

preceding particular words." Our appellate courts have frequently held that in construing statutes a general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words, or in other words, as comprehending only things of the same kind as those designated by them, unless there is something to show that a wider sense was intended: *City of Corry v. The Corry Chair Co.*, 18 Pa. Superior Ct. 271; *Dalzell's Estate*, 96 Pa. 327, 331. It follows from the language of the Act of 1915, *supra*, and the rules of construction applicable thereto, that the expression "other claims" cannot be construed to include an easement or right of way. (*Italics supplied*)

The fact that the mutual casualty insurance company now seeking the amendment in question has been engaged solely in the health and accident insurance business does not alter the general principle hereinbefore discussed. It furnishes a persuasive argument in favor of the granting of an exception by the legislature to a company which seeks by amendment to convert itself into another class in which the same kind of insurance may be written. However, the legislature has not as yet authorized such a transition and we can find no basis for reading such authority into the Insurance Company Law.

Accordingly, you are advised that a Pennsylvania insurance company incorporated as a mutual insurance company other than a mutual life insurance company, even though it is engaged in writing health and accident insurance, may not amend its charter so as to become a mutual life insurance company.

Very truly yours,

DEPARTMENT OF JUSTICE,

T. McKEEN CHIDSEY,

Attorney General.

GEORGE W. KEITEL,

Deputy Attorney General.

OPINION No. 595

General State Authority—Department of Property and Supplies—Opinion concerning certain legal problems:

1. (a) The Contract to Lease and Lease itself, if for a term of not more than thirty years, will be when properly approved, executed and delivered a valid,

legal and binding obligation to pay the rental therein provided out of current revenues;

(b) Once a contract to lease a project is properly approved, executed and delivered, neither the Department of Property and Supplies nor the Commonwealth can specifically direct or compel the Authority not to complete the particular project;

2. The proposed form of approval by the Governor appended to the Contract to Lease is legally valid and a sufficient approval to require the Department of Property and Supplies to execute a lease upon the terms and conditions of the Contract to Lease and the attached form of Lease, without further approval by the Governor.

3. The aggregate of the rentals under the Contract to Lease and the Lease itself do not constitute a prohibited debt of the Commonwealth within the meaning and provisions of Article IX, Section 4 of the Constitution of Pennsylvania; and

4. The Bonds of the Authority do not constitute debts of the Commonwealth within the meaning and provisions of Article IX, Section 4 of the Constitution of Pennsylvania.

Harrisburg, Pa., July 11, 1949.

Honorable C. M. Woolworth, Secretary of Property and Supplies,
Harrisburg, Pennsylvania.

Sir: This department is in receipt of your request for an opinion concerning certain legal problems which have arisen due to the program of The General State Authority and the Department of Property and Supplies. We understand the Authority will construct buildings and improvements, low head dams, impounding basins, desilting dams and various other projects for the State as authorized by The General State Authority Act of 1949, Act No. 34, approved March 31, 1949. Prior to the commencement of construction, the Authority and the Department of Property and Supplies propose to enter into a Contract to Lease the project at a rental based upon the estimated cost of the project and an estimated rate of interest for which its bonds will be sold. Provision is made for adjustment of rental when actual costs are known so that the rental charged will in all respects comply with the provisions of the Resolution authorizing the bonds of the Authority. The Contract to Lease has reference to the attached form of Lease containing the terms and conditions of the tenancy to be created, but the rental, the term and the date of commencement are to be fixed pursuant to the terms of the Contract to Lease. There is also appended to the Contract to Lease a form of approval by the Governor.

We shall answer your questions seriatim. The first question is:

1. (a) Is the contract to lease and the lease itself, when properly signed, a binding obligation to pay out of current revenues?

The Act of 1949, *supra*, in Section 4(h) empowers the Authority:

To fix, alter, charge, and collect rates, rentals, and other charges for the use of * * * projects * * * at reasonable rates, to be determined by it, for the purpose of providing for the payment of the expenses of the Authority * * * the payment of the principal of and interest on its obligations, and to fulfil the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

By Section 9.1 of the Act, the Department of Property and Supplies:

* * * shall have power and authority, with the approval of the Governor, to enter into contracts with the Authority, to lease as lessee from the Authority any or all of the projects undertaken by the Authority for a term, with respect to each project constructed, not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority, and upon the completion of the said projects, the department shall have power and authority, with the approval of the Governor, to lease as lessee any or all of the projects completed by the Authority for a term, with respect to each project leased, not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority.

In our opinion, each Contract to Lease and Lease when properly approved, executed and delivered, if for a term permitted by law will be a legal, valid and binding instrument in accordance with its terms, obligating the Commonwealth to pay the rentals provided for therein out of its current revenues. The validity of long-term leases, payable out of current revenues, has been sustained many times. See *Kelley v. Earle*, 325 Pa. 337, 347, 190 Atl. 140, 145 (1937); *Scranton Electric Co. v. Old Forge Boro.*, 309 Pa. 73, 163 Atl. 154 (1932); *Wade v. Oakmont Borough*, 165 Pa. 479, 30 Atl. 959 (1895).

Your next question is:

1. (b) Once the contract to lease is signed, executed and delivered, can the Department of Property and Supplies or the Commonwealth direct the Authority not to complete the project?

This question must be answered in the negative. The essence of a binding contract is that it can be terminated only by mutual consent. Once the Contract to Lease is made, unilateral termination by the Commonwealth will not be possible. This is especially true where the Authority has, on faith of the Commonwealth's obligation, sold bonds. The Act specifically provides in Section 14, that:

The Commonwealth does hereby pledge to and agree with any person, * * * subscribing to or acquiring the bonds to be issued by the Authority * * * that the Commonwealth will not limit or alter the rights hereby vested in the Authority until all bonds at any time issued, together with the interest thereon, are fully met and discharged. * * *

Your next question reads:

2. Is the proposed form of approval by the Governor in the contract to lease sufficient so that Property and Supplies can execute the form of lease in accordance with the contract to lease without further approval by the Governor?

By its terms, the approval of the Governor appended to the Contract to Lease specifically approves the execution of the Lease in accordance with the terms of the Contract to Lease without further approval by the Governor. In our opinion, the form of approval is valid, legal and binding. It authorizes only ministerial acts in the future, a mathematical calculation of costs and interest and execution and delivery of documents containing terms previously approved. The provision in Section 9.1, quoted above, that "upon the completion of the said projects, the department shall have power and authority, with the approval of the Governor, to lease as lessee" is satisfied by the proposed form of approval, as the statute does not state when the approval is to be given. It is only the entry into the Lease that must await completion of the project. Any other interpretation would render meaningless the preceding sentence as the Contracts to Lease there mentioned would be wholly ineffective. In our opinion, further approval of the Governor will only be required whenever the proposed Lease contains terms not covered by the prior approval. And, of course, specific approval is required should a project be constructed and leased or acquired and leased without a previous Contract to Lease. As a matter of evidence, the department and the Authority must be able to demonstrate that the formal lease, when entered into, is in accordance with the approval. This can readily be done by attaching to the formal lease as an exhibit the relevant Contract to Lease, appended approval and attached form of Lease.

You next ask:

3. Will the aggregate of the rentals under the contract to lease and the lease itself constitute a debt of the Commonwealth within the meaning of the Constitution?

You refer, of course, to Article IX, Section 4, of the Constitution. The Supreme Court in the very recent case of *Greenhalgh v. Woolworth et al.*, 361 Pa. 543, 64 A. (2d) 659 decided on March 21, 1949,

ruled in almost the precise situation that the aggregate of rentals did not constitute a prohibited indebtedness. The case involved an attack upon the constitutionality of the State Public School Building Authority. That Authority and the School District of the Borough of West Mifflin had entered into a Contract to Lease a school building to be constructed by that Authority. The contract was similar to the one involved in your question.

The Court in upholding that Act and contract said:

* * * And, inasmuch as the rental is, by the terms of the proposed lease, payable solely from current revenues, there is no question present of any possible increase in the indebtedness of the School District through its execution of the proposed contract with the Authority and the consequent lease. As was said in Appeal of the City of Erie, 91 Pa. 398, 403,—“If the contracts and engagements of municipal corporations do not overreach their current revenues, no objections can lawfully be made to them, however great the indebtedness of such municipalities may be; for in such case their engagements do not extend beyond their present means of payment, and so no debt is created.” See also, *Wade v. Oakmont Borough*, 165 Pa. 479, 488, 30 A. 959.

An identical question was raised with regard to the Leases and Contracts to Lease of the former General State Authority. In ruling that the aggregate of the lease rentals did not constitute an unconstitutional indebtedness, the Supreme Court in *Kelley v. Earle et al.*, 325 Pa. 337, 190 Atl. 140 (1937) said:

It was conceded at the argument that contracts or leases to meet recurrent needs the obligation of which is to be met by the Commonwealth from current revenues extending beyond the biennium are not within the constitutional limitation. This court, through Mr. Justice Drew, so expressed itself in the former decision on this case: *Kelley v. Earle*, supra, at page 457. See also *Scranton Elec. Co. v. Old Forge Boro.*, 309 Pa. 73; *Wade v. Oakmont Boro.*, 165 Pa. 479; *Metropolitan Elec. Co. v. City of Reading*, 175 Pa. 107. As far as municipalities are concerned if such obligations are met from current revenues from year to year, they cannot be considered debts in the constitutional sense, even though the aggregate or sum total of all payments should exceed the constitutional limitation. See *Wade v. Oakmont Boro.*, supra. The same rule applies to the State. The amended record shows revenues on hand sufficient to meet rent charges during the biennium, and other similar demands will be taken care of in appropriations by the legislature. The effect of the above decisions is unquestionably controlling in the matter before us. The court has held that these contracts extending over a long period of time were not to be considered in their aggregate so as to violate the constitutional inhibition. * * *

It is our opinion, therefore, that the aggregate of the rentals under the Leases and the Contract to Lease does not constitute an unconstitutional debt of the Commonwealth within the meaning and provisions of Article IX, Section 4 of the Constitution of Pennsylvania.

Your fourth and final question is:

4. Are the bonds of the Authority a constitutional debt of the Commonwealth?

The act before us follows very closely the provisions of the former General State Authority Act. The differences in our opinion have no significance so far as the question here raised is concerned. The bonds state that they do not constitute obligations of the Commonwealth and the act specifically so provides. We feel that the question is controlled by the case of *Kelley v. Earle*, supra. Other cases have likewise held that Authority bonds are not debts of the political entity leasing its projects. See *Greenhalgh v. Woolworth, et al., Tranter v. Allegheny County Authority, et al.*, 316 Pa. 65, 173 Atl. 289 (1934) and in *Kelley v. Earle*, supra, the Court said:

It is urged that the transaction is in effect a purchase of capital assets by installments. To sustain this conclusion, of necessity we must hold the agreement a sale; we have held the agreement is a lease and nothing more. If this were an outright purchase of property to be paid for in the future it would undoubtedly be within the constitutional objection, but it is not a purchase nor does it have the attributes of a purchase. The title to the property is in the lessor Authority, it may be subjected to defined uses and purposes by the trustee under the deed of trust; the Commonwealth, under the lease, cannot intermeddle with it if a default in the payment of rent exists. The fact that the proposed plan might be termed an evasion of the Constitution, would not condemn it unless such evasion was illegal. "It is never an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do it": *Tranter v. Allegheny County Authority*, supra, at p. 84. The bonds of the Authority are to be paid out of its revenues. * * *

By way of summation, we are therefore of the opinion and you are accordingly advised that:

1. (a) The Contract to Lease and Lease itself, if for a term of not more than thirty years, will be when properly approved, executed and delivered a valid, legal and binding obligation to pay the rental there-in provided out of current revenues;

(b) Once a contract to lease a project is properly approved, executed and delivered, neither the Department of Property and Supplies