

of the estate of Anna Woodworth, to Reese J. Davis and Charlottee E. Davis, it was stated that said conveyance was subject to a lease for fox farm privileges held by Duffus and McGilvery, the rental on which lease was to be paid to the grantees in said deed from and after March 12, 1926. There is nothing further stated in the abstract of title with respect to this or any other lease upon the property; but full information should be furnished to this office upon this point before the purchase of this property is consummated by or through your department.

I am herewith returning to you the abstract extension above referred to, the warranty deed, contract encumbrance record No. 2195 and other files relating to the purchase of this property. The original abstract of title submitted to me is being retained for use in the examination of the title of contiguous properties which are likewise being purchased by the State through your department, for the use of Kent State University.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1474.

MUNICIPAL ELECTRIC UTILITY FUND TRANSFER TO GENERAL FUND—NO AUTHORITY—EXCEPT, WHEN.

SYLLABUS:

There is no authority whereby surplus moneys in a municipal electric utility fund may be transferred to the general fund, Section 5625-13, General Code, containing no such authority except after the termination of the operation of such public utility and Sections 5625-13a to 5625-13g, both inclusive, General Code, relating solely to the transfer of funds derived from taxation. Lakerwood vs. Rees, 132 O. S. 399.

COLUMBUS, OHIO, November 17, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: Your letter of recent date is as follows:

"We are inclosing herewith certified copy of application made by the City of Cuyahoga Falls to the State Tax Commission, requesting the Commission's permission to apply to the Court of Common Pleas of Summit County for a transfer of \$20,000 from the electric light fund to the public safety fund,

the latter being a segregation of the general revenue fund of the City, together with copy of resolution of council and letter from the State Tax Commission signed by Ferd F. Becker, County Affairs Division.

It will be noted by reading the letter last referred to that reference is made to the case of *City of Lakewood vs. Rees*, 132 O. S., 399, as authority for refusing the request for transfer pending interpretation of the law by ruling from you.

May we request that you examine the inclosures and advise us whether, in view of the decision of the Supreme Court in the case above referred to, transfer may be made from the municipal electric utility funds to the general fund, or a subdivision thereof, under the provisions of Sections 5625-13a to 5625-13g of the General Code?"

Municipalities are required by Section 5625-9(g), General Code, to establish a special fund for each public utility operated by such municipalities, and moneys paid into such fund may be expended therefrom only for the purposes thereof under Section 5625-10, General Code. The only authority for transferring moneys from one fund to another is contained in Sections 5625-13 to 5625-13g, both inclusive, General Code. Section 5625-13, General Code, vesting and limiting the general power of taxing authorities of subdivisions to transfer moneys from one fund to another without the necessity of securing a court order contains no authority whereby moneys may be transferred from a public utility fund to the general fund, until "after the termination of the activity, service or other undertaking for which such special fund existed" and also after the payment of all obligations incurred and payable from such special fund.

If authority for such transfer exists, therefore, it must be found in Sections 5625-13a, et seq., of the General Code. Such Section 5625-13a provides as follows:

"In addition to the transfers authorized in Section 5625-13, the taxing authority of any political subdivision 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 the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes."

Sections 5625-13b and 5625-13c, General Code, impose upon a subdivision desiring to effect a transfer authorized by Section 5625-13a the duty to secure the approval thereof by the Tax Commission prior to the submission of the question for the approval of the common pleas court. *State, ex rel. vs. Tax Commission*, 129 O. S. 83.

In the instant case, it appears that a petition has been prepared to be filed in the court of common pleas seeking to transfer \$20,000 from the light fund to the safety fund of the municipality, which petition was submitted to the Tax Commission and disapproved, as set forth in the following letter directed to the city solicitor:

"We have received your letter of August 13, 1937, and also application of the City of Cuyahoga Falls requesting the consent of the Tax Commission to file a petition in the Court of Common Pleas of Summit County authorizing council to transfer \$20,000.00 from the light fund to the safety fund.

Prior to the decision of the Supreme Court of Ohio, April 21, 1937, *City of Lakewood, Appellant vs. Rees, et al., appellees*, 132 Ohio St. 399, the Commission approved all applications to file petitions to transfer money from both the light and water funds to other funds.

While the Court, in the decision, did not rule specifically on light funds, we believe that the language used in paragraph two of the syllabus, where it is stated that the provisions of Sections 5625-13a to 5625-13g relate solely to the transfer of funds derived from taxation and have no reference to funds derived from the maintenance and operation of municipal water works, would prohibit a subdivision from transferring money from the light fund to any other fund as the revenue is not derived from taxation.

It is our opinion that the Commission should not grant your request until we have a ruling from the Attorney General on this point."

The case of *Lakewood vs. Rees*, upon which the Tax Commission based its disapproval, held as set forth in the syllabus:

"1. Revenues derived from municipally owned and operated waterworks may not be transferred to the general revenue fund of such municipality and be used to meet general governmental expenses and municipal obligations. (*City of Cincinnati vs. Roettinger, a Taxpayer*, 105 Ohio St., 145, and *Hartwig*

Realty Co. vs. City of Cleveland, 128 Ohio St., 583, approved and followed.)

2. No power to authorize or direct the transfer of waterworks funds is conferred upon the Common Pleas Court or the State Tax Commission by Sections 5625-13a to 5625-13g, General Code. Those provisions relate solely to the transfer of funds derived from taxation and have no reference to funds derived from the maintenance and operation of municipal waterworks."

Although the foregoing case was concerned with the transfer of the proceeds of water revenues and although the General Code in and by Section 3959 expressly limits the purposes for which water rents may be used, which express limitation does not appear in the General Code in the case of electric light revenues, nevertheless the second branch of the syllabus definitely lays down the rule that Sections 5625-13a to 5625-13g relate solely to the transfer of funds derived from taxation. Proceeds of a municipally operated electric light plant are clearly not funds derived from taxation any more than revenues of a municipally owned waterworks. Both being revenues of a public utility, they are necessarily in the same category. Whatever may be said, therefore, as to the authority for the previous practice of allowing transfers from the electric light fund to the general fund, thereby enabling municipalities to circumvent tax limitations contrary to the principles adhered to in the case of *Cincinnati vs. Roettinger*, 105 O. S. 145, the question is definitely put at rest by the second branch of the syllabus in the case of *Lakewood vs. Rees*, *supra*.

Specifically, answering your question, it is my opinion that there is no authority whereby surplus moneys in a municipal electric utility fund may be transferred to the general fund, Section 5625-13, General Code, containing no such authority except after the termination of the operation of such public utility and Sections 5625-13a to 5625-13g, both inclusive, of the General Code relating solely to the transfer of funds derived from taxation. *Lakewood vs. Rees*, 132 O. S. 399.

Respectfully,

HERBERT S. DUFFY,
Attorney General.