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1. RESTAURANTS—INFORMATION AS TO FUNDS RECEIVED BY BOARD OF HEALTH FROM LICENSE FEES FOR RESTAURANTS MUST BE REPORTED TO COUNTY BUDGET COMMISSION — SECTIONS 3732.01 ET SEQ., 5705.29 RC.
2. BOARD OF HEALTH—AUTHORIZED TO EXPEND FUNDS REALIZED FROM LICENSE FEES FOR DESCRIBED PURPOSES—COUNTY BUDGET COMMISSION WITHOUT AUTHORITY TO LIMIT OR CONTROL APPROPRIATION OR EXPENDITURE OF THE FUNDS — SECTIONS 3732.01 THROUGH 3732.08 RC.

SYLLABUS:

1. Information relative to the funds received by a board of health from license fees for restaurants, pursuant to Section 3732.01 et seq., of the Revised Code, must be reported to the county budget commission under the provision of Section 5705.29, Revised Code.

2. The board of health of any health district is authorized to expend the funds realized from license fees levied pursuant to Sections 3732.01 to 3732.08, inclusive, of the Revised Code, for the purposes therein prescribed, and the county budget commission is without authority to limit or control the appropriation or expenditure of such funds.

Columbus, Ohio, April 30, 1954

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Under Sections 3732.01 and 3732.04 of the Revised Code of the State of Ohio, certain license fees shall be levied upon each food service * * * etc., and shall be placed into a special fund for the purpose of administering and enforcing 3730.02 to 3732.08 of the Revised Code. My question is as follows:

“Are the monies received under these sections considered as coming under the statutory provisions that make the Budget Commission of the county responsible for allocation of these

monies; or can these monies be authorized for payment, by the Board of Health of the county, without a previous allocation?"

Sections 3732.01 to 3732.08, Revised Code, were new enactments introduced into the Revised Code. By the terms of the act, they became effective October 29, 1953. Generally speaking, the act provides for licensing all food service operations, "commonly known as restaurants."

By the provisions of Section 3732.02, Revised Code, the public health council has general supervision of the enforcement of the act, and is authorized to provide uniform standards of plans, equipment and supplies to be used by the various city or general health districts in the granting of licenses and inspection of food service operations, as defined in the law.

Every person conducting such food service operation is required to procure a license annually from the city or general health district in which his establishment is located.

By the provisions of Section 3732.04, Revised Code, the annual license fee is to be determined by the licensor, the board of health of the district, subject to the approval by the public health council, in an amount not to exceed the cost of inspection and enforcement. This section further provides in part:

"* * * The sum of three dollars of each such license fee shall be transmitted by the licensor to the treasurer of the state, to be placed in a special fund to be used by the director of health for the purpose of administering and enforcing sections 3732.02 to 3732.08 of the Revised Code. * * * The portion of this tax retained by the licensor shall be paid into a special fund and *used only* for the purpose of administering and enforcing sections 3732.02 to 3732.08, inclusive, of the Revised Code."

(Emphasis added.)

Section 3732.05, Revised Code, makes it the duty of the department of health of each city or general health district to inspect every "food service operation" which comes within the provisions of the act.

I direct particular attention to that portion of Section 3732.04, which provides that the portion of the tax retained by the licensor shall be paid into a special fund, and used only for the purpose of administering and enforcing the act. This leads directly to the question what, if any duty or authority rests in the county budget commission, with respect to the moneys so received.

The statutes relating to the county budget commission and its operation are found in Section 5705.27 et seq., of the Revised Code, formerly Section 5625-19 et seq., of the General Code, forming a part of the act passed in 1927, known as the Uniform Tax Law. Under the provisions of Section 5705.28, Revised Code, it is the duty of the taxing authority of each subdivision or other taxing unit to adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board, commission and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority or, in the case of a municipal corporation, with its chief executive officer, before the first day of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year.

Section 5705.29, Revised Code, outlines the details required in such tax budget, including a statement of the necessary current operating expenses, the requirements for permanent improvements, the amount required for the payment of final judgment, the proposed expenditures for any purpose for which a special levy is authorized and certain comparative statements relative to previous years. This section further requires details as to the estimated receipts from sources other than tax levies. Among other required items is:

“(B) (1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current year, and the funds to which such estimated receipts are credited; * * *

(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenue for the current year and the two preceding years.”

Section 5705.32, Revised Code, reads in part as follows:

“The county budget commission shall adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, so as to bring the tax levies required therefor within the limitations specified in sections 5705.01 to 5705.47, inclusive, of the Revised Code, for such levies, but no levy shall be reduced below a minimum fixed by law. The commission shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.
* * *”

Section 5705.34, Revised Code, requires the budget commission, when it has completed its work, to certify its action to the taxing authority of each taxing subdivision or taxing unit, together with an estimate by the county auditor of the rate of tax necessary to be levied by each taxing authority. From these provisions it seems very clear that the main purpose of the institution of the budget commission is to arrive at the amount of tax that should be and may be levied within the constitutional and statutory limitation by each of the taxing authorities.

The case of *State, ex rel. Crawford v. Carr*, 17 Abs., 449, decided by the Court of Appeals of Montgomery County, was an action in mandamus to require the county commissioners to appropriate funds to pay the salary of assistants to the prosecuting attorney. The defense claimed that the budget law of 1927 had impliedly repealed the statutes which authorized the Court of Common Pleas to fix the salaries of such assistants. The court held as indicated by the headnotes:

“3. The general purpose of the Budget Act of 1927 was to create a uniform rule of county budgeting in order that counties might live within their incomes.

“5. The County Budgeting Act of 1927 did not repeal by implication §§ 2915, 2915-1, GC, authorizing the judges of the Court of Common Pleas to fix the compensation of assistants to the prosecuting attorney and that of the secret service officer of the prosecutor’s office.”

The court in that case of *Jenkins v. State, ex rel.*, 40 Ohio App., 312, where it was held by the Court of Appeals of Jackson County:

“1. The benefits accorded to an agricultural society by Section 9894, General Code, are not affected by the subsequently enacted appropriation code, Sections 5625-1 to 5625-39, General Code.

“2. An agricultural society qualified under Section 9894, General Code, to receive the benefits provided by that section cannot be deprived of those benefits by any act of the budget commission under Section 5625-24, General Code.”

This case was decided by the Court of Appeals of Jackson County, and grew out of an action in mandamus to require the county commissioners to appropriate for the benefit of the agricultural society the minimum sum prescribed by Section 9894, of the General Code. In the course of the opinion, it was said:

“The record discloses an unfortunate condition in the fiscal affairs of the county. When the commissioners presented their budget to the budget commission for the year 1931, they included an allowance of \$1,500 to the agricultural society under Section 9894, General Code. The testimony seems to disclose that the budget commission undertook to disregard this claim in making the county levy. If the agricultural society had an unqualified right to an allowance from the county treasury it was, of course, beyond the power of the budget commission to affect that right by assuming to ignore it in making the levy for the county. * * *”

The principle of these cases would appear to be equally applicable as limiting the power of the budget commission in dealing with the license fees here under consideration.

It might appear, therefore, that the receipts from the license fees in question could not in any way enter into the matters with which the budget commission is concerned. It is plain that these moneys could not be mingled with the general funds of a health board, or an accumulated balance therein be used directly to reduce the necessary tax levies for the townships or municipalities who contribute to the support of the health district, as provided in Section 3709.28, Revised Code.

However, it does not follow that the estimate of receipts and expenditures pertaining to this special fund are not to be presented to the budget commission. The statute makes no exception in requiring all sources of income to be laid before the commission. The law plainly contemplates that the commission is to have before it all possible data which will throw light upon the financial situation and needs of the several taxing subdivisions, and the various departments and agencies which are to be supported by taxation. In the matter of the particular function here under consideration, it appears to me that the administration of this license system by the board of health will inevitably be woven into the general conduct of the office, and if the balance in the license fund should grow to considerable proportions, it may have some bearing on the allowances for general administration, and on the contrary, if the license fund was inadequate to provide for the required inspection, the general office force might be called upon to assist. I see no legal obstacle to supplementing the license fund by allowances from the general fund if that should become necessary. These considerations would have some bearing on the amount of tax that would have to be levied and apportioned to the supporting subdivisions.

Plainly, the budget commission would have no authority to order either an increase or reduction of the amount of the license fee in any case, nor could it divert the expenditure of the fund away from the purpose to which the statute confines it. The provision of Section 3732.04 supra, virtually amounts to an appropriation by the legislature of the funds arising from these license fees, and the budget commission would certainly have no authority to take any action which would limit or interfere with their expenditure by the board of health in carrying out the duties prescribed by the statute.

Accordingly in specific answer to your question, it is my opinion :

1. Information relative to the funds received by a board of health from license fees for restaurants, pursuant to Section 3732.01 et seq., of the Revised Code, must be reported to the county budget commission under the provision of Section 5705.29, Revised Code.

2. The board of health of any health district is authorized to expend the funds realized from license fees levied pursuant to Sections 3732.01 to 3732.08, inclusive, of the Revised Code, for the purposes therein prescribed, and the county budget commission is without authority to limit or control the appropriation or expenditure of such funds.

Respectfully,
C. WILLIAM O'NEILL
Attorney General