

rendered to your board under date of September 4, 1930, being Opinion No. 2289.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

750.

UNEXPENDED POOR RELIEF APPROPRIATION—MUST BE HELD INTACT BY THE SEVERAL COUNTIES, PENDING LEGISLATIVE ENACTMENT—PROCEEDS OF CAREY ACT BONDS—EXPENDITURE OF FUNDS FROM PUBLIC UTILITIES EXCISE TAX AND SELECTIVE SALES TAX, WHEN.

SYLLABUS:

1. *The balance of the \$4,000,000 appropriation for poor relief in the year 1937 referred to in Section 15 of Substitute House Bill No. 65, passed February 10, 1937, and approved February 11, 1937, and provided for by Section 5546-18, General Code, not expended or encumbered prior to April 15, 1936, must be held intact by the several counties awaiting further legislative enactment as to its expenditure and distribution.*

2. *Available proceeds of Carey Act bonds may be allotted by the county commissioners to the cities and townships in proportion to their relative needs and expended by them for poor relief.*

3. *Allocations from the public utilities excise tax and the selective sales tax not needed or pledged for poor relief bond retirement, may be allotted and expended in the same and like manner as the proceeds of the Carey Act bonds.*

4. *The residue of the undivided classified property tax fund over and above the amount of residue allocated to the county school tax fund in the year 1936, may be allocated to the municipalities and townships on the basis of their respective relief needs.*

5. *County Commissioners, city officials and township trustees may not enter into an agreement whereby the county commissioners or an agent appointed by them would investigate and handle temporary and partial relief cases for the contracting subdivisions; municipalities have the right to appoint an investigator and would have the*

right under Section 2450-2, General Code, to enter into an agreement with other cities or municipalities for the appointment of an investigator and they may contribute to his compensation because of express statutory authorization; township trustees have no power to compensate from public funds an investigator which they may appoint.

COLUMBUS, OHIO, June 18, 1937.

HON. ELLIS W. KERR, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR: This acknowledges receipt of your recent request for my opinion which reads as follows:

"The Miami County Commissioners have requested me to secure an opinion from you on the following question.

In Miami County there is a fund made up of money received from the State for relief purposes, plus the proceeds of relief bond issues under the Carey Bond Act. Almost the entire fund consists at the present time of the Carey bond money. When the relief law expired April 15th no definite provision was made for any balances in county relief funds. The question is whether or not the commissioners have the right to allot this money to the townships and cities for relief purposes.

We know of several counties which have surplus funds which are being allotted to the townships and cities, and it was our own opinion that in the absence of any legislation covering these surplus funds they could be allotted at the present time to the townships and cities in the same way that was provided for by the relief law, which expired April 15th, and that although such law had expired, the funds could be disbursed in the manner originally provided for by the law which created the fund. However, it seems that a member of the State Tax Commission advised the commissioners that they had no authority to expend the money because the relief law had expired and there was, therefore, no authority by which commissioners could allot this money.

The further question arises as to what becomes of these funds if the commissioners have no authority to allot them. May such funds be used only for relief purposes by the county or would they go into the general fund to be used for all purposes."

There are many problems relative to poor relief in the State of Ohio not specifically questioned or contained in your letter. However, I feel that these matters are of such statewide importance that they should be answered and included in this opinion.

In the State of Ohio at present in the several counties there are various funds for poor relief originating from various sources. In some counties there are moneys appropriated by the State under Amended Substitute House Bill No. 65; in addition to these moneys, some counties have on hand unexpended proceeds from the sale of Carey Act bonds; then, again, there are allocations received from the public utilities excise tax and selective sales tax; and still another fund arising from the classified property tax. To better understand the distribution and proper expenditure of these funds, it would be well to discuss each in their order as above mentioned.

Amended Substitute House Bill No. 65, passed February 10, 1937, and approved February 11, 1937, as an emergency measure, provided not only for a state relief commission but likewise, by virtue of Section 15 of said act, referred to an appropriation of \$4,000,000 appropriated for poor relief in the year 1937 by Section 5546-18 of the General Code and such unexpended and unencumbered funds as remain in the possession and control of the State Relief Commission under the provisions of House Bill No. 663 of the first special session of the 91st General Assembly, passed July 20, 1936, and approved July 22, 1936 and then proceeded to provide that these moneys were available to pay liabilities authorized and incurred from and after the first day of January, 1937, and up to and including the 15th day of April, 1937. This section specifically provided that these moneys shall be expended or encumbered prior to April 15, 1937. No provision is contained in this act for the expenditure of any remaining part of these appropriations after the deadline date of April 15, 1937, and in the absence of further legislative direction and empowerment, I am forced to the conclusion that any remaining moneys being a part of these appropriations not already expended or liability incurred thereon prior to April 15, 1937, must be held intact by the county awaiting further legislative enactment as to their expenditure or distribution.

Section 16 of said act, namely Amended Substitute House Bill No. 65, provided further that of the \$4,000,000 appropriated, \$1,000,000 was to be expended and used for the purpose of flood relief, fire catastrophe or other acts of God. Nothing in this section changed or altered the time limitation set forth in Section 15 of the act and here again, in the absence of further legislative enactment, I am forced to the conclusion that the remaining flood relief appropriation not expended or a liability incurred thereon prior to April 15, 1937, must be held intact by the

several counties awaiting further legislative enactment as to its expenditure or distribution.

The State Relief Commission or administration collapsed April 15, 1937, and with it collapsed the right of counties to administer direct, temporary or partial relief. Under the old statutory relief laws, the counties under Section 3476, General Code, were obligated only to afford relief to those persons who did not have the necessary residence requirements and to those who were permanently disabled and had become paupers and to such other persons whose peculiar condition is such that they could not be satisfactorily cared for except at the county infirmary or under county control; while the obligation to furnish temporary or partial relief in their homes to the needy fell upon the respective municipalities or townships.

It would be quite proper at this time to insert a definition of temporary or partial relief as contained in a 1920 Ohio Attorney General's Opinion, Vol. II, page 1179:

"The word 'temporary' has reference to a duration of time and is the antithesis of 'permanent,' while 'partial' refers to the amount or quantity of relief, and is the antithesis of 'complete'."

I affirm and concur in this opinion.

In counties wherein proceeds of Carey Act bonds are still available, I am of the opinion that these proceeds may be expended under the provisions and direction of the commonly called Carey Act and subsequent amending acts, notwithstanding the collapse of the State Relief Commission or administration. Amended Senate Bill No. 13, passed January 28, 1937, as an emergency measure and approved February 2, 1937, is the last amending enactment of the commonly called Carey Act. This act provided, among other things, for the issuance of poor relief bonds during the years 1935, 1936 or 1937. Under Section 2 of this act, the county commissioners by resolution were enabled to find it necessary to issue bonds for emergency poor relief within the county and if on submission to the Tax Commission of Ohio such commission finding no further means existed to provide such funds except by the issuing of bonds, the county commissioners of such county were empowered to borrow money in the amount approved and authorized by the Tax Commission. The county commissioners in the issuance of such bonds not only pledged the full faith, credit and revenue of the county but likewise pledged the estimated allocations to be received from the public utilities excise taxes to the extent of the estimated allocations upon which the Tax Commission of Ohio authorized and calculated the issu-

ance of the bonds. The last paragraph of this particular section reads as follows:

“The proceeds of the bonds issued under the provisions of this section shall be expended for poor relief and for the payment of premiums to the Industrial Commission of Ohio for the public work relief employes compensation fund, in accordance with the provisions of Section 2 of Amended Senate Bill No. 4, passed March 31, 1932, approved April 5, 1932, as said Section 2 is amended by House Bill No. 7, 115 O. L. Pt. 2, 31, passed August 23, 1933, and approved August 25, 1933.”

So, as to the proceeds of the bonds issued under Section 2 of this act, we have a definite and specific purpose and expenditure provided.

Section 5 of said act, namely Amended Senate Bill No. 13, provided for the issuance of additional bonds, that is that whenever in the years 1935, 1936 or 1937 the county commissioners of any county or the council or any other legislative body of any city having found that they had issued all the bonds authorized under the provisions of Section 2 of this act and that additional funds are necessary for poor relief prior to December 31, 1937, they may by resolution expressly provide that such a condition exists and with the consent of the Tax Commission to the effect that no other means exist to provide such funds except by the issuance of bonds, then and in that event may issue bonds of such county or city in an amount not exceeding in the aggregate one-fifth of one per cent of the general tax lists and duplicates of such county or city. The indebtedness created hereunder shall be subject to the provisions and limitations of Section 2293-14, General Code, as modified by Section 2293-18, General Code, as to cities, and as to counties shall be subject to Section 2293-16, General Code, as modified by Section 2293-18, General Code. The second paragraph of this section defines the purposes of “poor relief” as to counties, townships and municipalities, so that here again we have a definite and specific purpose for which the proceeds of these bonds may be used and employed.

Section 6 of said act provides in brief that the proceeds of the sale of any such bonds or notes heretofore issued under Section 2 or Section 5 of this act by any county shall be placed in a special fund to be denominated the “emergency relief fund” and shall be deemed to be appropriated only for the purpose for which the bonds or notes were authorized, but no expenditure shall be made from such special fund except in accordance with the method and under such uniform regulations as prescribed by the State Relief Commission and in no case after December 31, 1937. The proceeds of the sale of any such bonds

by a city under Section 5 of this act shall be placed in a special fund of such city called the "emergency poor relief fund" and shall be used only for poor relief. It would be well to note that this section further provides that 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, and this is likewise true as to those unencumbered balances of a city which has issued bonds under Section 5 of this act. I am assuming for the sake of argument that even though the State Relief Commission has collapsed that the purpose for which the fund from the proceeds of said bonds was established still exists, namely relief, and that as long as such purpose and need exists the proceeds of said bonds may be used for such purposes and need not be transferred to their retirement.

Under Section 7 of Amended Senate Bill No. 13, supra, the county commissioners or the council or other legislative body of any city or county has certain powers and this section further provides that at any time prior to the 31st day of December, 1937, the county commissioners of any county shall, from time to time, distribute such portion of said fund to any or all the cities (whether charter cities or otherwise) and townships of such county, according to their relative needs for poor relief as determined by such county and as set out in such approved budget, such moneys so distributed to any city or township shall be expended for poor relief in such city or township. It can be easily seen from the language of this section that the county commissioners during the year 1937, following certain procedure, were authorized to allot back to the townships and municipalities sufficient funds for their individual poor relief.

Amended Substitute House Bill No. 65, supra, provided, as already mentioned, not only for the establishment of a State Relief Commission but likewise provided for a different type and set-up of administering poor relief during the time from February 11, 1937, to April 15, 1937, at which time the State Relief Commission ceased to exist. This act further provided in Section 4 that the unexpended or unencumbered balances in the then existing "emergency poor relief fund" or in the "county poor relief excise fund" were to be transferred to the "county relief fund" and also that all allocations received from the state or proceeds of any bonds issued under Section 2 of House Bill 501 were to be placed in this newly created county relief fund. I am of the opinion that this act was merely a suspension of the procedure whereby the funds were to be expended for poor relief during the effective date of this act and that upon its death the provisions of the last amending Carey Act supplement, namely Amended Senate Bill No. 13, would pre-

vail. Amended Substitute House Bill No. 65 did not change or alter the authorization to issue poor relief bonds. It merely created a State Relief Commission and set up a new method of disbursing and spending poor relief funds during the effective date of said act. Article 1, Section 18 of the Ohio Constitution specifically provides that the General Assembly of Ohio shall have the sole power of suspending laws. It is my opinion that during the effective period of Amended Substitute House Bill No. 65 the method and procedure of administering the poor relief funds heretofore provided for in the Carey Act and supplementary acts was merely suspended. It would be vain to argue that one act should authorize subdivisions to borrow money for certain purposes and that after the bonds had been issued, the subdivision would be denied the right of expending the funds for the purposes for which they were borrowed. I am therefore of the opinion that the proceeds of bonds issued under the commonly called Carey Act or supplementary acts may at this time be expended for poor relief as defined in the acts authorizing their issuance and that the counties now have the power and right to allot this money to the respective cities and townships in accordance with their poor relief needs.

Coming next to the allocations received by the counties from the public utilities excise tax and the selective sales tax, it would be well to insert the first branch of the syllabus contained in my Opinion No. 611, dated May 18, 1937:

“Allocations received or to be received which have been pledged by the subdivision and upon which the Tax Commission of Ohio estimated and approved the issuance of bonds under authority of Amended Senate Bill No. 4, 114 O. L., Pt. 2, 17, or other amending acts authorizing poor relief bonds, shall not be used for any other purpose until the poor relief bonds so authorized have been retired or a sum sufficient has been set aside for the retirement of both principal and interest of poor relief bonds.”

I will therefore confine my following remarks relative to allocations to those surplus allocations or allocations not heretofore pledged for the retirement of poor relief bonds. Amended Senate Bill No. 4, House Bill No. 7, House Bill No. 501, and all supplementary acts provided that these allocations should be used for the same purposes as the proceeds of the bonds issued. It is therefore my opinion that these surplus allocations may be allotted and an expenditure thereof may be made in the same and like manner as the proceeds of the commonly called Carey Act bonds.

Amended Senate Bill No. 361, passed April 22, 1937, as an emergency measure and approved April 30, 1937, provided for the distribution of the undivided classified property tax. This act in part provides that in the year 1937 the county budget commission of any county could by resolution passed within thirty days from the effective date of this act request and direct the county treasurer, in lieu of distributing the residue of the undivided classified property tax fund, as provided for in Section 5639, General Code, to distribute such surplus or residue as remains over and above the amount of residue allocated to the county school tax fund in the year 1936 to be allocated by the county budget commission among the municipalities and townships on the basis of their respective relief needs. If the county budget commission determines that such need exists, these funds may be used for poor relief as defined in an act passed and approved February 11, 1937, known as House Bill No. 65. It is therefore my opinion that the residue of this undivided classified property tax over and above the amount allocated to the county school fund may be allotted to the municipalities and townships on the basis of their respective relief needs and used by them for the purposes of poor relief as defined in House Bill No. 65, *supra*.

Inasmuch as the cities and townships have by law been forced to take over their individual relief burdens, the question now arises in the state as to the establishment of a centralized relief unit or a certification officer in each county so that these municipalities and townships within the several counties may not be deprived of federal participation by way of surplus commodities and other federal relief and that a system be created to conform to the rules and regulations of the federal relief set-up or program. In many counties of the state, municipalities and townships have joined together by agreements to the effect that the county commissioners set up a centralized relief office affording the services of a certifying officer.

As hereinbefore recited, the county commissioners have the power and duty under Section 3476, General Code, to provide relief to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers, and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or *under county control*. With this type of relief clients in mind, Section 2394-6, General Code, further provides for non-institutional relief for needy persons. Section 2394-6 reads as follows:

“In addition to the other powers vested in it, the board of county commissioners of any county may provide, for needy persons therein whose condition requires it, such non-institutional

support, care, assistance or relief, as such persons may be entitled to receive at public expense; and may establish a suitable office or agency for the administration thereof."

It has been contended by some of the various subdivisions of the state that under Section 2450-2, General Code, which provides for agreements authorized between county commissioners and other legislative authorities whereby one subdivision is authorized by the contracting subdivision to exercise any power or powers and to perform any function or functions or to render any service or services on behalf of the contracting subdivision which such contracting subdivision is authorized to exercise, perform or render, that this authorization gives the county commissioners, the city officials or the township trustees the power to enter into an agreement whereby the county commissioners handle the direct relief for the cities and the townships.

It must be borne in mind that the county commissioners have only such power as expressly conferred upon them by statute and that the setting up of a proper relief office to afford administration of relief to non-institutional relief clients gives no authority for the county commissioners or their agents to investigate temporary and partial relief cases. The investigation and furnishing of temporary or partial relief is a burden placed upon cities and townships only and I do not feel that by an agreement or contract the cities or townships could give to the county commissioners any greater powers than those already conferred upon them by statute. For this reason, I believe that the county commissioners, the proper city officials and the township trustees may not enter into a contract or agreement whereby temporary and partial relief is administered by the county commissioners in behalf of the contracting subdivisions.

Section 3481, General Code, provides in part that whenever a complaint is made to the township trustees or to the proper officers of a municipal corporation that a person therein requires public relief or support, one or more of such officers or some other duly authorized person shall visit the person needing relief and make a proper investigation of the case. For the reason that this section contains the specific recital "or some other duly authorized person," I am of the opinion that municipalities may appoint some person to investigate the municipality's temporary or partial relief cases. The council of any city, under Section 4214, General Code, is expressly authorized to determine the number and to fix the compensation of officers, clerks and employes of the city so that the city may, within their own rights, appoint a person to investigate their temporary or partial relief cases.

This authorization, however, does not go so far as to include township trustees. It will be noted that under Section 3481, *supra*, the township trustees apparently have power to appoint same individual to investigate their temporary or partial relief cases. However, there is no statutory provision allowing the township trustees to compensate such investigator. At this point, I direct your attention to two former Attorney Generals' Opinions, namely Opinions of the Attorney General for 1932, Vol. II, page 1106 and for 1933, Vol. I, page 18. The first branch of the syllabus of the 1933 opinion reads as follows:

“Township trustees are not authorized to appoint any person to make investigations or keep records in connection with poor relief and to pay him compensation therefor.”

I affirm and concur in the foregoing opinions for the reason that township trustees have no express authority to compensate an investigator and in the absence of such authority they would be prohibited from entering into an agreement or contract with other subdivisions to appoint and help compensate a relief investigator.

It is therefore my opinion that county commissioners, city officials and township trustees may not enter into an agreement whereby the county commissioners or an agent appointed by them would investigate and handle temporary and partial relief cases for the contracting subdivisions; second, that municipalities have the right to appoint an investigator and would have the right under Section 2450-2, General Code, to enter into an agreement with other cities or municipalities for the appointment of an investigator and they may contribute to his compensation because of express statutory authorization; and third, that township trustees have no power to compensate from public funds an investigator, which they may appoint.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

751.

GOVERNING BOARD OF SUBDIVISION—DESIGNATION OF PUBLIC DEPOSITORIES—AWARDING OF FUNDS BY SECTION 2296-11, GENERAL CODE—PUBLICATION UNNECESSARY, WHEN—SECTION 2296-7, GENERAL CODE—COUNTY, TOWNSHIP, AND CITY OFFICIALS MAY NOT