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E. H. Vickers

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OPINION OF

HON. A. A. LILLY

Attorney General of West Virginia

CONCERNING

The Finances of The State



Issued April 10, 1915

BY COAL OPERATOR'S LEGISLATIVE COMMITTEE
HUNTINGTON, WEST VIRGINIA

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ATTORNEY-GENERAL LILLY'S
OPINION ON
STATE'S FINANCES

Huntington, W. Va., April 10, 1915.

Dear Sir:

Confirming the statement which we sent out last week concerning the present financial condition of the state as well as the revenues and expenditures for the next two years, we beg to submit to you, herein, printed copy of the opinion of Attorney General Lilly, based upon the figures taken from the official records in the offices of the Auditor and Treasurer. Hoping that you will read the opinion, I am,

Very respectfully yours,

A. H. LAND,

Secretary Coal Operators Legislative
Committee.

E. H. Vickers

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April 8, 1915.

HON. J. S. DARST, Auditor,
HON. E. L. LONG, Treasurer,

Charleston, W. Va.

Dear Sirs:

I beg to acknowledge your favor of March 31, 1915, in compliance with my request of the previous day, giving me information in regard to the financial condition of the State Treasury, including in detail the condition of the same for previous years and the administration of the various funds thereof by you and your predecessors in office.

Your communication was quite illuminating, embracing as it did a comprehensive statement of the financial transactions of this State from 1871 until the 17th day of March, last.

I have had occasion to examine somewhat in detail the recent acts of legislation appropriating money, and your official biennial reports, together with other sources of information from your respective offices, and feel that the facts obtained will in a great measure, help to solve the legal questions asked in your recent letter.

As fiscal officers of this state, charged with the collection and disbursement of the state's revenue, you, under authority of and in compliance with law, make your biennial reports, which official documents, together with information contained in your recent letter to me and other official information gathered from your offices, will be the basis of fact upon which I shall predicate my answer.

Upon investigation I find that there exists in the chief executive the authority to borrow money, which authority is based upon the constitution and statutes of this state.

This right of the Governor to borrow money, which is delegated to him by statute, is very broad, comprehensive and far reaching, as set forth by serial section 372 Ch. 14 of Hogg's Code, 1913, which provides:

"The Governor may raise, from time to time, by temporary loans, not having over eighteen months, to run, nor bearing greater interest than two cents per hundred dollars per day, so much as may be needed to supply the wants of the treasury."

It will be seen that this section provides that the Governor may "supply the wants of the treasury" from time to time by temporary loans not exceeding eighteen months duration.

In order to see if the right of the Governor to borrow money, as expressed by the statute, above quoted, is further limited or restricted, it would be necessary to refer to the constitutional limitations, if any, in that regard.

The sections of our Constitution which primarily bear upon this subject are four and five of article ten. Section four prohibits the state contracting a debt except for three purposes, to-wit: (a) to meet casual deficits in the revenue, (b) to redeem a previous liability, (c) to suppress insurrection, repel invasion and defend the state in time of war.

The right of the state to contract a debt as applied to the facts in this case would essentially rest upon the first purpose for which a debt could be contracted, (a) "to meet a casual deficit in the revenue." As to what a casual deficit is, is a question of law; as to whether a casual deficit exists, is a question of fact. A "casual deficit" as defined by the law writers is a temporary deficit occasioned by mistake, accident or inadvertance. A "casual deficit" exists in fact when the revenues of a particular fund are depleted and the debtor obligations exceed the credit entries. If such conditions exist in point of fact then the Legislature "shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year."

If what are known as "blank appropriations," which are paid into the state fund, from special sources of revenue for particular purposes, are considered as a part of the state fund then from the reports of your offices no deficit in the revenue did exist in the year previous to the last session of the Legislature. These moneys are paid into the state fund, are not segregated therefrom, and are often spent, in part at least, temporarily in the payment of general state appropriations. They were so treated the last two fiscal years by unanimous consent of the Board of Public Wotks when moneys were being transferred from the state fund to the general school fund.

Including these blank appropriations as part of the state fund at the close of the fiscal year 1913, there was a balance in

that fund of \$35,515.76 and at the close of the fiscal year 1914, \$209,917.65, and on March 17th, last, the day the "moratorium" began there was \$216,762.35 in said state fund. With this as the basis, there was in point of fact no deficiency in the revenue of this state "in any year" preceding the last session of the Legislature, in which event it was not incumbent upon the Legislature at its last session to provide revenue "to meet such deficiency."

As I review the facts it is not necessary for me to decide whether there was a deficiency in the state revenue in the years 1913 and 1914, or either of them, for if any deficiency existed, the Legislature at its regular and extra session, 1915, fulfilled the requirements of Section 5 of Article 10 by providing for sufficient sources of revenue to meet such deficiency as well as the estimated expenses of the state.

It is true from current newspaper report, and otherwise, an impression obtains among some that the Legislature did not make such provision, but upon an examination of the present condition of the state fund and the revenue provided by the Legislature it is fully apparent that the Legislature did provide for the payment of any deficiency that may exist in the state fund as well as the current expense for the year 1916, and likewise 1917, which will fully appear by the following statement, which shows the present financial condition of the state, as well as the future estimated income and disbursements to July 1, 1915, and also the estimated income and disbursements for the next biennial period, 1916-1917:

FISCAL YEAR

1915

April 1, Balance State Fund.....	\$478,274.02
Estimated Revenue 1915, Auditor's Report page 182.....	\$2,164,500.00
Amount received first three-fourths year year 1915.....	1,705,242.75
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Balance of 1915 estimate to be collected	459,257.25
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Total available revenue, balance of 1915	937,531.27
Amount due blank appropriations, ac- count Public Service Corporation tax.....	214,746.17
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Balance after refunding Public Service Corporation tax.....	722,795.10
Estimated disbursements, April, May and June, 1915, based on same months 1914.....	\$433,345.93
Transfer to General School Fund.....	400,000.00
Due Workmen's Compensation Fund, borrowed by Governor, with inter- est to July 1, 1915.....	102,000.00
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Total charge against State Fund to July 1, 1915.....	\$923,345.93
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Estimated deficit July 1, 1915.....	\$212,550.83
Less amount paid on appropriation bill for 1916, prior to April 1, 1915, items provided for fiscal year 1915, (cost of Legislature, miscellaneous appropriations, etc.).....	116,114.87
Leaving estimated deficit July 1, 1915, not including amount due blank appropriations.....	96,435.96

FISCAL YEAR

1916

Estimated income direct tax from Governor's message to Legislature	
March 3rd.....	1,150,000.00
Ditto, license and other tax.....	1,175,000.00
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Total revenue 1916.....	\$2,325,000.00
(Auditor's estimate of income 1916, page 182 Biennial Report \$2,349,500.)	
Total of all appropriations regular and extra session.....	2,259,957.35
Amount to be charged off by virtue of Chap. 51 Acts 1915, transferring the "entire cost of care, maintenance, transportation", etc. of inmates of asylum from State Fund to respective counties.....	\$261,427.98
Amount to be charged off by virtue of Chap. 2 Acts 1915, extra session Workmen's Compensation....	86,200.00
Ditto. Salary Compensation Commissioner.....	6,000.00
Amount to be charged off by virtue of Chap. 8 Acts 1915, Salaries Public Service Commissioners.....	18,000.00
Total deductions.....	371,627.98
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Balance appropriations 1916.....	\$1,888,329.37
Less 10 per cent estimated remaining unexpended.....	188,832.93
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Balance.....	\$1,699,496.44
Transfer to General School Fund.....	400,000.00

Total expenditures, State Fund.....	\$2,099,496.44
Revenue over expenditures.....	255,503.56
Deduct balance deficit from fiscal year 1915.....	<u>96,435.96</u>
Balance State Fund (including blank appropriations).....	129,067.60

FISCAL YEAR

1917

Estimated income direct tax Governor's message March 3rd.....	\$1,150,000.00
Ditto. License and other tax.....	<u>1,175,000.00</u>
Total revenue.....	\$2,325,000.00
(Auditor's Estimate \$2,349,500)	
Total appropriations for 1917.....	\$2,036,350.00
Amount to be charged off by virtue of Chap. 51 Acts 1915, transferring the "entire cost of care, maintenance, transport- ation", etc. of inmates of asylums, from State Fund to respective coun- ties.....	\$261,427.98
Amount to be charged off by virtue of Chap. 2, Acts 1915, Extra session Workmen's Compensa- tion.....	86,200.00
Ditto. Salary Compensation Commissioner.....	6,000.00
Amount to be charged off by virtue of Chap. 8 Acts 1915, Salary Public Ser- vice Commissioners.....	<u>18,000.00</u>
	<u>371,627.98</u>
Appropriations less deductions.....	1,664,722.02
Less 10 per cent estimated remaining un- expended.....	<u>166,472.20</u>

Balance.....	1,498,249.82
Transfer to General School Fund.....	<u>400,000.00</u>
Total expenditures State Fund 1917....	\$1,898,249.82
Revenue over expenditures.....	426,750.18
Balance from 1916.....	<u>129,067.60</u>
Surplus revenue end of Biennial Period 1916-1917.....	\$555,817.78

From the foregoing it will appear that at the close of the fiscal year 1916, after the repayment of the \$100,000.00, and interest thereon borrowed by the Governor out of the Workmen's Compensation Fund, there would be a balance of revenue to the credit of the state fund, after allowing disbursements of \$129,067.60 and after paying deficit of \$96,435.96 existing in 1915, there will be a balance of revenue for the year ending June 30, 1917, of \$426,750.18 making a total surplus after discharging all prior indebtedness of \$555,817.78, at the close of the Biennial Period, June 30, 1917.

I have made some observation of probable income, and expenditures based on official information, to and from the state fund, for the next biennial period, from July 1, 1916, to June 30, 1917, inclusive, which is as follows:

Estimated revenue 1916-1917.....	\$4,650,000.00
Total appropriations biennial period 1916-1917.....	\$4,296,307.35
Less deductions as provided by recent acts of Legislature of 1916-1917...	<u>743,255.96</u>
Appropriations less deductions.....	3,553,051.39
Less 10 per cent estimated remaining unexpended.....	<u>355,305.13</u>
Total appropriations to be expended less deduction.....	3,197,746.26
Transfer to General School Fund 1916- 1917.....	<u>800,000.00</u>
Total expenditures State Fund 1916- 1917.....	<u>\$3,997,746.26</u>
Revenue over disbursements, biennial period 1916-1917.....	\$652,253.74

From the above it appears that for the biennial period the receipts over disbursements would be \$652,253.74. These figures are predicated upon the amount of income it is conceded will be derived, and upon the reductions which are authorized by recent statutes and a deduction of 10 per cent from the appropriation bill to be expended. This deduction of 10 per cent is much less than has remained unexpended in previous years, the percentage being for 1910, about 26 per cent; 1911, 23 per cent; 1912, 27 per cent; 1913, 27 per cent; 1914, 28 per cent. And while the item of \$261,427.98 collected from the counties for the support of the insane will not all be collected for both years (the payment therefor being due respectively in the succeeding year), yet it will be a valid obligation from responsible debtors, and therefore should be considered as an asset.

With reference to the \$828,934.89 unexpended appropriations of previous Legislatures such appropriations cannot at this time properly be charged even as a paper deficit as the amount has not been expended, as you both know, and for the very good reason that it was clearly apparent to those in charge of the affairs of State that the available revenue being insufficient, it necessarily followed that some of the improvements and incidentals contemplated by the Legislature must be curtailed or abandoned. So it was unanimously agreed by the Board of Public Works to leave as much of the appropriations unexpended as possible, and the Governor agreed he would use his good offices with the Board of Control to get it to expend as little of the appropriations as it reasonably could get along with and to get it to refrain from expending money for buildings and permanent improvements, which agreement and understanding was carried out. As a consequence, there remained for the year 1913 \$816,966.12 of the appropriation bill unexpended, and \$828,934.89 unexpended for the year 1914. If there be an intention to spend these remaining appropriations (as to which I am not advised), it must have arisen very recently.

In the foregoing tabulated statement I have therein assumed that the same amount of expenditures would be made for the last three months of the present fiscal year as was expended for like period of last year, and that the same relative income will inure to the state fund.

Section four Article ten, provides that "the payment of any

liability other than that for the ordinary expenses of the state, shall be equally distributed over a period of at least twenty years."

It will thus be seen that any indebtedness incurred as limited in said section shall be paid in equal installments embracing a period of at least twenty years, except "the ordinary expenses of the state." What are ordinary and extraordinary expenses are somewhat well defined and differentiated by the law writers and decisions of the courts. It is well established that expenses incurred in construction, enlargement and improvement of buildings is an extraordinary expense and that maintenance and operation is an ordinary expense. Therefore, the Governor, in case of a casual deficit, would have no authority to borrow money except for the ordinary expense of the state, which includes maintenance and operation, nor would he have authority to borrow money for construction, enlargement and improvement of buildings.

In making the total deductions, which will amount annually to \$371,627.98 from which the recent acts of the Legislature relieved the state fund from payment, transferring payment thereof to the various counties, Workmen's Compensation fund, etc., there is the item of \$261,427.98, which will be charged to the counties for the keeping of the inmates of the asylums beginning with the first day of next July. This money cannot be collected until the next year, and while the Legislature has provided for the payment thereof by the respective counties, yet this money, although to the credit of the state fund for the care and maintenance of the insane, would not be immediately available.

The estimate of \$261,427.98 annually for the entire care and maintenance of the patients of state institutions is based upon the average per capita cost for the year 1914, as per the report of the Board of Control in regard to said institutions, and does not include repairs and improvements, which, if included by the Board of Control, under its construction and administration of the statute, would relieve the state fund of a considerable additional expense, which has not been included in the foregoing statement.

The state government must live. Finances for the support thereof is a necessary life-given element to that end. When temporary deficits exist, it is the fundamental law of this state that such deficiency may be relieved by temporary loans.

The right of the governor to borrow money, although it has been invoked on various occasions, in practically every administration, has never been, so far as I am advised, questioned. Not only is this so, but on various occasions the legislature has appropriated funds to pay interest on sums borrowed, thus giving its sanction to this course.

There exists now no extraordinary or peculiar reason why the state, by its chief executive officer, cannot borrow money to tide the finances of the state over until such time as they can be, if proper economy is invoked, and old appropriations that have heretofore not been expended are not now expended, replenished when the revenues, which the Legislature has provided, are made available in the ensuing biennial period.

The money now borrowed from the Workmen's Compensation fund can be repaid with interest and all other money necessary to tide the state over its temporary financial embarrassment can be paid, and at the end of the fiscal year 1917, there will be a balance in the State Treasury to the credit of the state fund of from a quarter to a half million dollars.

It was not contemplated by the forefathers who gave us the present constitution, nor by the legislatures that have enacted laws in pursuance thereof and in conformity therewith nor by those executive officers who have made various administrative interpretations and constructions of their rights to borrow money, that those charged with the administration of the state's affairs would permit a condition to continue with reference to the state's finances that would, in the eyes of our own people and of the world, exhibit us as not being able to meet conditions, such as now exists, by the borrowing of money. As individuals we would not hesitate to meet our own financial wants and necessities; then why should the state be cast on the breakers of financial ruin, bankrupt at home and without credit abroad, impairing its own prestige and fair name, resulting in irreparable injury to it and its loyal citizenship?

Therefore, in answer to your question as to whether or not money can be borrowed and, if so, by whom, I beg to advise that it is my opinion that when a casual deficit does exist, and, under the law and facts nothing more than that does now exist, the Governor of the state has the right to borrow money.

Very truly,

A. A. LILLY, Attorney General