

building and loan association which is solvent may accept running stock credits in payment of real estate sold by the association. The principles discussed in answering your first question are likewise applicable to this one. Omitting for the moment provisions relating to withdrawal notices, if under the constitution and by-laws of the association, running stock credits are presently withdrawable, the stock depositor is entitled to payment. It follows that if it is mutually agreeable, the association can pay him in real estate. The provision relating to withdrawal notices merely delays payment in cash, but does not alter the fact that the stock credits are presently withdrawable.

In the light of the foregoing and in specific answer to your questions, it is my opinion that:

1. A purely mutual building and loan association which is solvent may accept running stock deposits which, under its constitution and by-laws, are presently withdrawable in payment of mortgage loans made to the stock depositor, regardless of whether such mortgage loans are in good standing, past due, or now excessive, due to depreciation in the value of the mortgaged real estate.

2. Such building and loan association may accept such withdrawable stock deposits of a purchaser in payment for real estate sold by the association.

3. Stock deposits otherwise presently withdrawable under the constitution and by-laws of such association, are not rendered non-withdrawable by provisions in the constitution or by-laws requiring withdrawal notice or limiting payment from certain funds, the only effect of such provisions being to delay payment in cash.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

950.

PROBATE JUDGE—SALARY MAY NOT BE REDUCED BY COUNTY COMMISSIONERS BY AMENDED APPROPRIATION MEASURE WHEN REVENUES IN GENERAL FUND SUFFICIENT TO MEET STATUTORY EXPENDITURES.

*SYLLABUS:*

*County commissioners may not reduce the appropriation made for the salary of a probate judge, by means of an amended appropriation measure passed under authority of section 5625-32, General Code, if at the time such amended appropriation measure is passed there are revenues in the general fund of the county sufficient to meet the total amount of expenditures made imperative by statute.*

COLUMBUS, OHIO, June 10, 1933.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Acknowledgment is made of a communication over the signature of C. B. MacDonald, Assistant Prosecuting Attorney, as follows:

“In January, 1932, the County Commissioners of Summit County appropriated for the personal salary of the judge of the Probate Court the sum of \$5855.00, being the amount of the statutory salary

to which the judge was entitled. Later on during the year 1932, the Commissioners amended the appropriation and reduced the amount approximately \$1000.00.

The Auditor has issued his warrants equal to the reduced appropriation, but refuses to issue warrants for anything more. The old Board of County Commissioners likewise refused to appropriate anything more after the appropriation had been reduced as above set out. At the end of the year 1932, there remained in the general fund an amount sufficient to cover the balance of the salary if appropriated.

We would like to have your opinion as to whether or not the County Commissioners were within their rights in reducing the appropriation below the statutory salary for an elective officer."

Section 5625-29, General Code, provides that "on or about the first day of each year, the taxing authority of each subdivision \* \* \* shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary \* \* \*."

In the case of *Jenkins, Auditor vs. State ex rel. Jackson County Agricultural Society*, 40 App. 312, it was held, as disclosed by the third paragraph of the syllabus:

"In preparing an appropriation measure under section 5625-29 General Code, the taxing authority is bound to provide first for all those expenditures made imperative by statute."

Sections 2989 and 2992, General Code, under Title X, Division 3, Chapter 1, entitled "Salaries of County Officers," provide as follows:

Sec. 2989. "Each county officer hereinafter named shall receive out of the general county fund the annual salary hereinafter provided, payable monthly upon the warrant of the county auditor, and such additional compensation or salary as may be provided by law."

Sec. 2992. "Each probate judge shall receive one hundred dollars for each full one thousand of the first fifteen thousand of the population of the county, as shown by the last federal census next preceding his election;

Sixty-five dollars per thousand for each full one thousand of the second fifteen thousand of such population of the county;

Fifty-five dollars per thousand for each full one thousand of the third fifteen thousand of such population of the county;

Forty-five dollars per thousand for each full one thousand of the fourth fifteen thousand of such population of the county;

Thirty-five dollars per thousand for each full one thousand of the fifth fifteen thousand of such population of the county;

Twenty-five dollars per thousand for each full one thousand of the sixth fifteen thousand of such population of the county;

And five dollars per thousand for each full one thousand of such population of the county, in excess of ninety thousand."

When the language of the court in the above syllabus is read with the language of section 2989, General Code, it is obviously imperative that

the salary of the probate judge, computed under the method set forth in section 2992, General Code, be provided for by the county commissioners, as the taxing authority of the county under section 5625-1 (c), General Code.

The court in the above case decided that the county commissioners were bound to appropriate at least \$1500.00 annually to the county agricultural society under terms of section 9894, General Code. Said court, after quoting the language of section 9894, providing that "the county commissioners shall, on the request of the agricultural society, annually appropriate from the general fund not to exceed the sum of two thousand dollars or less than fifteen hundred dollars for such purposes \* \* \*," stated at pages 314 and 315:

"This language is direct and unequivocal and entitled the agricultural society to not less than the sum of \$1,500, and deprived the commissioners and all other county officers of any discretion in the premises except that the commissioners might determine the amount within the limits mentioned which an agricultural society is to receive. *State, ex rel. Justice vs. Thomas, Aud.*, 35 Ohio App., 250, 172 N. E. 397. It may seem strange that an appropriation of this kind to a quasi private society should enjoy a preferred position and be entitled to payment over flour for the county home, or coal for the court house but it is so written by the lawmakers.

\* \* \*

At the time the new budget law was passed there were many sections, of which 9894 was but one, creating fixed and inescapable liabilities of the county, *such as salaries of county officers*, and it is unthinkable that it was the purpose of the Legislature to make any claims of this character subject to the action or nonaction of the county commissioners. Such a construction would impose legislative functions on the commissioners and render the act of doubtful constitutionality." (Italics the writer's.)

Section 5625-32, General Code, authorizes a taxing authority to pass amended or supplementary appropriation measures from time to time, subject to certain modifications. Such section reads in part:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, *provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation \* \* \*.*" (Italics the writer's.)

Inasmuch as the effect of section 2989, General Code, is to make it an imperative duty for the county commissioners to appropriate in the first instance the amount of the salary of the probate judge, computed under section 2992, General Code, it follows from the italicized language of section 5625-32, supra, that the county commissioners could not reduce the amount by amendment. From the facts set forth in your communication, it appears that at the end of the year there was a sum of money in the general fund which was unexpended. It would therefore seem that the county commissioners at the time of amending the appropriation must have had ample funds in the county treasury to satisfy all expenditures made imperative by the statutes. If the facts, however, were such that at the time of the pass-

age of the amended appropriation, the balance in the general fund of the county was not sufficient to bear the monthly charges against said fund, it was the duty of the county commissioners to reduce items of the appropriation measure not made imperative by statute, in order to balance the general fund.

I am therefore of the opinion, in specific answer to your question, that the county commissioners were not within their rights in reducing the appropriation made for the salary of the probate judge, if at the time the amended appropriation was made there were enough moneys in the general fund to meet the appropriations for expenditures made imperative by the statutes.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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951.

SCHOOL DISTRICT—PART THEREOF LYING IN ONE COUNTY—  
ADMINISTRATIVE JURISDICTION IN ANOTHER COUNTY—  
LEVY COLLECTED IN FIRST COUNTY PAYABLE TO COUNTY  
BOARD OF EDUCATION FUND WHERE ADMINISTRATIVE  
JURISDICTION LIES.

**SYLLABUS:**

*Where there are parts of school districts lying within a county, the jurisdiction of which districts for school administrative purposes is in another county school district, the proceeds of the 2.65 mills levy provided for by Section 7575, General Code, collected from those parts of districts should be paid by the treasurer of the county in which the parts of districts lie, into the county board of education fund of the county having jurisdiction of the district to be distributed according to law.*

COLUMBUS, OHIO, June 10, 1933.

HON. HOWARD C. BLACK, *Prosecuting Attorney. London, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Plain City School District is in the three counties of Madison, Union and Franklin.

As to the 2.65 levy, a question has been raised:

When that money raised in the Plain City School District in Union and Franklin counties is transmitted to Madison County (Madison county having largely the most territory in the district) does it all go to the Plain City district or does it go into the pot to be distributed pro rata over Madison county?”

It appears from your inquiry that the Plain City School District is a part of the Madison County School District; that is to say, the Madison County