

tions as well as formal condemnation proceedings, and the determination as to whether a Flood Relief Grant may be paid is dependent upon the manner in which damages are measured under Section 602 of the Eminent Domain Code and not the method of acquisition.

Very truly yours,

LANCE H. LILIEN
Deputy Attorney General

GERALD GORNISH
Acting Attorney General

OFFICIAL OPINION NO. 78-18

Non-preferred appropriations are excluded from the general appropriation act by operation of Article III, § 11 and Article III, § 30.

1. Act of May 31, 1978, P.L. 1485, No. 16-A discussed and construed.
2. Pennsylvania Constitution, Article III, § 11 and § 30 discussed and construed.
3. Non-preferred appropriations are excluded from the general appropriation act by operation of Article III, § 11 and Article III, § 30.

August 16, 1978

Honorable Charles P. McIntosh
Budget Secretary
Office of the Budget
425 S.W. Main Capitol
Harrisburg, PA 17120

Dear Secretary McIntosh:

You have asked for our legal evaluation of the Act of May 31, 1978, P.L. 1485, No. 16-A, in particular an examination of the act to determine if it contains constitutionally impermissible appropriations. Please be advised as follows:

The general appropriation act, under Article III, § 11 must contain no items except the operating budget for the three branches of government and money for the public debt and for public schools. "All other appropriations shall be made by separate bills, each embracing but one subject." Categories of "other appropriations" not to be enacted through the general omnibus bill include charitable and educational institutions not directly controlled by the Commonwealth. Article III, § 30, which reads as follows, deals specifically with these non-preferred appropriations.

No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for

the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

This provision was first enacted in the Pennsylvania Constitution of 1874, and the debates of the Constitutional Convention of 1873 are most instructive on the origins of Article III, § 30. The members of the convention were anxious that public money be given freely to worthy charities but equally concerned that it be given wisely. "Certain abuses of a very flagrant character having crept into the practice of making large appropriations to real or alleged charitable or educational institutions, it being charged that there was a regular system of bribery by division of the appropriations, the entire matter was regulated by [Article III, §§ 29, 30]." *White, Commentaries on the Constitution of Pennsylvania*, 274-275 (1907). Legitimate charities often had to share large parts of their appropriations with legislators in kickback money. Charitable giving had been reduced to an institutionalized system of bribery. *See, Debates of the Convention to Amend the Constitution of Pennsylvania*, Vol. II, 636-648 (1873).

Article III, § 30 was adopted to prevent exploitation of public donations to charitable and educational institutions. The two-thirds vote was deemed necessary to assure that state taxpayer funds would be bestowed wisely and that all truly necessitous cases would be provided for.

Article III, § 30 provides further protection against potential abuses through the removal of non-preferred appropriations from the general appropriation bill. Each charitable appropriation must be enacted separately under Article III, § 11, lest the two-thirds vote become a meaningless impediment to the abuses that had developed around appropriations to charitable or educational institutions not under the absolute control of the Commonwealth by log-rolling the various appropriations together in one bill.

Non-preferred appropriations, then, are excluded from the general appropriations act by operation of Article III, § 11 and Article III, § 30. The Constitution requires that legislation unconnected with Commonwealth financing be enacted by separate bills, and if it is in aid of a charitable or educational institution not under the absolute control of the Commonwealth, it must be passed by a two-thirds vote.

In accordance with Section 512 of the Administrative Code, 71 P.S. § 192, the Auditor General and the State Treasurer have been afforded an opportunity to present any views which they may have upon this matter.

Bearing these constitutional principles in mind, this Office has reviewed the language contained in the recently overridden line item vetoes relating to non-preferred appropriations. This review, wherein we find certain appropriations are made to non-preferred institutions, and thus improperly contained in the general appropriation act, is at-

tached as an Appendix. This office stands ready to assist further should questions arise.

Sincerely yours,

CONRAD C. M. ARENSBERG
Deputy Attorney General

GERALD GORNISH
Acting Attorney General

APPENDIX

Applying the principles established in the foregoing opinion, an examination of Act No. 16-A of 1978 reveals the following language improperly contained in this general appropriation act. This language is basically improper because it violates Article III, § 11 and Article III, § 30 of the Constitution by including non-preferred appropriations in a general appropriations act.

Charitable and educational institutions listed below are instructed that the language contained in the act as noted herein is a nullity. All institutions affected by this ruling are advised, however, that we are not commenting on the advisability or the legality of these appropriations if they were to be properly enacted at some later date. We limit our holding only to the fact that these appropriations are unconstitutionally found in this act.

The following language is found to be improper in Act No. 16-A of 1978:

p. 2, Line 27:

(1) Erie Philharmonic Orchestra. \$70,000

p. 2, Line 28:

(2) Lansdowne Philharmonic Orchestra \$5,000

p. 2, Line 29:

(3) Schuylkill County Council for the Arts \$85,000

p. 10, Lines 16-19:

“Milrite” - For the administration, operation and expenses of Milrite Council for the project “Make Industry and Labor Right in Today’s Economy” \$200,000

p. 25, Lines 21-23:

For support of the Pennsylvania Conservation Leadership School at Stone Valley Recreation Area. \$30,000

p. 28, Line 11:

Central Penn Oncology Group. \$100,000

p. 29, Lines 16-18:

For payment to the Wistar Institute of Philadelphia, Pennsylvania for research in the field of cellular biology . . \$200,00
 p. 29, Lines 19-21:

For payment to the Inglis House of Philadelphia for the detection and diagnosis of neurological diseases. \$30,000
 p. 29, Lines 22-27:

For the following research programs:

Lankenau Hospital - Research \$75,000

Cardio-Vascular studies - University of Pennsylvania. . . \$60,000

Cardio-vascular studies - St. Francis Hospital, Pittsburgh \$60,000

p. 30, Lines 1-8:

For outpatient-inpatient treatment:

Cerebral Palsy - St. Christopher's Hospital \$75,000

Cerebral Dysfunction - Children's Hospital, Pittsburgh . \$25,000

Pittsburgh Cleft Palate \$30,000

For payment to the Burn Foundation of Greater Delaware Valley. \$155,000

Lancaster Cleft Palate. \$30,000

p. 30, Lines 9-11:

For a comprehensive program relating to persons with Tay-Sachs Disease at the Jefferson Medical College and Hospital, Philadelphia, Pennsylvania. \$50,000

p. 31, Lines 9-16:

For administration of Allentown Art Museum \$50,000

For administration of the Somerset Historical Center . . \$47,000

For refurbishing of the stone maintenance building at Conrad Weiser Park for the use of the Tulpehocken Settlement Historical Society for a geneological center for the preservation of Pennsylvania German ancestry. \$18,000

p. 37, Lines 18-24:

For the provision of services to the blind at:

Center for the Blind - Delaware County. \$25,000

Beacon Lodge Camp \$25,000

Center for the Blind - Philadelphia \$25,000

Pittsburgh Association for the Blind. \$25,000

Rudolph Residence for the Blind	\$25,000
p. 40 Lines 19-21:	
Arsenal Family and Children's Center	\$100,000
Blair County Society for Crippled Children and Adults	\$25,000
p. 40, Lines 22-30:	
For adult programs for victims of cerebral palsy and other severe physically disabling diseases:	
(1) Scranton: United Cerebral Palsy of Lackawanna County	\$59,000
(2) Pittsburgh: United Cerebral Palsy of Pittsburgh and vicinity	\$28,000
(3) Bethlehem: United Cerebral Palsy of Lehigh Valley	\$7,000
p. 41, Lines 1-6:	
(4) Erie: United Cerebral Palsy of Northwest Pennsylvania	\$19,000
(5) Reading: Association of Retarded Citizens	\$7,000
(6) Pottsville: United Cerebral Palsy of Schuylkill County	\$11,000

OFFICIAL OPINION NO. 78-19

Act of June 21, 1937, P.L. 1960, No. 385, § 4 (55 P.S. §§ 6, 7) discussed and construed.

1. Act of June 21, 1937, P.L. 1960, No. 385, § 4 (55 P.S. §§ 6, 7) discussed and construed.
2. The statutes which created the Navigation Commission for the Delaware River and its navigable tributaries and the Director of Commerce of the City of Philadelphia empowered those bodies to grant a license for construction below the low-water mark of the Delaware and Schuylkill Rivers.
3. The deed or title which must be produced as a prerequisite to licensure is that of the riparian land down to the low-water mark.
4. Statutory and case law demonstrate that historically no interest greater than a license has been intended to pass to riparian owners along the Delaware River and its navigable tributaries for construction of obstructions below the low-water mark.

August 21, 1978

The Honorable Maurice K. Goddard
 Secretary of Environmental Resources
 Evangelical Press Building
 Third and Reily Streets
 Harrisburg, PA 17120