

3945

RELIEF — EFFECT AMENDED SENATE BILL 462, SECTION 2, 117 O.L. 868 — AMENDED 118 O.L. 133 — NOTES — SINCE DECEMBER 31, 1939, PROCEEDS DERIVED FROM SALE SUCH NOTES MUST BE PLACED IN FUND FOR THEIR RETIREMENT AND FOR RETIREMENT OF BONDS — MARCH 1, 1943, LIMITATION, FINAL MATURITY DATE.

## SYLLABUS:

1. *When notes are issued pursuant to the authority of Section 2 of Amended Senate Bill No. 462, (117 O.L., 868) as amended in 118 O.L., 133, the proceeds derived from their sale must be disposed of as provided in Section 3 of such act, and since December 31, 1939, cannot be used for purposes of poor relief.*

2. *The proceeds derived from the sale of such notes must since December 31, 1939, under authority of Section 3 of such act, be placed in a fund for the retirement of notes issued under authority of Section 2 of such act and the retirement of bonds issued under authority of Section 3 of such act and may be used for no other purpose.*

3. *Section 2 of Amended Senate Bill No. 462 (117 O.L., 868) as amended in 118 O.L., 133, limits the final maturity date of the notes issued under authority of such section to March 1, 1943, and they may not be legally issued to mature at a later date.*

Columbus, Ohio, July 1, 1941.

Hon. Charles L. Sherwood, Director, Department of Public Welfare,  
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion in which you refer to my opinion bearing number 3882 issued under date of June 13, 1941, and in which you call my attention to Section 3 of Amended Senate Bill No. 462 as enacted in 117 O.L., 868, 873, which reads:

“The proceeds of the sale of any bonds or notes issued under section 2 of this act by any county, municipality or township shall be placed in a special fund to be denominated the ‘emergency relief fund,’ and shall be deemed to be appropriated for the purposes only for which the bonds or notes were issued, but no expenditure shall be made from such special fund after December 31, 1939. Any unencumbered balance resulting from the sale of such bonds, not needed for the purpose for which such fund is established, shall be transferred to the special fund for the retirement of any outstanding bonds or notes authorized under the provisions of this act, or if the treasurer of state has been appointed paying agent of the county under the provisions of section 6 of Amended Senate Bill No. 4, passed March 31, 1932, and approved April 5, 1932, and amendments thereto, shall be paid to the treasurer of state as such paying agent in the amount necessary to meet the payment of principal and interest on bonds issued under section 2 of this act.”

You then inquire:

“Your opinion is requested on the following questions as they relate to the effect of Section 3, Amended Senate Bill 462 upon any bonds or notes issued under authority of Section 2, of that act as amended by House Bill No. 572 (118 O.L., p. 133) and Substitute House Bill No. 172 of the present General Assembly:

1. If the proceeds of any such bonds or notes are placed in a special fund denominated the ‘emergency relief fund’ can they be expended for poor relief purposes?
2. If the proceeds of any such bonds or notes are placed in the special fund for the retirement of outstanding bonds or notes previously issued under authority of Amended Senate Bill 462, can the balance in this special fund be transferred to the emergency relief fund for poor relief purposes provided the proceeds of the bonds or notes being placed in the retirement fund are sufficient to retire bonds or notes due in 1942?
3. Since the final distribution of public utility excise taxes levied under the provisions of Substitute House Bill No. 172 will not be made until March 1, 1944, will it be possible for local subdivisions to issue bonds or notes under this act which will be due and payable on or before that date?”

Your inquiry arises by reason of the fact that Section 1 of House Bill No. 741 (117 O.L., 753) was amended in Amended Senate Bill No. 462 (117 O.L., 868), and again in Substitute House Bill No. 172, enacted by the present General Assembly, by extending the time during which

the additional .65% public utility tax is levied, however, the legislature did not at any time amend Section 3 of Amended Senate Bill No. 462, above quoted, which made provision for the use and disposition of funds acquired by means of borrowing in anticipation of the receipt of the taxes levied by such Section 1 as so amended.

As I pointed out in my opinion bearing number 3882, when a section of a law is amended by a subsequent legislature without at the same time amending the remaining sections of such law, the amended section is to be treated as a substitute for the former section and the whole law is, after such amendment, to be construed as though all sections were enacted as a single act. (See also *State, ex rel., v. Cincinnati*, 52 O.S., 419.)

Placing such interpretation on Amended Senate Bill No. 462 (117 O.L., 868) as amended in 118 O.L., 133, and as further amended in Substitute House Bill No. 172 enacted by the present General Assembly, we then must substitute Section 1 of such Substitute House Bill No. 172 for the amendment of Section 1 of House Bill No. 741 (117 O.L., 741) as amended in such Amended Senate Bill No. 462; and substituting for Section 2 of such Amended Senate Bill No. 462 its amendment in 118 O.L., 133, we find the following situation:

Section 1 levies an excise tax on the gross receipts of certain public utility companies until and through the year 1943 at the rate of .65 of 1% of such gross receipts. Section 2 as so amended authorizes boards of county commissioners, councils or other legislative bodies of municipalities to borrow money in anticipation of the receipt of such taxes providing that the notes shall become due and payable "on or before March 1, 1943." Section 3 of such Amended Senate Bill No. 462 then provides the method for the use of the proceeds of the notes issued in anticipation of the receipt of such taxes, and states that "the proceeds of the sale of any bonds or notes issued under section 2 of this act \* \* \* shall be placed in a special fund to be denominated the 'emergency relief fund' and shall be appropriated for the purposes only for which the bonds or notes were issued," or poor relief purposes (see Section 2). However, it should be observed that such section has further specific limitation that "no expenditure may be made from such special fund after December 31, 1939." We then have a specific direction of the legislature not only as to the placing of the moneys into the fund but an express inhibition against the use of such moneys for poor relief after December 31, 1939.

Such being true, the statute itself answers your first inquiry in the negative. It thus appears that such special fund could have been used for the purposes of poor relief only until December 31, 1939. The General Assembly has itself specified the use which may be made of the special fund after December 31, 1939, — that the “unencumbered balance resulting from the sale of the notes shall be transferred to the special fund for the retirement of any outstanding bonds or notes authorized under the provisions of this act, or if the treasurer of state has been appointed paying agent of the county under the provisions of section 6 of Amended Senate Bill No. 4, passed March 31, 1932, and approved April 5, 1932, and amendments thereto, shall be paid to the treasurer of state as such paying agent in the amount necessary to meet the payment of principal and interest on bonds issued under section 2 of this act.”

It is self-evident that the phrase “this act” used in such Section 3 refers to the act of which it is a part, or Amended Senate Bill No. 462 (117 O.L., 868). When we examine such act, we find that Section 2 thereof authorizes the issuance of the notes above described and that Section 4 thereof authorizes the issuance of bonds upon a vote of the electors if the subdivision is unable to issue notes under authority of Section 2 by reason of the inhibition of Section 2 of Article XII of the Constitution of Ohio.

It would therefore appear that if notes are now to be issued under authority of Section 2 of Amended Senate Bill No. 462 (117 O.L., 868) as amended in 118 O.L., 133, the proceeds must be used for the purpose of paying such notes as may have been issued under authority of such Section 2 or for the payment of bonds issued upon a vote of the electors under authority of Section 4 of such act. Such being the express provisions of Section 3, it would appear that such proceeds can be used for the payment of notes and bonds issued under the act and for no other purpose.

From your second inquiry, I am uncertain whether you use the term “emergency relief fund for poor relief purposes” to designate that special fund created under authority of Section 3 of Amended Senate Bill No. 462 above referred to and referred to in that section as “emergency relief fund” or whether you use the phrase to designate the fund so designated in House Bill No. 501 (116 O.L., 571) as amended in 116 O.L., Pt. 2, 31, and again in 117 O.L., 8, or by other acts of the legislature, or which

may be set up by the subdivision pursuant to the Uniform Tax Levy Law. If such latter suggestion be that inferred by your inquiry, it would seem that the funds already in the special fund are similarly earmarked and may only be used for the payment of the bonds and notes issued under such Amended Senate Bill No. 462.

Your third inquiry has been specifically answered by my opinion numbered 3882 and a reexamination of the statutes does not produce any reason for a change of opinion. Even if we would be of the opinion that the legislature might well have taken a different view of the situation had its attention been called to the apparent effect of the amendments above referred to when read in the light of the unamended provisions of the act under consideration, yet as stated by Mr. Justice Brewer in *United States v. Goldenberg*, 168 U.S., 95, 102, 103:

“The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true that there are cases in which the letter of the statute is not deemed controlling, but these cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language.”

Specifically answering your inquiries, it is my opinion that:

1. When notes are issued pursuant to the authority of Section 2 of Amended Senate Bill No. 462 (117 O.L., 868) as amended in 118 O.L., 133, the proceeds derived from their sale must be disposed of as provided in Section 3 of such act, and since December 31, 1939, cannot be used for purposes of poor relief.

2. The proceeds derived from the sale of such notes must since December 31, 1939, under authority of Section 3 of such act, be placed in a fund for the retirement of notes issued under authority of Section 2 of such act and the retirement of bonds issued under authority of Section 3 of such act and may be used for no other purpose.

3. Section 2 of Amended Senate Bill No. 462 (117 O.L., 868) as amended in 118 O.L., 133, limits the final maturity date of the notes issued under authority of such section to March 1, 1943, and they may not be legally issued to mature at a later date.

Respectfully,

THOMAS J. HERBERT,

Attorney General.