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1. TAX — PROCEEDS LEVIED UPON “GROSS RECEIPTS” AND “GROSS EARNINGS” — PUBLIC UTILITIES — MAY BE USED ONLY FOR PURPOSES OF “POOR RELIEF” WHEN DISTRIBUTED TO COUNTIES — MAY NOT BE TRANSFERRED TO OTHER FUNDS — AMENDED H. B. 741, SECTION 1, 117 O. L. 753 AS AMENDED BY AM. S. B. 462, 117 O. L. 868 - H. B. 172, 119 O. L. 59 - H. B. 196, 95 GENERAL ASSEMBLY.
2. MONEYS DISTRIBUTED TO COUNTIES FROM “COUNTY POOR RELIEF EXCISE FUND” IN STATE TREASURY — MAY BE USED ONLY FOR POOR RELIEF AND COUNTY WELFARE PURPOSES — WHEN NOT PRESENTLY NEEDED FOR SUCH PURPOSES MAY NOT BE TRANSFERRED TO GENERAL FUND — ARTICLE XII, SECTION 5, OHIO CONSTITUTION — SECTIONS 5625-13, 5625-13a G. C.

SYLLABUS:

1. The proceeds of the tax levied upon “gross receipts” and “gross earnings” of public utilities by Section 1 of Amended House Bill 741 in 117 O. L. 753, as amended by Amended Senate Bill 462 in 117 O. L. 868, House Bill 172 in 119 O. L. 59 and in House Bill 196 of the present General Assembly when distributed to counties may be used only for purposes of “poor relief” and may not be transferred to other funds.

2. The moneys distributed to counties from the “county poor relief excise fund” in the state treasury may be used only for purposes of poor relief and county welfare purposes and when not presently needed for such purposes may not be transferred to the general fund. (Section 5 of Article XII, Ohio Constitution; Sections 5625-13 and 5625-13a, General Code.

Columbus, Ohio, May 1, 1944

Hon. Herbert R. Mooney, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Extraordinary employment because of the war effort finds many counties in a position where, for the time being, the balances in utility excise tax monies (from the one per cent and the 65/100 per cent) are more than sufficient to take care of current poor relief needs. In a number of counties it is contemplated that such surpluses will be used for purposes other than poor relief as defined in Section 3391, General Code. Indeed, there have been some instances in the past where transfers have been made. The principal programs to which transfers are proposed are the following:

1. County Infirmaries and Children's Homes
2. Health programs, such as T. B. care
3. Grants to Aid to Blind and Aid to Dependent Children programs
4. Hospitalization
5. General Fund

We are interested in obtaining your opinion on the legality of such transfers. The questions specifically raised include the following:

1. Are there at present statutory sanctions for such transfers? If so, how should they be accomplished?
2. Would they run counter to Article XII, Section 5 of the Constitution of Ohio?
3. Are the excise taxes mentioned above dedicated exclusively to poor relief? If so, does it mean only poor relief as defined in Section 3391, General Code?
4. If such transfers are contrary to the statutes or the constitution, how and by whom may such illegal transfers be prevented? Or be restored if they have already been made?
5. If money has been appropriated from the general fund at some time in the past for poor relief, may the county commissioners now consider it a loan and repay the general fund from their poor relief fund?
6. Can transfers legally be made from either the county poor relief excise fund or from the poor relief fund of a county or city to any other fund to be expended for any other purpose than poor relief? If so, for what purpose or purposes, and what procedure would be required?”

In considering questions such as those presented by your inquiry, we must keep in mind the provisions of Section 5 of Article XII of the Ohio Constitution, which reads:

“No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly the object of the same, to which only, it shall be applied.”

The tax referred to by you as the “one per cent utility excise tax” is the transfer by statute of a portion of the regular public utility taxes imposed by Sections 5474, 5475, 5483, 5485, 5486, 5487 and 5487-1 of the General Code to the purposes of poor relief. Such transfer was authorized by the amendment of Section 5491 of the General Code (116 O. L. 573), which provided for the diversion of a portion of such tax from the general fund for the years 1935 to 1943, both inclusive, to poor relief, etc., the pertinent portion whereof reads:

“For the purpose of providing funds for poor relief and for the payment of premiums to the industrial commission of Ohio for the public work-relief employees’ compensation fund and of carrying out of the other purposes and provisions of this act, except as to the excise taxes from street and suburban and interurban railroad companies, such proportion of the excise taxes received by the treasurer of state under the provisions of sections 5474, 5475, 5483, 5485, 5486, 5487, and 5487-1, of the General Code, as represents one per centum of the amount of gross receipts and gross earnings on which the computations required by sections 5483, 5485, 5486 and 5487, of the General Code, are made, less the subtractions required to be made by section 5487-1 of the General Code, (the additional tax hereby imposed) during the years 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942 and 1943 shall be allocated to the ‘county poor relief excise fund’, and thereafter shall be allocated to the general fund of each county for county statutory relief and welfare purposes, and shall be allocated to each county in the ratio by which the average of the real, public utility and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county during the previous five years, bears to the average of the aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state during the previous five years, respectively. * * *”

The language just above quoted from such Section 5491 was amended by the Ninety-Fifth General Assembly (Amended Substitute Senate Bill, No. 143) by making the allocation of such one per cent to the county poor relief excise tax fund perpetual. The effect of such

amendment to former Section 5491 of the General Code is to divert from the general revenue fund of the state to the "county poor relief excise fund" a portion of the permanent "gross receipts" and "gross earnings" excise tax proceeds. The permanent public utility excise tax on gross receipts and gross earnings as originally enacted was, in terms, for the purposes of the general revenue fund of the state. By reason of the amendments above mentioned an amount equal to what would be a levy of one per cent on such gross receipts and gross earnings is for the purposes of the "county poor relief excise fund". The remainder of such levy is for the purposes of the general revenue fund of the state. The "county poor relief excise fund" is a fund in the state treasury which is required to be "allocated to the general fund of each county for county statutory relief and welfare purposes," (Section 5491, General Code).

The "65/100 per cent" public utility tax moneys referred to in your request are the proceeds of a tax originally levied in Section 1 of Amended House Bill No. 741 (117 O. L. 753) by the Ninety-Second General Assembly "for the purpose of providing funds for relief and the administration thereof". Such act levied the tax for the designated purpose for the years 1938 and 1939 only. Such act was amended in Section 1 of Amended Senate Bill No. 462 of such General Assembly to extend the levy through the year 1942 with like purpose, but adding to the purpose the words "including payment of premiums to the industrial commission of Ohio for the public work-relief employes' compensation fund and of carrying out the other purposes and provisions of this act," (117 O. L. 868). "The other purposes" mentioned in this act are for payment of certain bonds issued in anticipation of such receipts. Such section was again amended in House Bill No. 172 of the Ninety-Third General Assembly so as to extend the tax during the year 1943, but without change in the purpose of the tax (119 O. L. 59). It was again amended in House Bill No. 196 of the present General Assembly so as to extend the levy through the year 1945, but likewise without change in the purpose of the tax.

As I have above pointed out, the tax funds distributed to the counties from the "county poor relief excise fund" under authority of Section 5491, General Code, were levied for the purposes of "county statutory relief and welfare purposes" and, as stated in such section, they "shall be expended only for county statutory welfare and relief pur-

poses, as determined by the county budget commission.”

In sub-paragraph 9 of Section 3391-2, General Code, it is provided that:

“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.”

By virtue of the provision just above quoted, it is apparent that the monies received by the counties by virtue of Section 2 of such Amended House Bill No. 741, as amended, are distributed to the subdivisions entitled thereto and are required to be placed in their “poor relief funds” to be used for purposes “of poor relief”, which the General Assembly has defined in Section 3391, General Code, poor relief being the express purpose for which such tax was levied. However, you will observe that the purpose for which the “one per cent utilities tax” is levied is for distribution among the counties for “county statutory relief *and welfare purposes*” and not merely for “poor relief” as defined by statute.

In Section 2511-4 of the General Code the Legislature itself has recognized aid to dependent children and aid to the needy blind as county welfare problems and has provided for the administration of such duties by a county department of welfare when established. Similarly, I believe the operation of county and children’s homes, the care of needy tuberculosis patients and hospitalization of needy poor come within the ordinary concept of county welfare purposes. It would, therefore, seem that the use of county funds distributed to the county from the “county poor relief excise fund”, referred to in your letter as the “one per cent utility excise tax monies”, might constitutionally be used for any of the first four purposes mentioned in your request.

While, as I have above pointed out, the monies received by the

county from the "county poor relief excise tax fund" were not required to be placed in the poor relief funds of the taxing subdivision, but could be placed in a fund for poor relief and county welfare purposes, your inquiry is directed to the transfer of such funds from the poor relief fund after they have been placed in such fund.

Section 5625-13 of the General Code provides for transfers from certain funds of a subdivision to other funds of a subdivision. No one of such provisions has any application to your problem except possibly that contained in sub-paragraph d. The pertinent provisions therein contained are:

"No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided: * * *

d. Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with section 5625-9, paragraph (s), (d), (f), or (g) or section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund."

Since there has been no termination of the activity of dispensing poor relief, I do not believe such section authorizes the transfers concerning which you inquire.

In Sections 5625-13a to 5625-13g, General Code, the Legislature has authorized certain transfers of funds from one fund to another, with the approval of the Department of Taxation and the Common Pleas Court, as therein outlined. Section 5625-13a reads:

"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."

By reason of the express limitations contained in such section, it is apparent that it was not the legislative intent to authorize a transfer of excise tax proceeds levied for a specific purpose to a fund to be used for another purpose. I am, therefore, of the opinion that there is no authority of law to transfer the proceeds derived from the 65/100 per cent excise tax on certain public utilities, or any part thereof, from the poor relief fund to any other fund since such levy was one made by the Legislature for the specific purpose of poor relief. I am similarly of the opinion that there is no statutory authority to transfer any portion of the monies allocated to a subdivision from the "county poor relief excise fund" to the general fund of a subdivision. Such monies, when received from the state, should be placed in a special fund for county statutory relief and welfare purposes created under authority of Section 5625-11 of the General Code. However, it would seem that a court might hold that such monies, with the approval of the Department of Taxation, could be transferred from the poor relief fund of the county to another fund for county welfare purposes.

In view of the opinion above expressed, it is apparent that my answer to your first question is that to the extent that there is statutory authority for transfers to the funds mentioned in your inquiry, such authority is contained in Sections 5625-13a to 5625-13g, both inclusive, of the General Code; that as to your second question with respect to the funds referred to as "65/100 per cent utility excise tax monies", no transfer to any other fund than poor relief could be made without a violation of Section 5 of Article XII of the Constitution and that no transfer of the funds received by the county from the "county poor relief excise tax fund" may be made to the general fund without infringing upon the provisions of Section 5 of Article XII of the Constitution.

It is patent, therefore, in view of my opinions above set forth, that a categorical answer can not be given to your third question. As I have above pointed out, the monies received from the "county poor relief excise tax fund" are not required to be used exclusively for poor relief, but may also be used for county welfare purposes, but the funds disbursed to the county from the "65/100 per cent public utility excise tax fund" are to be used for purposes of poor relief as defined by statute, which term is defined in Section 3391 of the General Code.

I do not express herein any opinion concerning your fourth and fifth inquiries for the reason that the problems arising out of such questions are ones of direct concern to the Bureau of Inspection and Supervision of Public Offices, which Bureau has not requested my opinion.

In my opinion transfers may be legally made from monies disbursed to the county from the "county poor relief excise tax fund" to a poor relief fund or a fund for county welfare purposes, but to no other fund, in the manner above pointed out. However, there is no statutory provision authorizing transfers from the poor relief fund of a county or city to another fund when the monies therein contained are proceeds of a tax levied by the Legislature for the exclusive purpose of poor relief. Any other funds therein contained may be transferred to the extent authorized by and in the manner authorized by Sections 5625-13a to 5625-13g, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General