

## OFFICIAL OPINION NO. 78-30

*Fish Commission—Game Commission—Pennsylvania Constitution, Article VIII, Section 12(b)—Act No. 149 of 1978—Capital Projects—Operating Funds*

1. The Fish Commission and the Game Commission are required to submit to the Governor a detailed listing of specific capital projects that they intend to acquire or construct during the year for purposes of having them included in a capital budget.
2. As independent administrative commissions, the Fish Commission and the Game Commission must furnish to the Secretary of the Budget, not later than November 1 of each year, such detailed information pertaining to their proposed capital projects for the ensuing fiscal year as he shall request.

December 29, 1978

Honorable Charles P. McIntosh  
Budget Secretary  
Governor's Office  
Harrisburg, PA

Re: Capital Projects of the Fish and Game Commissions

Dear Secretary McIntosh:

You have asked for an opinion as to whether or not the Fish Commission and the Game Commission are required to submit to the Governor a detailed listing of specific capital projects that they intend to acquire or construct during the year for purposes of having them included in the Governor's Capital Budget. It is our opinion, and you are advised, that the Fish Commission and Game Commission are required to submit such a detailed listing.

Article VIII, Section 12(b) of the Pennsylvania Constitution provides:

Annually, at the times set by law, the Governor shall submit to the General Assembly:

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(b) A capital budget for the ensuing fiscal year *setting forth in detail proposed expenditures to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds;* (emphasis added)

The question is whether that provision requires the Fish Commission and the Game Commission, which finance capital projects out of operating funds, to furnish the Governor with an itemized list of their proposed capital projects for the ensuing fiscal year, specifying the nature, purpose and estimated cost of each project in order that the Governor may incorporate them in the capital budget submitted to the General Assembly.

This issue has been resolved by the passage of Act No. 149 of 1978 (Act of September 27, 1978) which has implemented the constitutional provision as it relates to operating funds. Section 613 provides, in relevant part, as follows:

As soon as possible after the organization of the General Assembly, . . . the Governor shall submit to the General Assembly copies of agency budget requests and a State budget and program and financial plan embracing:

\* \* \* \*

(2)\* A capital budget for the ensuing fiscal year setting forth capital projects to be financed from the proceeds of obligations of the Commonwealth or of its agencies or authorities or from operating funds.

Although the pertinent words "in detail" are omitted from the legislative language, which otherwise follows closely the language of the Constitution, the implementing legislation must be interpreted so as to give effect to the constitutional provision. This means that the Governor is required each year to submit a capital budget to the General Assembly setting forth in detail capital projects to be financed from obligations of the Commonwealth and also capital projects to be financed from operating funds.

In order for the Governor to do that with respect to capital projects of the Fish Commission and the Game Commission, it will be necessary for those commissions to furnish him with the necessary detailed information through the Secretary of the Budget. Section 610 of Act No. 149 provides:

(a) . . . It shall be the duty of each administrative department, and each *independent administrative board and commission to comply*, not later than November 1, *with any and all requests made by the Secretary of the Budget in connection with the budget.*

(b) . . . The Secretary of the Budget shall, on or before January 1 next succeeding, submit to the Governor, in writing, the above information, and any additional requested by the Governor, as the basis for the Governor's requests for appropriations for the next succeeding year. (emphasis added)

As independent administrative commissions, the Fish Commission and the Game Commission must furnish to the Secretary of the Budget, not later than November 1 of each year, such detailed information pertaining to their proposed capital projects for the ensuing fiscal year as he shall request.

In accordance with Section 512 of the Administrative Code (71 P.S. § 192), the State Treasurer and the Auditor General have been given an opportunity to comment on a draft of this opinion. The State Treas-

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\* The enrolled bill designated this as subparagraph (iii) under paragraph (1); however, it will be printed as paragraph (2) to carry out the intention of the General Assembly which was for Section 613 to correspond to Article VIII, Section 12 of the Constitution. (Paragraph (2) will be printed as paragraph (3)).

urer has indicated his concurrence with our conclusion. The Auditor General has declined to comment.

Very truly yours,  
W. W. ANDERSON  
*Deputy Attorney General*  
GERALD GORNISH  
*Attorney General*

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OFFICIAL OPINION NO. 78-31

*Board of Commissioners of Public Grounds and Buildings—Department of General Services—Administrative Code—Leases—Amendments—Consideration—Utility Escalation Clause*

1. The Department of General Services is not empowered to amend leases during the renewal terms thereof to include a utility escalation clause without any consideration passing from the lessor in exchange.
2. Even if there were consideration for the amendment, the Department could not enter into it without the consent of the Bureau of Employment Security, the occupying agency, since its expenses are paid out of special funds.
3. The Board of Commissioners of Public Grounds and Buildings is not empowered to amend leases, but only to approve or disapprove amendments.
4. The power to enter into a lease carries with it, by implication, the power to amend or modify a lease after it has been executed. However, there must be consideration for the amendment or modifications.

December 31, 1978

Honorable Paul J. Smith  
Secretary of Labor and Industry  
1700 Labor and Industry Building  
Harrisburg, PA.

Dear Secretary Smith:

You have asked for our opinion as to the authority of the Board of Commissioners of Public Grounds and Buildings (the Board) to include utility escalation clauses in preexisting leases of State offices to be applicable during the renewal terms of the leases.

You have advised us that the Board met on March 27, 1978 and voted to approve the inclusion of utility escalation clauses in lease agreements that were entered into prior to March 4, 1977 with options to renew for periods of three years or more. The clauses would apply to the renewal terms only and only with respect to options exercised after March 4, 1977. You have further advised us that the federal government finances the rental of offices occupied by the Bureau of Employment Security, of your department, and you question the Board's au-