Governor's veto only by a vote of three-fifths of the members elected to

each house of the General Assembly. The Controlling Board, of course, has no such power. The Legislature is powerless to confer on any administrative board authority that would result in thwarting or circumventing the veto power of the Governor.

The demurrer to the petition is sustained, and relator not desiring to plead further, a writ of mandamus is denied.

Writ denied.

WEYGANDT, C. J., and STEPHENSON, WILLIAMS, JONES, MATTHIAS, DAY, and ZIMMERMAN, JJ., concur.

Parallel Citations

197 N.E. 129, 3 O.O. 168