

1391.

AID TO NEEDY CHILDREN—WHERE MONEYS TRANSFERRED—GENERAL FUND OF COUNTY TO SPECIAL FUND—NO LIMITATION ON AMOUNT TO DEFRAY EXPENSE OF ADMINISTRATION—SECTION 1359-36 G. C.—WHERE STATE TREASURY PAYS AMOUNTS INTO COUNTY TREASURY—PORTION UP TO 10%, DETERMINED BY STATE DEPARTMENT OF PUBLIC WELFARE MAY BE USED FOR EXPENSE OF ADMINISTRATION.

SYLLABUS:

1. *When moneys are transferred from the general fund of a county to a special fund for aid to needy children, pursuant to section 1359-36, General Code, there is no limitation upon the amount of such moneys which may be used for defraying the expense of administering such aid.*

2. *Of the amounts paid into the treasury of any county from the State Treasury, pursuant to the provisions of said section, only that portion up to 10 per cent thereof, as determined by the State Department of Public Welfare, may be used for defraying the expense of administering such aid.*

COLUMBUS, OHIO, November 6, 1939.

HON. KARL T. STOFFER, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“It is provided by Section 6 of the act relating to aid for dependent children (General Code, Sec. 1359-36) that the county commissioners shall include in their annual budget a certain amount to be placed in a special fund for aid to needy children and for defraying the expenses of administering this act. Contributions are also made into the county treasury from the state treasury and credited to this special fund. This statute further provides that such moneys shall ‘be deemed to be appropriated for the purposes thereof excepting that no more than 10 per cent of such amounts as may be determined by the State Department of Public Welfare shall be deemed to be appropriated for defraying the expenses of administering this act within the county.’

A question has arisen under this section of the General Code (1359-36) whether or not funds may be expended for administrative purposes, under this act, during any single year in excess of the 10 per cent limitation imposed thereon; assuming that the amount expended over and above the 10 per cent limitation will be absorbed during the ensuing fiscal year and assuming further

that there would be no overdraft of the General Fund provided by this act.”

Section 1359-36, General Code, reads as follows:

“The county commissioners of each county shall include in the annual tax budget and at the opening of each fiscal year transfer from the general fund to a special fund for aid to needy children and for defraying the expense of administering this act within the county an amount not less than the computed yield of a levy of fifteen one-hundredths of one mill on each dollar of the general tax list of the county, and shall appropriate such amount for the purposes of said special fund. All amounts paid into the treasury of any county from the state treasury pursuant to this act shall be credited to the special fund therein, created pursuant to this section, and shall thereupon be deemed to be appropriated for the purposes thereof, excepting that not more than ten per cent of such amounts, as may be determined by the state department of public welfare, shall be deemed to be appropriated for defraying the expense of administering this act within the county. If the county commissioners of any county fail to comply with this section, the state department of public welfare shall request the attorney general to institute proceedings in mandamus or otherwise for the enforcement thereof, and it shall thereupon be his duty so to do.”

In connection with your question, it is significant to note that the above section provides for a transfer annually of a certain amount of money from the general fund of the county to a special fund, to be used for aid to needy children, and for defraying the expense of administering such aid, and for a contribution from the state to be credited to such special fund.

It will likewise be observed that the language of said section with respect to a limitation of the amount which may be used for administering the Act is contained in the second sentence thereof, which reads as follows:

“* * * All amounts paid into the treasury in any county from the state treasury * * * shall be credited to a special fund * * * and shall thereupon be deemed to be appropriated for the purposes thereof, excepting that not more than 10 per cent of such amounts, *as may be determined by the state department of public welfare*, shall be deemed to be appropriated for defraying the expense of administering this act within the county.” (Italics the writer’s.)

In other words, while the above section contains the provision with

respect to the limitation of amount which may be used to administer the Act, said provision has application only to the annual amounts received by the county from the state.

If the limitation had been meant to apply also to amounts transferred from the general fund of a county to the special fund provided for by said section, the language fixing such limitation should obviously read "10 per cent of such fund", rather than "10 per cent of such amounts". This distinction is all the more apparent because of the discretion placed in the Department of Public Welfare, as indicated by the emphasized language above. It should be noted that 10 per cent specified is the maximum, leaving in the Department of Public Welfare the authority to fix any amount up to such maximum. Whether or not such percentage might be reduced by the Department of Public Welfare, if the administrative expense of the county's portion of such special fund were to be deemed excessive, is a question which need not be determined herein.

It is accordingly my opinion that, when a transfer from the general fund of a county to a special fund for the aid of needy children is made in accordance with the provisions of section 1359-36, General Code, there is no limitation as to the amount of such moneys so transferred which may be used for administering the Act and that of the amount paid to the county by the state only that portion up to 10 per cent, as determined by the State Department of Public Welfare, may be used for the expense of administering said Act within the county.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1392.

BONDS—BERNE UNION VILLAGE SCHOOL DISTRICT, FAIRFIELD COUNTY, \$2,000.00.

COLUMBUS, OHIO, November 6, 1939.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Berne Union Village School District, Fairfield County, \$2,000. (Limited.)

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school improvement bonds in the aggregate amount of \$2,000, dated December 1, 1939, and bearing interest at the rate of 3½ per cent per annum.