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COUNTY COMMISSIONERS—NO LEGAL AUTHORITY TO DIVERT TAX FUNDS DERIVED FROM LEVY FOR SPECIAL PURPOSE TO ANY OTHER PURPOSES—POOR RELIEF FUND—OHIO STATE EMPLOYMENT SERVICE.

SYLLABUS:

The Board of County Commissioners has no legal authority to divert tax funds from tax moneys derived from a levy for a special purpose to any other purpose. County Commissioners may not, therefore, contribute funds from the poor relief fund of a county to the Ohio State Employment Service.

COLUMBUS, OHIO, January 26, 1939.

HON. CARL W. RICH, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR: Your request for my opinion reads as follows:

"There has been submitted to this office by the County Commissioners of Hamilton County a question which we believe to be of state-wide importance, one which may arise in any county of the State. For the sake of uniformity we feel that an opinion from your office would be highly desirable.

The question, as presented to our office, is in the form of a Resolution by the Commissioners in the following words:

'WHEREAS, The City of Cincinnati has made request that this Board contribute the sum of \$10,000.00 toward defraying the expenses of the Ohio State Employment Service; and

WHEREAS, No provision was made in the budget for the year of 1939 for such purpose in the General Fund; and

WHEREAS, There will be sufficient money to the credit of Relief Fund after certain revenues have been received from the State:

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Hamilton County, Ohio, that the Prosecuting Attorney be and he is hereby directed to submit to this Board at the earliest convenience, an opinion as to whether this Board can use relief money for the purpose of contributing the sum of \$10,000.00 toward defraying the expenses of the Ohio State Employment Service.'

In your request you use the words "Relief Fund" and you further state that such funds will be received from the State of Ohio. I must assume at the start, therefore, that you are referring to the allocations of funds made to the counties from monies received by the State from the sales, cosmetic, admissions and other excise taxes which provide for such allocation for county poor relief funds.

Article XII, Section 5 of the Ohio Constitution reads:

"No tax shall be levied except in pursuance of law and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied."

The purpose section of the sales tax enactment, Section 5546-2, General Code, states that the tax is levied "for the purpose of providing

revenue with which to meet the needs of the state for poor relief in the existing economic crises". Section 5546-18, General Code, in allocating the monies received by the State under the sales tax act, states in part:

"The moneys received into the state treasury under the provisions of this act shall be credited to funds therein as follows:

To the county poor relief excise fund, * * *."

The parallel sections governing the application of funds from the admissions and cosmetic taxes contain similar provisions.

Section 5625-10, General Code, governing the disposition of revenue derived from tax levies states in part:

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

and

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

and

"Money paid into any fund shall be used only for the purpose for which said fund is established."

In 11 O. J. at page 573 and the cases cited thereunder, the following is found:

"The commissioners of the county are subject to the general control of the Legislature of the State and it has been held that the revenue of a county is subject to the control of the Legislature and where the Legislature directs the application of the revenue to a particular purpose, a duty is imposed and an obligation created on the county."

Applying all of the above to the instant case, it appears that we here have a fund raised by excise levies and directed and allocated by law to a particular purpose. In the light of this, it becomes difficult to see how money raised by a special tax by the State for a particular purpose can be diverted by county commissioners to a different use. The above view is strengthened by an examination of the sections controlling the transfer of funds by local sub-divisions. Section 5625-13, General Code, reads:

"Unless otherwise provided by law the unexpended balance in any special fund * * * may be transferred to the general fund or the sinking fund or bond retirement fund after the termina-

tion of the active service or other undertaking for which said special fund existed but only after the payment of all obligations incurred and payable from such special fund."

Section 5625-13a, General Code, provides :

"In addition to the transfers authorized in Section 5625-13, the taxing authority of any political sub-division may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues or special levies for payment thereof and except *the proceeds or balances of funds derived from any excise tax levied by law for a specific purpose or purposes.* * * *" (Italics the writer's).

I can not infer from your letter or from extraneous facts that relief work in your county is terminated, but I must assume as common knowledge would dictate that it is a continuing activity. See Opinion No. 1474, Opinions of the Attorney General for the year 1937.

It has been suggested that House Bill No. 108, passed by the 90th General Assembly, which reads :

"The board of county commissioners of any county shall be authorized to appropriate money for the purpose of cooperating with the government of the United States in the operation and maintenance of a national re-employment service. Any moneys previously expended by any county or municipality for such purpose shall be deemed valid obligations of the county or municipality."

would enable payment as suggested in your inquiry. In my opinion the above quoted section only authorizes the county to contribute to the support of a re-employment service but does not even approach the question of transfer of funds or the diverting of money from special funds.

Answering your question specifically, it is my opinion that the Board of County Commissioners has no legal authority to divert tax funds from tax moneys derived from a levy for a special purpose to any other purpose and that, therefore, the proposed action of the county commissioners would not be legally authorized.

Respectfully,

THOMAS J. HERBERT,

Attorney General.