

2242.

COUNTY BUDGET COMMISSION HAS POWER UNDER SECTION 1261-40
G. C. TO REDUCE ITEMS CONTAINED IN BUDGET SUBMITTED BY
COUNTY HEALTH BOARD.

SYLLABUS:

The county budget commission has power under Section 1261-40 General Code to reduce any item or items contained in the budget submitted by the county health board, and when the amounts of the several items are so fixed, the county health board is limited in its expenditure of funds for a given item to the amount so fixed by the budget commission.

COLUMBUS, OHIO, February 25, 1925.

HON. HARRY W. CLARK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—I acknowledge receipt of a letter addressed to this office by your predecessor, Hon. Robert S. Parks, in which he submits the following question, and with which he encloses a copy of his opinion with reference to that question, addressed to the Auditor of Geauga County:

“As provided by the law the County Health Board filed with the County Tax Budget Commission its budget for the year 1925 and the Tax Commission, after considering it, reduced it several items. The budget covered the salary of the Health Commissioner, the antitoxin, the office expenses and all other items. The great question is, must this health board so operate its department as to make all its expenditures come within the various amounts allowed by the Tax Commission, or may it use the entire funds available for one purpose, and as soon as these funds are exhausted declare that an emergency exists and appeal to the County Commissioners for additional help.”

Section 1261-40, under which the health budget for a general health district is made up, was passed by the General Assembly in 1920, as a part of the general revision of the health laws of Ohio. The method by which the district board of health obtains its funds differs from that in which other boards obtain funds for their use, in this, that instead of a levy on all property in the county being made by the board of health on the basis of its budget as adjusted by the budget commissioners, the amount so allowed is apportioned by the auditor among the various townships and municipalities within the district on the basis of taxable valuations in such political subdivisions.

It is obvious, therefore, that this section adopts some of the machinery provided by Sections 5649-3a, 5649-3b, 5649-3c and 5649-3d. Section 5649-3c specifies in detail what the action of the budget commission shall be with reference to the budget submitted by the various taxing authorities mentioned in 5649-3a. The following language is significant:

“In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all items in any such budget, but shall not increase the total of any such budget, nor any item therein.”

Section 5649-3d provides for appropriations for each fiscal half year, and provides:

“But no appropriation shall be made for any purpose not set forth in the annual budget, nor for a greater amount for such purpose than the total amount fixed by the budget commissioners, exclusive of receipts and balances.”

It is true that the district board of health is not one of the bodies specifically mentioned in section 5649-3a, and is probably not to be considered in any sense as a "board or officer" authorized by law to levy taxes. Therefore, the provisions of these four sections cannot be said to directly apply to district boards of health. The similarity of the language used in these sections and that used in section 1261-40 of the General Code suggests, however, a close analogy.

Section 1261-40 reads as follows:

"The board of health of a general health district shall annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such districts for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. * * *"

The words of section 1261-40 should be construed so as to have their ordinary meaning. Whether or not the district health board is required to confine its expenditures for any purpose within the amount of the item as allowed by the budget commissioners must depend upon the construction of the words of this section. If such action of the budget commission does not restrict the use of funds in that case the language of the section might very well be:

"Such estimate shall be certified to the county auditor, and by him submitted to the budget commissioners, which may reduce, but may not increase, the aggregate of all items."

To adopt this construction is equivalent to saying that the general assembly did not intend that any meaning whatever should attach to the words "any item or items in such estimate, but may not increase any item." The language of the section is not to the effect that the budget commissioners may reduce any estimate, but that they may reduce any item.

Funk and Wagnall's New Standard Dictionary defines "reduce" as follows:

"To diminish in value, size, quantity, dimensions or the like."

It cannot be assumed that the general assembly used this language intending that the budget commissioners might perform the vain task of changing the figures in such estimate with the knowledge that the board of health could absolutely disregard such changes and render them wholly ineffective. No such strained interpretation should be placed upon the language of this section unless for some compelling reason, such as to make it harmonize with the constitution, or with other sections of the General Code. Certainly no constitutional reason can be imagined for such an interpretation. The opposite interpretation would certainly be more in conformity with the spirit of the constitution, if not within the precise terms thereof.

Section 5, article XII of the Constitution provides:

"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."

We do not contend that this section of the Constitution of itself would determine the question here at issue, but we do believe that it should have some weight when it comes to deciding between the two interpretations of the section under consideration.

I have given very careful consideration to the opinion of my predecessor, to which Mr. Parks refers, as found in volume 1, Opinions of Attorney General for 1921, at page 779, but for the reasons herein set out I find myself unable to concur in the conclusions reached in that opinion.

Specifically answering the question which is submitted, you are advised that in the opinion of this department the health board in determining the expenditures for the various purposes, must keep within the several items as fixed by the budget commission. I express no opinion on the question of whether the health board may apply to the county commissioners for additional help in an emergency, for the reason that the answer to such question would depend wholly upon the attendant circumstances.

Respectfully,

C. C. CRABBE,

Attorney-General.

2243.

APPROVAL, BOND OF HERMAN R. WITTER, IN THE SUM OF \$10,000.00,
FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS DIRECTOR
OF INDUSTRIAL RELATIONS.

COLUMBUS, OHIO, February 27, 1925.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, O.*

DEAR SIR:—You have submitted to this department a bond upon which the Columbia Casualty Company appears as surety, to cover the faithful performance of your duties as Director of Industrial Relations. The amount of the bond is \$10,000. It is evidently executed in pursuance to the provisions of section 154-14 of the General Code.

Finding said bond in proper legal form, I have noted my approval thereon as to form and return the same herewith to you.

Your attention is directed to the fact that the Governor is required to approve the security and amount.

Respectfully,

C. C. CRABBE,

Attorney-General.

2244.

AMENDED SUBSTITUTE HOUSE BILL No. 27 CONSTRUED.

SYLLABUS:

1. *The amount of the deficiency to be certified under Amended Substitute House Bill 27 is the sum of the deficiency which exists February 1, 1925, and the estimated deficiency for the balance of the fiscal or school year.*

2. *Where a subdivision contains part of a precinct without containing all of said precinct, the petition signed must contain a number of electors living in said subdivision equal to the majority of the total number who voted for governor in such subdivision, plus the number who voted for governor in precincts, a part of which is included in the subdivision.*