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1. RELIEF, POOR — WHERE BY AGREEMENT BETWEEN BOARD OF COUNTY COMMISSIONERS AND CITY, COMMISSIONERS ACTED AS POOR RELIEF AUTHORITY, WHEN AGREEMENT TERMINATED, FUNDS IN EXCESS OF PRESENT NEEDS MAY BE TRANSFERRED BY COMMISSIONERS TO CITY FOR POOR RELIEF — SECTION 5625-13h G. C.
2. WHERE SUCH CONTRACT EXPIRED, IN ABSENCE OF AGREEMENT TO CONTRARY, COUNTY LOCAL RELIEF AUTHORITY NOT REQUIRED TO TRANSFER ANY PORTION OF POOR RELIEF FUNDS TO CITY AUTHORITY, OTHER THAN MONEYS FROM PROCEEDS OF BONDS ISSUED FOR POOR RELIEF—BOND PROCEEDS MUST BE DIVIDED AS PRESCRIBED IN SUBPARAGRAPH 9, SECTION 3391-2 G. C.

SYLLABUS:

1. Where, pursuant to an agreement between the board of county commissioners and a city, such board has been acting as the poor relief authority throughout the county, and, upon the termination of such agreement, it is in possession of poor relief funds in excess of its present needs, it may, under authority of and as provided in Section 5625-13h of the General Code, transfer moneys therefrom to such city for purposes of poor relief.

2. Upon the expiration of a contract between a board of county commissioners and a city, authorizing such board to act as the poor relief authority within the city, in the absence of an agreement to the contrary, the county local relief authority is not required to transfer any portion of the poor relief funds in its possession to the city authority, other than such as represents proceeds of bonds issued for purposes of poor relief; which bond proceeds must be divided in the manner prescribed in subparagraph 9 of Section 3391-2 of the General Code.

Columbus, Ohio, April 8, 1943.

Hon. Richard E. Hole, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads:

“The City Auditor of Greenville and the Darke County Auditor have requested me to obtain the opinion of your office concerning the following fact situation.

After the enactment of Sections 3391 et seq., of the General Code of Ohio, the County Commissioners of Darke County and the City of Greenville entered into a contract designating the County Commissioners as local relief authority for and on behalf of the City. I am enclosing a copy of the contract for the year 1942.

During the period the County Commissioners acted as local relief authority, there accumulated an unencumbered balance of \$26,192.62 as at January 1, 1943, in the relief funds of Darke County, Ohio. In addition to this balance the County Auditor had received \$9,722.70 in March of 1941, and \$9,691.91 in March of 1942, which sums were paid directly into the County General Fund and which funds originated under HB 501 P. U.

Because of mutual differences the County Commissioners and the City of Greenville could not agree upon a contract for the year 1943, and due to that fact the City will necessarily have to operate as its own local relief authority. The City has conferred with the Department of Public Welfare of the State of Ohio, which Department has broken down the respective encumbrances of the City and of the County as per the enclosed statement.

The question has now arisen as to whether or not the City of Greenville is entitled to a proportionate share of the unencumbered balance as at January 1, 1943, and the aforesaid sums received in March of 1941 and March of 1942.

I am familiar with the case of State ex rel. Columbus vs. Thatcher, 139 O. S. 469 and State ex rel. Ranz vs. City of Youngstown, 22 O. O. 433 (CP). I have also read your Opinion No. 1467 rendered November 22, 1939, but do not feel that these two decisions nor your Opinion are determinative of the question before me. In rendering your Opinion, I would also like for you to take into consideration Section 5625-13h of the General Code of Ohio."

Section 3391-1 of the General Code created within each county certain "local relief areas"; that is, each city therein constituted a separate poor relief area, and all of the county lying outside of the geographic limits of such cities constituted an area designated therein as the "county local relief area." In such section, after the creation of the separate local poor relief areas and the designation of the relief authority therefor, is contained the following proviso:

" * * * provided, further, that the legislative authority of a city, on the one part, and board of county commissioners of the county in which the city or any part thereof is located, on the other part, may, under the provision of sections 2450-1 to 2450-6 of the General Code, and with the effect herein specified, enter

into an agreement whereby such board of county commissioners is authorized to act as the local relief authority for and in behalf of the city; or the legislative authorities of two or more cities in a county may, under section 3615-1 of the General Code, enter into an agreement for the joint administration of poor relief within such cities; provided further that the legislative authority of any city within the county may, by agreement with all other cities and the county act as the local relief authority for such cities and county upon such terms as may be agreed upon.

Such an agreement whereby the board of county commissioners is authorized to act as the local relief authority for and in behalf of a city, if entered into prior to the first day of July in any year, may provide that, for the purpose of tax levies for poor relief and the appropriation and expenditure thereof for one or more next ensuing fiscal years, the city shall be a part of the county local relief area, anything to the contrary in section 2450-2 of the General Code notwithstanding; in which event such city shall not, for the duration of such contract, have power to levy taxes for poor relief.

If the county local relief area is not coextensive with the county, it shall constitute a special taxing unit on the taxable property within which the county commissioners of the county shall have authority to levy a tax for poor relief and to the electors within which the county commissioners shall have authority to submit the question of a special levy outside of the ten mill limitation for such purpose in the manner provided by sections 5625-15 to 5625-18, both inclusive, of the General Code. The county treasurer shall be the treasurer of such county local relief area and all expenditures from the treasury of such county local relief area shall be governed by the appropriate provisions of law relative to the expenditure of moneys in the county treasury and by the provisions of this act."

Sections 2450-2 and 2450-3 of the General Code, which are referred to in such Section 3391-1 of the General Code, provide that:

Section 2450-2.

"The board of county commissioners of any county may enter into an agreement or agreements with the legislative authority of any city, village, school district, library district, health district, park district, or other taxing district, or with the board of county commissioners of any other county as legislative authority thereof, and such legislative authorities shall have power to enter into such agreements with the board of county commissioners, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power or powers, to perform any function or functions, or to render any service or services, in behalf of the contracting subdivision or of its legis-

lative authority, which such contracting subdivision or its legislative authority is authorized to exercise, perform or render. Upon the execution of such agreement and within the limitations prescribed by it, the board of county commissioners shall have and may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which by such agreement they undertake to perform or render, and all powers necessary or incidental thereto, as amply as such powers may be possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board of county commissioners in accordance with such agreement shall be exercised or performed, the board of county commissioners shall from time to time determine and assign the same. Nothing in this act nor in any agreement by it authorized shall be construed to suspend the possession by a contracting subdivision of any power or function exercised or performed by the board of county commissioners in pursuance of such agreement. Nor shall the county commissioners by virtue of any agreement entered into under the authority of this section be deemed to have acquired any power to levy taxes within and in behalf of a contracting subdivision."

Section 2450-3.

"Every agreement entered into under the authority of this act shall provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made by the contracting subdivision into the county treasury, in consideration of the performance of the agreement. In cases where it is deemed practicable, the agreement may provide that payment shall be made by the retention in the county treasury of the amounts due from taxes collected for the contracting subdivision; and the county auditor and treasurer shall be governed by any such provision in settling the accounts for such taxes."

From the copies of the agreements between the Darke County Commissioners and the City of Greenville for the years 1941 and 1942, I observe that such agreements were each entered into prior to the first day of July of such respective years. The further terms of such agreements may be summarized as follows:

1. It was agreed that the county commissioners should dispense poor relief within the City of Greenville poor relief area in the same manner as in the county poor relief area, "except the City shall designate a proper person to handle relief in the place and stead of the Township Trustees," whose salary was to be paid by the city.

2. The person designated by the city was to receive the

applications and make the investigations concerning the administration of relief within the city area, as prescribed by Section 3391-2 of the General Code. He was further authorized to write relief orders for those entitled to relief within such area under the conditions and circumstances stated in the agreement.

3. In such agreement it was provided that the "City shall be a part of the County local relief area."

4. Such contracts further provided that :

"This contract is entered into by the City in consideration that said County Commissioners shall assume the responsibility of and provide the funds for the care of the poor within the corporate limits of said City, and said City, in consideration thereof, waives its right to claim any portion of the relief funds now in the County Treasury, reserving, however, its right to participate in said relief funds, in conformity to law, at the expiration of this contract."

5. The contract for 1941 further contains the following provision and the contract for the year 1942 contains a similar provision with respect to a similar appropriation in the sum of \$8333.33 :

"The County Commissioners have appropriated seven thousand five hundred (\$7500.00) dollars for the purpose of hospitalization and have agreed with Wayne Hospital Company to pay three-fourths ($\frac{3}{4}$) of four hundred twenty-seven (427) hospital days for the City of Greenville. The County Commissioners further agree that if there are any unexpended balances of said sum of \$7500.00, remaining at the end of the year, that they will use said funds, which have not been expended, for the purpose of defraying any unpaid hospital bills of the City of Greenville and the various Townships of Darke County, Ohio, in the event said City of Greenville or such townships are without funds for the purpose of paying their respective hospital bills and such payments of bills on the part of the County Commissioners shall be on a pro rata basis if there are insufficient funds in the hands of the County Commissioners out of said appropriation of \$7500.00 to pay all of said bills."

I am not informed as to the amount of expenditures made by the county poor relief authorities for the year 1941 nor of the method of its obtaining the funds so expended. I am informed, however, from the enclosures accompanying your request and otherwise, that of the funds paid to the county from the "county poor relief excise fund," as defined in Section 4 of House Bill No. 501 enacted by the Ninety-first General Assembly (116 O. L., 571), there were excesses above the amounts

needed for poor relief in Darke County for the years 1941 and 1942 to the extent of \$9722.70 and \$9691.91, respectively, and that on March 1 of each of such respective years the excesses were transferred to the county general fund. I am further advised that as of January 1, 1943, there was an unencumbered balance in the county poor relief fund of \$26,192.62. Your inquiry is as to whether the city, which has not elected to delegate its administrative duties with respect to poor relief, is *entitled* to any share of such surplus or the transferred surpluses.

In subparagraph 9 of Section 3391-2 of the General Code provision has been made for the division of moneys paid by the state to the county for purposes of poor relief, among the various relief areas therein. Such section, in so far as pertinent, reads:

"9. The moneys received by a county under any law other than this act providing for the distribution of state funds to counties for poor relief shall be paid into the county treasury to the credit of the proper funds therein; but in counties containing two or more local relief areas, or part or parts thereof, the proportional share of the county relief area as determined by the provisions of this act shall be paid into the treasury of the county relief area, and the proportional shares of the cities shall be distributed and paid by the county treasurer on the order of the county auditor to the treasurer of each city entitled thereto. Such distribution shall be made in proportion to the obligations incurred for poor relief in the respective local relief areas, and part or parts thereof in the county, during the calendar month next preceding the receipt of such moneys.

Nothing herein shall be construed to repeal any law authorizing the county commissioners to issue bonds for poor relief purposes; but the proceeds of any such bonds shall, in a county containing two or more local relief areas, or part or parts thereof, be distributed between said local relief areas in proportion to the obligations incurred for poor relief in such respective poor relief areas, and part or parts thereof, during the calendar month next preceding the adoption of the resolution providing for the issuance of such bonds. A like apportionment shall be made whenever, and as of the date when a contract whereby a city surrenders its power to levy taxes for poor relief shall expire, unless such contract shall have been renewed or extended."

From such language it is self-evident that if during the years 1941 and 1942 the city and the county had constituted separate relief areas, it would have been the duty of the county auditor to have divided the funds received from the state under authority of Section 4 of such House Bill No. 501 in the proportion mentioned in Section 3391-2 of the General Code. However, since two or more areas did not co-exist in Darke

County during such years, it would appear that such moneys were properly received by Darke County for purposes of poor relief. See Opinions of the Attorney General for 1939, Vol. I, page 2147, and State, ex rel. Columbus, v. Thatcher, 139 O. S., 469.

Since you neither inquire nor present facts sufficient for me to pass upon the question as to whether the transfers from the county poor relief fund to the county general fund were legal, I assume, for the purposes of this opinion, that such transfers were made in compliance with law and do not herein express any opinion with respect to such question. Assuming such transfers to be legal and in view of the fact that, under the agreements submitted, the sole duty to finance poor relief during the years 1941 and 1942 was upon the county, I am unable to form the opinion that the city is *entitled* to any portion of the moneys distributed to Darke County from the "county poor relief excise fund" mentioned in Section 4 of such House Bill No. 501, during the years 1941 and 1942, especially in view of the fact that the city had not incurred and could not have obligations for poor relief during the calendar months preceding such distributions.

You do not inform me of the sources from which the unencumbered balance of \$26,192.62 existing in the county poor relief fund accrued. I therefore am unable to form an opinion that there may not be portions thereof that are earmarked for return to other funds when not needed for purposes of poor relief. You are undoubtedly familiar with the holding of the court in State, ex rel. Ranz, v. City of Youngstown, 140 O. S., 477, wherein the court held in the fifth paragraph of the syllabus that:

"A county may transfer to a city within the county or a city may transfer to the county in which the city is located funds for poor relief without obligation for repayment. (Section 5625-13h, General Code.)"

Section 5625-13h of the General Code provides that:

"In addition to the provisions of sections 5625-13 and 5625-13a, and any other sections of the General Code relating to the transfer of funds within or between subdivisions, the board of county commissioners of any county, the council or other legislative authority of any municipal corporation, and the trustees of any township not furnishing poor relief, upon a vote of two-thirds of the members of the board of county commissioners of any county, the council of any municipal corporation or the board of trustees of any township may transfer poor relief funds or any other funds not otherwise appropriated, to the county, municipal corporation, or townships furnishing poor relief; provided, however, that transfers by the board of county commis-

sioners shall be to municipal corporations or townships located within the county, transfers by township trustees shall be to the county in which the township is located or to municipal corporations located wholly or in part within the township, and transfers by municipal corporations shall be to the county or counties or the townships in which such municipal corporations are located in whole or in part. Immediately upon receipt of notice of the action of the legislative authority transferring funds, the officer of the political subdivision making such transfer, who is charged with the duty of distributing the funds thereof, shall make distribution in accordance therewith.

Funds received pursuant to any transfer under this section shall be credited to the poor relief fund of the transferee subdivision and shall be expended solely for the purposes of poor relief.

Nothing in this act shall be construed to mean that any subdivision is authorized to transfer to any other subdivisions funds for relief purposes that the transferring subdivision is not authorized to expend in its own subdivision for purposes of relief."

In Section 3391-2 of the General Code, subparagraph 9 provides that when bonds have been issued for poor relief purposes by a county containing two or more poor relief areas, the proceeds thereof shall be apportioned among the areas in the proportion therein designated, and that:

"A like apportionment shall be made whenever, and as of the date when a contract whereby a city surrenders its power to levy taxes for poor relief shall expire, unless such contract shall have been renewed or extended."

The apportionment so referred to is of the proceeds of bonds issued by the county local relief authority during the time it was acting on behalf of the city under contract in the administration of poor relief.

I have been unable to find any provision of law *requiring* a county local relief authority which, under contract with other relief authorities, has been administering poor relief in such areas, upon termination of the contract, to make any division of its poor relief funds with such authorities, except when such funds are proceeds of bonds issued for the purpose of providing funds for poor relief throughout the combined area. As above pointed out, under authority of Section 5625-13h of the General Code, the county commissioners *may* transfer such portion as they do not need for poor relief purposes within the county area; however, it does not seem that they may be compelled so to do.

Likewise, I am unable to find in the contract between the Commissioners of Darke County and the City of Greenville any provision

requiring an allocation of the unexpended funds remaining in the possession of the county authority at the termination of the agreement.

Specifically answering your inquiry, it is my opinion that:

1. Where, pursuant to an agreement between the board of county commissioners and a city, such board has been acting as the poor relief authority throughout the county, and, upon the termination of such agreement, it is in possession of poor relief funds in excess of its present needs, it may, under authority of and as provided in Section 5625-13h of the General Code, transfer moneys therefrom to such city for purposes of poor relief.

2. Upon the expiration of a contract between a board of county commissioners and a city, authorizing such board to act as the poor relief authority within the city, in the absence of an agreement to the contrary, the county local relief authority is not required to transfer any portion of the poor relief funds in its possession to the city authority, other than such as represents proceeds of bonds issued for purposes of poor relief; which bond proceeds must be divided in the manner prescribed in subparagraph 9 of Section 3391-2 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.