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1. ARMED FORCES UNITED STATES—TAX VOTED BY ELECTORS OF COUNTY TO ESTABLISH COUNTY MEMORIAL—LEVIED AGAINST TAXABLE PROPERTY, ENTIRE COUNTY—WHERE TOWNSHIP ISSUED VOTED BONDS TO ESTABLISH TOWNSHIP MEMORIAL, TAXABLE PROPERTY IN TOWNSHIP NOT EXEMPT FROM COUNTY LEVY—SECTION 3059 ET SEQ., G. C.
2. TETANUS ANTITOXIN TREATMENTS—EMPLOYES OF RENDERING PLANT WHO HANDLED BODIES OF CATTLE WHICH DIED OF LOCKJAW—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO PAY PHYSICIAN TO ADMINISTER TREATMENTS—DISTRICT HEALTH COMMISSIONER OF COUNTY—NO AUTHORITY TO PLEDGE CREDIT OF COUNTY.

## SYLLABUS:

1. A tax voted by the electors of a county under Section 3059 et seq., General Code, for the purpose of establishing a county memorial to commemorate the services of members and veterans of the armed forces of the United States, should be levied against the taxable property throughout the entire county, and the fact that one of the townships in the county may have issued voted bonds for the purpose of establishing a township memorial, will not exempt the taxable property in the township from the county levy.

2. County commissioners are without authority to pay a physician for administering tetanus antitoxin treatments to employees of a rendering plant who handled the bodies of cattle which had died of lockjaw, and the district health commissioner of the county was without authority to pledge the credit of the county therefor.

Columbus, Ohio, November 27, 1946

Hon. Mary F. Abel, Assistant Prosecuting Attorney  
Bellefontaine, Ohio

Dear Madam:

This will acknowledge receipt of your letter in which you state that one of the townships in your county has issued voted bonds for the purpose of establishing a memorial for war veterans, and request my opinion on the question whether or not a tax voted by the electors of the county

for the purpose of establishing a county memorial, may be levied against the taxable property in the township which has issued the bonds.

Under Amended Substitute Senate Bill No. 224, passed by the 96th General Assembly, and codified as Sections 3059 to 3069-2, inclusive, General Code, any township, municipality or county, acting through its taxing authority, is authorized and empowered to establish a memorial to commemorate the services of members and veterans of the armed forces of the United States, and to finance the same by voted tax levy or by the issuance of bonds, and there is nothing in these statutes which either expressly or impliedly prohibits a county from taking advantage of its provisions, merely because one of the townships in the county has done so.

Since the township referred to in your letter has elected to finance its memorial by the issuance of voted bonds, these bonds must of course be serviced by an annual tax levy against the taxable property in the township, as required by Section 11 of Article XII of the Ohio Constitution; and the county having elected to finance its memorial by a voted tax, this tax, because of the "uniform rule" requirement of Section 2 of Article XII of the Ohio Constitution, must be levied against all of the taxable property throughout the entire county, or, in other words, the tax must be levied against the taxable property in all of the subdivisions in the county.

In this connection, I quote the following from the opinion of the Supreme Court in *Exchange Bank of Columbus v. Hines, Treas.*, 3 O. S., 1, at page 15:

"The uniformity must be co-extensive with the territory to which it applies. If a state tax, it must be uniform over all the state; if a county, town, or city tax, it must be uniform throughout the extent of the territory to which it is applicable. \* \* \* It must be extended to all property subject to taxation, so that all property may be taxed alike, equally—which is taxing by a uniform rule."

In *State, ex rel v. Jones, Aud.*, 51 O. S. 492, it is said at page 505:

"Taxation by a uniform rule will require, that the rate of taxation shall be uniform, and such uniformity co-extensive with the territory to which it applies, whether the tax is a state, county, township, or city tax."

There is nothing in the Ohio Constitution which either expressly or impliedly exempts property in a township from being taxed for a county

purpose, such as for a county memorial for war veterans under Section 3059, et seq., merely because one of the townships in the county may have issued bonds for a township memorial, and no attempt whatever has been made by the legislature to create any such exemption, even had it the power to do so.

You are therefore advised that a tax voted by the electors of a county under Section 3059 et seq., General Code, for the purpose of establishing a county memorial to commemorate the services of members and veterans of the armed forces of the United States, should be levied against the taxable property throughout the entire county, and the fact that one of the townships in the county may have issued voted bonds for the purpose of establishing a township memorial, will not exempt the taxable property in such township from the county levy.

In your letter you have also requested my opinion as to the authority of the county commissioners to pay a bill presented to them by a physician for administering tetanus antitoxin to the employees of a rendering company. It appears in this connection that certain cattle had died of lockjaw, and after the dead animals had been delivered to the rendering plant, their bodies were handled by the employees without knowledge of the cause of death; that the health commissioner ordered the employees to take a "shot" of tetanus antitoxin each day for fifteen days, and informed them at the same time that the treatments could be administered by their own family physician, and that the county commissioners would pay the bill.

County commissioners and the county health commissioner are statutory officers, and have only such powers as are expressly delegated to them by statute, or are necessarily implied from those so delegated. This rule is particularly applicable with respect to financial transactions. The following quotations will confirm this statement.

In 32 O. Jur., page 933, section 74, it is said:

"As a general rule, public officers have only such powers as are expressly delegated to them by statute, or such as are necessarily implied from those so delegated."

In *State, ex rel. Locher v. Menning*, 95 O. S., 97, the court at page 99, used the following language:

"The legal principle is settled in this state that county

commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

In *Jones, Aud., v. Commissioners of Lucas County*, 57 O. S., 189, the following appears in the syllabus :

“The board of county commissioners represent the county in respect to its financial affairs, only so far as authority is given to it by statute.”

I have examined the statutes for their possible bearing and application to the case presented in your letter, and while the county health commissioner is empowered by Sections 2500 and 2501, General Code, to authorize physicians to furnish antitoxin for indigents in diphtheria cases, to be paid for by the county commissioners from the general fund, I have been unable to find any statute empowering the health commissioner to authorize physicians to administer tetanus antitoxin to persons under the circumstances mentioned in your letter, or to bind the county to pay physicians who may have administered such treatment. Nor have I been able to find any statute which imposes any liability upon the county for the bill in question, or which would authorize the county commissioners to recognize it as a valid claim against the county.

Although the physician and the health commissioner acted in good faith, and under an honest belief that the county commissioners could and would pay the bill, the fact remains that under the present state of the statutory law of the state, the commissioners are without authority to do so. The following quotation from 32 O. Jur., page 955, section 95, is pertinent at this point, viz :

“Public officials should consider themselves rather as trustees than philanthropists, in the appropriation and disbursement of public funds. Public funds may be disbursed only by clear authority of law. Mere good faith in making an improper payment of public funds is not generally recognized as an excuse.”

It seems to me that if the legislature intended bills of the kind referred to in your letter to be paid from the county treasury, it would have enacted legislation somewhat along the lines of Sections 2500 and 2501, supra, or as it has done in Section 5851, General Code, with respect to persons injured by a dog, cat or other animal afflicted with rabies.

You are therefore advised that county commissioners are not liable for the payment of the bill referred to in your letter, and that the county health commissioner was without authority to pledge the credit of the county for its payment.

Respectfully,

HUGH S. JENKINS  
Attorney General