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Constitutional Law--Public Funds Appropriated to a Private Organization for Public Purpose in Ohio

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In short, to the serviceman, trial by military tribunals is due process.[26] To the civilian it is not.

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CONSTITUTIONAL LAW — PUBLIC FUNDS APPROPRIATED TO A PRIVATE ORGANIZATION FOR PUBLIC PURPOSE IN OHIO

The relating taxpayers attempted to enjoin state officers from paying funds appropriated by the General Assembly to war veterans organizations.[1] The appropriation bill, as enacted by the General Assembly, granted specific sums of money to the veterans organizations for the purpose of rehabilitating war veterans and promoting patriotism.[2] Relators alleged that the veterans institutions are private groups organized for private purposes, and are therefore prohibited from receiving any credit out of state funds.[3] The trial court found the appropirations act unconstitutional and enjoined distribution of the funds. The court of appeals reversed this decision and declared the appropriations to be valid.

It is well established that public funds must be expended for public purposes.[4] The meaning of public purpose as construed by the Ohio courts may be found in Cooley's treatise on *Constitutional Limitations.*[5] Cooley states that the legislature should determine what is a public purpose, and this legislative discretion should not be controlled by the courts.[6] The Ohio General Assembly through this controversial enactment interpreted the rehabilitation of war veterans and the promotion of patriotism as public purposes.

With the element of public purpose seemingly fulfilled, the court was confronted with the legality of appropriating public funds for private organizations to be expended for a public purpose. In *State ex rel. Leaverton v. Kerns,*[7] the Supreme Court of Ohio upheld appropriations for an independent agricultural society which were expended for the purpose of holding an annual agricultural fair for the benefit of the public. Such appropriations for private organizations were thought to be valid so long as there was no intention of distributing the profits among its members. And again in *State ex rel. Pugh v. Sayre,*[8] the Supreme Court of Ohio approved an allocation for a private corporation, the Franklin County Law Library Association,

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[26] Reeves v. Ainsworth, 219 U.S. 296 (1911).

[27] Other law review discussions of this problem include: 29 CALIF. S. B. J. 125 (1954); 4 MINN. L. REV. 79 (1920); 25 MISS. L. J. 277 (1954); 32 N.C. L. REV. 1 (1954); 30 N. DAK. L. REV. 155 (1954); 25 OKLA. B. A. J. 1605 (1954); 28 ST. JOHN'S L. REV. 301 (1954); 7 VAND. L. REV. 144 (1954); 40 VA. L. REV. 331 (1954).

since the library was accessible to, and used by, all the officers exercising judicial functions in the county.

Even with the two aforementioned cases as precedent, the court was still in doubt as to the constitutionality of the instant appropriations act. In Ohio, the expressly granted power of the judiciary to declare a law unconstitutional is to be exercised with the greatest possible care and reserve.[9] The regularly enacted statutes of the General Assembly are presumed to be constitutional,[10] and are so held unless proved clearly unconstitutional beyond a reasonable doubt.[11] Since there was an element of doubt as to the unconstitutionality of the statute, the majority of the court was forced to vote in favor of its validity.

In a dissenting opinion, Judge Hart, with whom Weygandt, C. J., and Griffith, Jr., concurred, took issue as to what constituted a public purpose. He stated that the expenditure of public funds for "The exclusive use and benefit of their soldier members . . . and certain other soldiers whom they select" did not fall within the meaning of a public purpose. This appears

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[1] Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955).

[2] Amended House Bill No. 10 of the 100th General Assembly. "This appropriation bill grants the following designated veterans organizations specific amounts as follows:

American Legion of Ohio	$72,375
Department of American Veterans of World War II	$14,475
Disabled American Veterans of World War II	$72,375
83rd Division of A.E.F. Veterans' Association	$ 482
Ohio Rainbow Division	$ 4,826
United Spanish War Veterans	$23,160
37th Division A.E.F. Veterans' Association	$ 5,790
Veterans of Foreign Wars	$72,375

These appropriations are made subject to reports by each of these organizations semi-annually to the state controlling board and no release of funds for any six-month period shall be made until the state controlling board has received a report of the expenditures made from these appropriations for the prior six-month period."

[3] OHIO CONST. Art. VIII, § 4: "The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever."

[4] State v. Moore, 76 Ark. 197, 88 S.W. 881 (1905); Patty v. Colgan, 97 Cal. 251, 31 Pac. 1133 (1893); Burnham v. Beverly, 309 Mass. 388, 35 N.E.2d 242 (1941); Bush v. Orange County, 159 N.Y. 212, 53 N.E. 1121 (1899).

[5] Walker v. City of Cincinnati, 21 Ohio St. 14, 8 Am. Rep. 24 (1871).

[6] COOLEY, CONSTITUTIONAL LIMITATIONS 129 (3d ed. 1874).

[7] 104 Ohio St. 550, 136 N.E. 217 (1922).

[8] 90 Ohio St. 215, 107 N.E. 512 (1914).

[9] State *ex rel.* Turner v. United States Fidelity & Guaranty Co., 96 Ohio St. 250, 258 117 N.E. 232, 234 (1917).

[10] State v. Parker, 150 Ohio St. 22, 80 N.E.2d 490 (1948); State *ex rel.* Mack v. Gluckenberger, 139 Ohio St. 273, 39 N.E.2d 840 (1942).

[11] Williams v. Scudder, 102 Ohio St. 305, 131 N.E. 481 (1921); State *ex rel.* Durbin v. Smith, 102 Ohio St. 591, 133 N.E. 457 (1921); City of Xenia v. Schmidt, 101 Ohio St. 437, 130 N.E. 24 (1920); Fletcher v. Peck, 10 U.S. (6 CRANCH) 86 (1810); Ogden v. Saunders, 25 U.S. (12 WHEAT.) 213 (1827).

to be a judicial condemnation of the legislature's wisdom in enacting such a bill. But such a condemnation is an exercise beyond the scope of judicial authority in this state.[12] Judge Bell, with whom Taft, J., concurred, emphasized this very point in his concurring opinion. He felt the majority opinion was correct as to the judgment, but refused to concede the wisdom of the enactment.

The conclusion reached by the majority of the court is not in accord with the decisions of most states. The legislatures of many states have not hesitated to appropriate funds for the promotion of patriotism,[13] but not through private corporations. Generally, where a state constitution contains an article prohibiting the granting of aid to private corporations, appropriations such as the instant one have been struck down even though public benefits were derived therefrom.[14] But in Illinois, Kentucky, and Pennsylvania, appropriations through private organizations for a public purpose have been upheld.[15] One decision construed the private corporation to be an agent of the municipality.[16] The underlying theory, however, as interpreted by the great weight of authority, seems to be that it is immaterial whether the dispensing agency is public or not, so long as it has a public purpose.[17]

It appears from the majority opinion of this case that the law in Ohio is now settled; the appropriation of public funds to a private organization for a public purpose is a valid enactment of the legislature, and not violative of the credit clause of the Ohio Constitution.

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[12] State *ex rel.* Cooper v. Roth, 140 Ohio St. 377, 44 N.E.2d 456 (1942); State *ex rel.* Clinger v. White, 143 Ohio St. 175, 54 N.E.2d 308 (1944).

[13] Allied Architects' Asso. v. Payne, 192 Cal. 431, 221 Pac. 209 (1923); Veterans' Welfare Bd. v. Riley, 189 Cal. 159, 208 Pac. 678 (1922); Barrow v. Bradley, 190 Ky. 480, 227 S.W. 1016 (1921); Kingman v. Brockton, 153 Mass. 255, 26 N.E. 998 (1891); Parsons v. Van Wyck, 56 App. Div. 329, 67 N.Y. Supp. 1054 (1st Dep't. 1000); Morton v. Philadelphia, 4 Pa. Dist. 523 (1895).

[14] Stone v. State, 223 Ala. 426, 136 So. 727 (1931); Fluharty v. Nez Perce County, 29 Idaho 203, 158 Pac. 320 (1916); State *ex rel.* St. Louis School & Museum v. St. Louis, 216 Mo. 47, 115 S.W. 534 (1909); Harrington v. Atteberry, 21 N.M. 50, 153 Pac. 1041 (1915); Johns v. Wadsworth, 80 Wash. 352, 141 Pac. 892 (1914); Daytona Beach v. King, 132 Fla. 273, 181 So. 1 (1938).

[15] Sambor v. Hadley, 291 Pa. 395, 140 Atl. 347 (1928); Furlong v. South Park, 340 Ill. 363, 172 N.E. 757 (1930); Hager v. Kentucky Children's Home Society, 119 Ky. 235, 83 S.W. 605 (1904).

[16] Sambor v. Hadley, supra note 15.

[17] Hager v. Kentucky Children's Home Society, 119 Ky. 235, 83 S.W. 605 (1904); "These authorities clearly settle that the vital point in all such appropriations is whether the purpose is public; and that, if it is, it does not matter whether the agency through which it is dispensed is public or is not; that the appropriation is not made for the agency, but for the object which it serves; the test is in the end, not in the means."