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RETIREMENT SYSTEM, PUBLIC EMPLOYEES — CONTRIBUTIONS — MADE ANNUALLY BY EACH COUNTY, MUNICIPALITY, PARK DISTRICT, HEALTH DISTRICT AND PUBLIC LIBRARY — CURRENT EXPENSES — APPROPRIATIONS MADE FROM GENERAL FUNDS OF TAXING DISTRICTS PURSUANT TO UNIFORM TAX LAW — SECTIONS 486-33g, 5625-1 ET SEQ. — 5625-5, 5625-10 G.C.

**SYLLABUS:**

The contributions to the employers accumulation fund of the public employes retirement system, required by Section 486-33g, General Code, to be made annually by each county, municipality, park district, health district and public library, constitute a part of the current expenses of said subdivisions respectively, and appropriations therefor are to be made from the general funds of the several taxing districts as established pursuant to the Uniform Tax Law, Section 5625-1 et seq. of the General Code, and more particularly by Sections 5625-5 and 5625-10.

Columbus, Ohio, December 31, 1942

Hon. Herbert R. Freeman, Prosecuting Attorney,  
Norwalk, Ohio.

Dear Sir:

I have your letter requesting my opinion, which reads as follows:

“I would like, if possible, your opinion on the following question:

The second section of Section 486-33g of the General Code of Ohio reads as follows:

‘The commissioners of each county, the legislative body of each municipality, the board of commissioners of any park district, the board of directors of any conservancy district, the fiscal officers of any health district and the board of trustees of each public library shall appropriate sufficient funds to provide for such obligations of such county, public library or municipality.’

This relates to the payment of the contribution to the employer's accumulation fund as set forth in Section 486-33f.

My examination of the statute does not reveal that there is any specific statement with reference to the funds which may be appropriated for the purpose of making the county's contribution. Assume, for example, that out of the gasoline tax funds, so-called, salaries and wages in the amount of \$10,000 are paid in the course of a year in the engineers department, assume further that this amount of salaries and wages would require a contribution of \$200.00 by the county to the accumulation fund, have the county commissioners authority to appropriate the said \$200.00 from the gasoline tax fund?”

The portion of Section 486-33g of the General Code which you quote requires the retirement board, prior to July 15th of each year, to submit to the commissioners of each county and to the executive head of each of the other subdivisions which are subject to the public employes retirement act, an itemized statement of the amount necessary to pay the obligation of each county or other subdivision accruing during the year beginning January 1st of the following year, and further provides:

“The amount so certified to each county, public library and municipality shall be included in its budget and allowed by the budget commission.”

Section 5625-4 of the General Code, being a part of the Uniform Tax Law, provides as follows:

“The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

1. The general levy for debt charges within the ten mill limitation.
2. The general levy for current expenses within the ten mill limitation.
3. Special levies authorized by the provisions of this act within the ten mill limitation.
4. The general levy for debt charges authorized by law or by vote of the people outside of the ten mill limitation.
5. Other special or general levies authorized by law or by vote of the people outside of the ten mill limitation."

Section 5625-5 indicates the purpose and intent of the general levy for current expenses, the proceeds of which are referred to in the statutes as the general fund. This section reads in part as follows:

"The purpose and intent of the general levy for current expenses is to provide *one general operating fund* derived from taxation from which *any expenditures for current expenses* of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but except the construction, reconstruction, resurfacing or repair of roads and bridges in counties and townships and the payment of debt charges. \* \* \* " (Emphasis mine.)

Section 5625-9 requires each subdivision to establish certain funds. It reads as follows:

"Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenues derived from

a source other than the general property tax, which the law requires to be used for a particular purpose.

(g) A special fund for each public utility operated by a subdivision.

(h) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

Section 5625-10 provides in part as follows:

"All revenue derived from general levy for current expense within the ten mill limitation; from any general levy for current expense authorized by vote outside of the ten mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund. \* \* \*

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. \* \* \*"

Sections 5625-20 and 5625-21 require each subdivision to prepare annually a budget of anticipated receipts and expenditures. This is followed by the levy of taxes for the general and special funds and the annual appropriation ordinance or resolution. It seems clear that unless otherwise specifically provided, all current operating expenses are to be appropriated from the general fund, made up as set out in Section 5625-10, above quoted. The general obligation, imposed upon the various subdivisions by Section 486-33g, to contribute to the public employes retirement fund, is certainly a part of the current expense of the subdivision. It would be competent for the Legislature to authorize a distribution of this expense to special funds, such as the returns from the operation of utilities and revenues derived from motor vehicle or gasoline taxes, but it does not appear to have done so, and the appropriation for such contributions must come from the general fund.

In your letter you call particular attention to the possibility of paying out of the gasoline tax funds that portion of the contribution required of the county to the public employes retirement fund, which would represent the proportionate share of the department engaged in the repair and maintenance of highways.

In an opinion by one of my predecessors, found in Opinions of Attorney General for 1924, p. 478, the Attorney General had before him the question as to the right of the several subdivisions, in making their required contributions to the state insurance fund, to apportion this contribution among the several funds for which taxes are raised; and also the propriety of charging a portion of such contribution to the revenues from the waterworks. It was held:

“The contribution of the several subdivisions to the state insurance fund is a charge against the subdivision as a whole. There is no provision in the statute for apportioning this contribution among the several funds for which taxes are raised. The general funds of the county may not legally be reimbursed from the waterworks fund for its proportion of the contribution to the state insurance fund.”

After discussing the provisions of the tax laws as they then stood, Section 5649-3a, et seq., and which bear a close similarity to the present budget and tax laws, the Attorney General called attention to the provisions of the state insurance law, particularly to Sections 1465-65 and 1465-66, which required the auditor of state to prepare a list showing the amount of money due from each county and from each other taxing district as its proper contribution to the state insurance fund, and required the auditor of each county to issue his warrant in favor of the treasurer of state for the aggregate amount due from each county, for such county and the taxing districts therein, to the state insurance fund, and to charge the amount paid to the county and the several taxing districts therein as shown by such list. The Attorney General then said:

“The language of these sections indicates the intention that the contribution to the State Insurance Fund should in itself constitute a charge against the political subdivision as a whole without reference to the several funds for which levies are made within the subdivision. Some of these funds are not such as could be charged with a contribution, and in the case of the sinking fund no part of it could be used for that purpose. The amount necessary for payment of this contribution from the political subdivision should be considered in determining the levy for general governmental purposes for that subdivision.”

In a subsequent provision of the laws relating to the Industrial Commission, and particularly the state insurance system, Section 1465-66a was added, effective August 1, 1931. This section provides as follows:

“The legislative body of any county or taxing district may reimburse the fund from which such contribution is made by transferring to such fund from any other fund or funds of such county or taxing district, the proportionate amount of such contribution that should be chargeable to such fund or funds whether such fund or funds be derived from taxation or otherwise.”

There was thus evidenced a legislative intention to permit a charge against special funds to reimburse the general fund of the county or other taxing district for a proportionate amount of the contribution of such taxing district to the state insurance fund. Likewise, in the act providing for the administration of poor relief (Section 3391 et seq., General Code), it is provided by Section 3391-9:

“Premiums to the industrial commission of Ohio on account of recipients on work relief shall be paid by the local relief area from any funds available for poor relief.”

It is significant, however, that as to contributions by the county and the several other districts which are subject to the public employes retirement system, no such provision has been made, and it seems evident that the contribution required of each of such subdivisions must be regarded as a part of its general operating expenses and be paid out of the general fund of the several subdivisions, produced by its levy for general purposes.

Referring specifically to the funds mentioned in your letter, to-wit, the gasoline tax funds, with which we might also class the proceeds of the motor vehicle licenses, I note that there has been a disposition for a long time, as shown by a number of opinions by this department, to hold the application of these funds strictly within the limits of the purposes stated in the statutes creating them. As to these funds, it may be noted that Section 5537, relating to what is called the first gasoline tax, provides that the funds raised therefrom and allocated to the counties, shall be used “for the sole purpose of maintaining and repairing the county system of public roads and highways within such counties.” Section 5541-8, relating to what is commonly called the second gasoline tax, provides that the portion of that fund allocated to the counties shall be used for the sole purpose of “constructing, widening and reconstructing such roads and highways”. Section 6309-2, relating to the motor vehicle license tax, requires the county’s share of that tax to be used “for the maintenance, repair, construction and repaving of public streets, and maintaining and repairing bridges and viaducts.”

The closeness to which the subdivisions have been held in the expenditure of these funds to the purposes stated in the statutes is illustrated by an opinion of one of my predecessors, found in Opinions Attorney General for 1924, p. 254, where it was held:

“1. A part of the general expenses of the engineering department of a city, whose functions include maintenance and repair of streets, as that phrase is defined in section 6309-2 of the General Code, may not be legally paid from the municipality's share of the motor vehicle license tax.

2. Expenses of providing engineering for the special purpose of such maintenance and repair may legally be paid out of such maintenance and repair fund.”

In 1939 the Legislature enacted Section 2782-2, supplementary to the provisions of the Code relating to the office of county surveyor, which provides as follows:

“Two-thirds of the cost of operation of the office of county engineer, including the salaries of all of the employes thereof and the cost of the maintenance thereof as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses as distributed by section 6309-2 of the General Code, and from the county's share of the fund derived from the motor vehicle fuel tax as distributed by section 5541-8 of the General Code.”

I had occasion, in an opinion dated December 13, 1939 (Opinions Attorney General 1939, p. 2334), to consider the last quoted section, and held:

“The salary of the county engineer is payable from the general fund of the county and is not included in the provisions of Section 2782-2, General Code, concerning the payment of the salaries of all of the employes of the office of the county engineer.”

In the course of the opinion it was stated:

“The intention of the Legislature apparently was to restrict the use of motor vehicle license and motor vehicle tax funds as levied by Sections 5527 and 5541, General Code, to the construction, improvement, maintenance and repair of public highways.”

It certainly cannot be claimed that retirement allowances for persons who work on the repair and maintenance of roads constitute a part of the expense of road repair or maintenance. Rather they are a part of a system of social security.

While your question seems to be directed specifically to the use of gasoline tax funds, I assume that the purpose of your inquiry is to arrive at a conclusion as to all the departments and functions of the county which might be supported by special funds. It is my opinion that unless otherwise specifically provided, all contributions required by law to be made by a county to the public employes retirement fund are payable out of the general fund of the county and not out of any special fund, whether raised by taxation or otherwise.

Respectfully,

THOMAS J. HERBERT  
Attorney General.