

developer guarantees the loan; where the developer uses the forms of the bank; or where the credit of the buyer must be approved by the bank before the developer will sell the property to him on an installment basis. It may be argued that this type of involvement does convert the transaction into a loan or use of money.

There is no prior Pennsylvania appellate case law on this question. The lower court cases reach different decisions without explaining satisfactorily the basis of those differences. Compare *Medical Dental Business Service of New Jersey, Inc. v. Morrison*, 51 D. & C. 552 (1944) and *Professional Service Credit Association, Inc. v. O'Hara*, 40 D. & C. 291 (1940) with *General Motors Acceptance Corp. v. Freeman*, 63 D. & C. 163 (1946). An attempt to explain these decisions is found in *Weaver, Grose, Langhart & May, Inc. v. Myers*, 17 D. & C. 2d 405 (1958). The Court there stressed the facts of each case as being important determinants and distinguished cases involving subsequent sales of paper from those involving the original creation of obligations.

Accordingly, since the law is not clear, we believe that your Department should keep close surveillance on the involvement of financing institutions in these types of transactions so that appropriate action, by way of legislation, regulations or litigation by this office may be instituted where indicated.

We trust the above discussion has been helpful in setting forth some of the parameters of the transactions which come under Act No. 6. We have no doubt but that there will be additional problems which will arise under the Act, and we stand ready to be of such further assistance as we may be called upon to render.

Sincerely,
 Gerald Gornish
Deputy Attorney General
 Israel Packel
Attorney General

OFFICIAL OPINION No. 30

Commonwealth Compensation Commission Reports — Cabinet Officials — Federal Wage and Price Freeze Legislation

1. The Reports issued by the Pennsylvania Compensation Commission on June 22, 1972 and November 30, 1972 require that the salaries of selected cabinet officials be increased.
2. The Secretary of Education is and has been entitled to the increases authorized by the June 1972 Commission Report; the Secretary of Education having been appointed after the effective date of that Report.
3. The Secretary of Banking, the Attorney General, the Commissioner of State

Police, the Secretary of Revenue, and the Commissioner of Insurance are entitled to the increases specified in the November 1972 Report of the Commission.

4. There is no constitutional impediment to the payment of these salaries notwithstanding Federal law under wage-price freeze legislation and regulations barred full payment of the salary increases up to April 30, 1974.

Harrisburg, Pa.
June 5, 1974

Honorable Frank Beal
Secretary of Administration
Harrisburg, Pennsylvania

Dear Secretary Beal:

You have asked our opinion as to the effect of the removal of Federal wage-price restrictions on salaries of cabinet level officials of the Commonwealth of Pennsylvania. Specifically, the question presented is: must the Commonwealth give effect to the initial and November 30, 1972 reports of the Commonwealth Compensation Commission enacted into law now that Federal wage and salary restrictions have been removed?

It is our opinion and you are hereby advised that you are required to give effect to the June and November Reports of the Pennsylvania Compensation Commission and accordingly the salaries of six cabinet level officials assuming office after the effective dates of the reports must be raised to the statutory amount. Because of the dates of their appointments, the Secretary of Education must be paid the salary prescribed by the initial June, 1972 Report of the Commonwealth Compensation Commission and the remaining five cabinet officials must be paid the salaries prescribed by the November 1972 Report of the Commission.

The Commonwealth Compensation Commission was established by Act No. 8 of June 16, 1971, 46 P.S. §§5-6, and had the responsibility and duty of making an exhaustive study of the salaries, emoluments, retirement benefits and expense allowances of the Governor, the Lieutenant Governor, the cabinet officers, the State Treasurer and the Auditor General, the Justices and Judges of the Courts of the Commonwealth, and members of the General Assembly. The Act further provided that the Commission was to issue an initial report as soon as practicable and subsequent reports on or before the commencement of each term of the General Assembly. Section 2(b), 46 P.S. §6(b).

The Act also stated:

“The initial report shall take effect immediately, unless, within sixty days following the date of submission thereof the General Assembly shall, by concurrent resolution reject the report, in whole or part, or enacts legislation as

hereinafter provided in this section. Reports submitted subsequent to the initial report shall take effect and have the force and effect of law at the beginning of the first pay period of said term of the General Assembly or the date of assumption of office of persons affected thereby after such date, unless, within sixty days following the date of submission thereof, the General Assembly shall, by concurrent resolution, reject the said report, in whole or in part, or unless within said period the General Assembly shall enact legislation which establishes a rate of pay or allowance differing from that recommended by said report in whole or in part. That portion of the report which is not inconsistent with the resolution or legislation so adopted shall have the force and effect of law as herein provided."

In response to this legislation the Commission issued its initial report on June 22, 1972 and a subsequent report on November 30, 1972. In the course of preparation of its reports the Commission held hearings, heard testimony from twenty-six witnesses and interviewed numerous other persons. See Report of the Commonwealth Compensation Commission, June, 1972, pp. viii, 28 & 29. (Hereinafter "Report, June 1972"). With respect to cabinet level officials within the Executive Branch, the Commission found that salaries for cabinet level officials had not been increased since 1967, that salaries of other persons in other fields had increased significantly in response to increased costs of living, and that the responsibilities of cabinet level officials had substantially increased as manifested by a doubling of the state budget and a 35 per cent increase in the number of state employees from 1967 to June 1972. Report, June 1972, at p. 13. The November 1972 report reiterated the Commission's earlier findings.

The June 1972 Report recommended salary increases, among others, for cabinet officials. However, on August 15, 1972 by Senate Resolution 100 concurred in by the House, the General Assembly rejected, in part, the report of the Commission to the extent that it provided for increases in salaries in excess of \$2,500 for cabinet officials and judges. 2 Pa. Bulletin 1725.

The November 1972 report issued November 30, 1972 recommended salary increases for cabinet officials as follows:

Attorney General	\$40,000
Secretary of Education	\$40,000
Secretary of Public Welfare	\$40,000
Secretary of Transportation	\$40,000
Secretary of Environmental Resources	\$37,500
Secretary of Health	\$37,500
Secretary of Labor & Industry	\$37,500
Secretary of Revenue	\$37,500

Commissioner, Pennsylvania State Police	\$37,500
Adjutant General	\$35,000
Secretary of Agriculture	\$35,000
Secretary of Banking	\$35,000
Secretary of Commerce	\$35,000
Secretary of the Commonwealth	\$35,000
Secretary of Community Affairs	\$35,000
Insurance Commissioner	\$35,000
Secretary of Property and Supplies	\$35,000

The November Report, not having been rejected or modified within sixty days by the General Assembly became effective per Section 2(b) of Act No. 8, *supra*.¹

Although it is not clear, it appears that the effective date of the initial report was August 15, 1972, the date of passage of Senate Resolution 100. As noted, Section 2(b) provides that the initial report takes effect immediately unless rejected or modified in whole or in part. Section 2(b) does not clearly indicate the effective date of a modified report or a report rejected in part, but in view of the fact that the Legislature took affirmative action with regard to the report on August 15, 1972, it is only logical and reasonable to assume the report is effective as of the later date.

The effective date of the November Report is December 1, 1972, that date, under the provisions of Section 2(b) dealing with subsequent reports, being the date on which the terms of service for members of General Assembly commence or, in effect, the first day of the first pay period for the General Assembly. See Article II, §2 of the Pennsylvania Constitution.

Subsequent to the corresponding effective dates of the June and November Reports, six cabinet officials were appointed as follows:

- (1) Secretary Pittenger, appointed and confirmed as Secretary of Education, November 30, 1972 (Appointed subsequent to the effective date of the initial report but not subsequent to the effective date of the November Report);
- (2) Secretary Dellmuth, appointed as an interim appointee as Secretary of Banking, December 30, 1972;
- (3) Attorney General Packel, appointed as an interim appointee, January 2, 1973;
- (4) Commissioner Barger, appointed as an interim appointee as Commissioner of State Police, January 2, 1973;

¹ By Act No. 57 of July 27, 1973, the General Assembly repealed those provisions of Act No. 8 establishing the Compensation Commission. Since Act No. 57 was passed subsequent to the effective dates of the June and November Reports, those Reports remain unaffected by the repealer in Act No. 57.

- (5) Secretary Yakowicz, appointed and confirmed as Secretary of Revenue, February 4, 1974;
- (6) Commissioner Sheppard, appointed and confirmed as Insurance Commissioner, April 30, 1974.

All of the above officials presently hold their respective offices. However, due to the wage-price controls imposed under the Federal Economic Stabilization Act and Executive Orders issued pursuant thereto, all but the Secretary of Education have been barred from receiving the statutorily prescribed salaries as set forth in the June and November, 1972, Reports of the Commission.² See 37 C.F.R. §24960 *et seq.*, CCH-Wage and Price Reporter §201.94 *et seq.*, QTC 3791 *et seq.*³ As of April 30, 1974, the Federal wage-price control program has terminated and, with the exception of petroleum products, there are presently no controls on wages, salaries, or prices.

With the lifting of Federal wage-price controls, the first question is does Act No. 8 of June 16, 1971 authorize and require payment of the increased salaries. A reading of the language of the act, quoted above, clearly indicates that as cabinet officials become eligible for their salary increases they are to be paid.

The language states that Reports submitted after the initial report shall take effect at the beginning of the term of the General Assembly for which the Report was submitted or the date of assumption of office of persons affected thereby after the effective date of a Report. The initial report is to take effect immediately. Moreover, Section 3 of Act No. 8 states that the Act shall be applicable to each officer when permitted by the Constitution of the Commonwealth.

With respect to the Secretary of Education, the initial Report of the Commission, effective June 22, 1972, was applicable to him and required that his salary be increased. With respect to the Secretary of Banking, the Attorney General, the Commissioner of State Police, the Secretary of Revenue, and the Insurance Commissioner, the November, 1972 Report is applicable to them, they having taken office after commencement of the term of the General Assembly commencing immediately after the effective

² The salaries are, for the Secretary of Education—\$32,500 per year; Secretary of Banking—\$35,000 per year; Attorney General—\$40,000 per year; Commissioner of State Police—\$37,500 per year; Secretary of Revenue—\$37,500 per year; and Insurance Commissioner—\$35,000 per year. As will be discussed more fully below, the salaries of other cabinet officials are not in issue here because of the constitutional prohibition against increasing salaries of officials during their terms of office.

³ These regulations permitted certain yearly increases for the above listed positions. However, despite these allowed increases, the salaries being paid these cabinet officials, with the exception of the Secretary of Education, did not equal the statutorily fixed amount.

date of the November Report.

The only remaining question involves an interpretation of Article III, §27 of the Pennsylvania Constitution which states:

“No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.”

It has been suggested that because of the intervention of Federal wage controls which have prevented increases in the salaries of the six cabinet officials in question, which increases would otherwise have been paid under the terms of Act No. 8, the Commonwealth, upon lifting of the controls, cannot now increase the salaries of the six cabinet officials in view of Article III, §27.

A reading of that section indicates that this suggestion is without basis. First, that section states “no law” shall increase or diminish salaries of officials during their term of office. As pointed out above, Act No. 8, and Commission Reports issued and effective under that Act, did not increase salaries, and were carefully drafted to assure that no increase was authorized by law during the term of office of any affected official. See *Baldwin v. City of Philadelphia*, 99 Pa. 164 (1911).

Secondly, the intervention of a higher authority, i.e., the Federal Government and its economic stabilization program, merely suspended, by virtue of Federal supremacy in the field of wages and prices, the effect of Act No. 8 and Reports issued pursuant thereto. Article III, §27, is concerned with “salary grab” legislation enacted by the General Assembly to increase salaries before the voters have a chance to speak on the subject. See *In re Hadley*, 336 Pa. 100 (1939). Viewed in this light, Article III, §27 does not operate to prohibit salary increases authorized by legislation tailored to avoid the prohibitions of Article III, §27 but suspended by subsequent federal action.

Finally, the Federal Economic Stabilization Program can be viewed as diminishing the salaries of cabinet officials during their term of office, a result, if imposed by state legislation, condemned by Article III, §27. As noted above, six cabinet officers had their salaries properly increased prior to the commencement of their term. The Federal wage controls barred, in part, those salary increases. It would be grossly unfair, and certainly violative of the spirit of Article III, §27 now to say that because of intervention of the Federal Government those salaries must remain at the lesser level.

Pursuant to Section 512 of the Administrative Code, 71 P.S. §192, we have requested comments from the Treasurer and Auditor General. We received their comments which are concerned with the effect of Senate Resolution 100 on the June, 1972 Report and the

effective date of the November Report. We concur in these comments and the opinion has been revised accordingly.

CONCLUSION

It is our conclusion and you are hereby advised that with the termination of Federal wage controls on April 30, 1974 you must carry out the mandates of Act No. 8 of June 16, 1971 and Reports issued pursuant thereto, and increase the salaries, effective May 1, 1974, of the cabinet officials appointed subsequent to the effective dates of those reports.⁴

Very truly yours,

Peter W. Brown

First Deputy Attorney General

OFFICIAL OPINION No. 31

Workmens' Compensation Appeal Board—Reimbursement for Expenses—Approval by Labor and Industry required.

1. The Workmens' Compensation Appeal Board, as a departmental administrative board, must submit requests for expense reimbursement to the Department of Labor and Industry for approval.
2. The Department of Labor and Industry must render its approval decision in accordance with the broad policies of the Executive Board Regulations rather than the specific requirements of these regulations.
3. These broad policies include, inter alia, reimbursement only for amounts actually expended and review and audit by the Department to which a board is assigned.

Harrisburg, Pa.
June 11, 1974

Honorable Paul J. Smith
Secretary
Department of Labor and Industry
Harrisburg, Pennsylvania

Dear Secretary Smith:

You have requested our opinion as to the responsibility of the Department of Labor and Industry for the approval of the expense accounts of the members of Workmens' Compensation Appeal Board (hereafter Board).

⁴ The Attorney General being directly affected by this opinion took no part in its preparation or issuance.