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RELIEF—AMOUNT LOCAL RELIEF AUTHORITY RECEIVES DIRECTLY OR INDIRECTLY FROM STATE FOR POOR RELIEF PURPOSES IN ANY CALENDAR YEAR—AMOUNT USED BY COUNTY TO RETIRE EMERGENCY POOR RELIEF EXCISE BONDS SHOULD BE DEEMED TO BE INCLUDED IN AMOUNT RECEIVED DIRECTLY OR INDIRECTLY FROM STATE FOR POOR RELIEF—ANY CALENDAR YEAR—AMOUNT SHOULD BE EXCLUDED FROM COMPUTATION OF AMOUNT OF SUCH RELIEF AUTHORITY'S POOR RELIEF ADMINISTRATIVE COSTS FOR CALENDAR YEAR—SECTION 3391-24 G. C.—AMENDED SENATE BILL 395, 98 G. A.

SYLLABUS:

In determining the amount, under the provisions of Section 3391-24, General Code, which a local relief authority receives directly or indirectly from the state for poor relief purposes in any calendar year, the amount used by a county to retire emergency poor relief excise bonds issued under authority of Amended Senate Bill 395, 98th General Assembly, should be deemed to be included in the amount so received "directly or indirectly from the state for poor relief purposes in any calendar year" and excluded from the computation of the amount of such relief authority's "expenditures for poor relief and poor relief administrative costs for such calendar year."

Columbus, Ohio, April 23, 1952

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Amended Senate Bill No. 395, enacted by the 98th General Assembly as an emergency measure became effective on June 29, 1949. This act authorized the County Commissioners of any county to issue bonds during the year 1949 for emergency poor relief within the county against anticipated revenues allocated to such county from public utility excise taxes levied by Sections 5474-5475-5483-5485-5486-5487-5487-1 and 5491 of the General Code.

"Several counties of the state issued such bonds which are now being retired from utility excise tax collections. A limitation

in Section 3391-24 of the General Code which first became effective on October 20, 1949, provides, 'that no local relief authority shall receive directly or indirectly from the state for poor relief purposes in any calendar year an amount in excess of 100% of its expenditures for poor relief and poor relief administrative costs for such calendar year.'

"During the calendar year 1951, there are two counties in the state which will receive more than 100% of their expenditures for poor relief and poor relief administrative costs for such year if the full amount distributed to such counties from public utility excise taxes under the section above referred to and under other temporary legislation, and maximum state matching from the general revenue fund as authorized by Section 3391-24, General Code, is paid to them.

"If the amount used by said counties during the calendar year 1951 to retire bonds issued under Amended Senate Bill No. 395, above referred to, is deducted from the full amount of public utility excise taxes distributed to such counties during the calendar year 1951, maximum reimbursements from general appropriations and the remainder of the public utility excise taxes would be less than 100% of their expenditures.

"I therefore desire your opinion on the following: In determining the amount that a local relief authority receives directly or indirectly from the state for poor relief purposes in any calendar year, shall the amount used by a county to retire emergency poor relief excise bonds issued under the authority of Amended Senate Bill No. 395 (98th General Assembly), during such calendar year be taken into consideration?"

It may be helpful at the outset to note the general plan prescribed by the General Assembly for financing poor relief needs in the several local relief areas of the state. The funds for this purpose are derived from two principal sources. First, we find that under the provisions of Section 5491, General Code, a portion of certain public utility excise taxes collected by the state is allocated to the "county poor relief excise fund." The amounts in this fund are distributed to the several local relief areas under a formula based on (a) the prior year's relief budget and (b) the population of the area, as provided in Section 5491-1, General Code. Second, we find a "matching provision" in Section 3391-24, General Code. Under this provision each local relief authority is entitled to reimbursement monthly in an amount not to exceed 50% of the expenditures for poor relief and the administration thereof. These reimbursements are made through the Department of Public Welfare from funds

provided from the general revenue fund by the General Assembly. In the current biennium, for example, we find in the general appropriation act, Amended House Bill No. 671, 99th General Assembly, an appropriation of \$9,000,000 for this purpose, p. 86 of the act.

Prior to the enactment of Section 3391-24, the provision for "matching" local poor relief expenditures with state funds was found in Section 3391-11, General Code. The first paragraph of this section was as follows:

"From appropriations to the department of public welfare for contributions for poor relief, and conditioned on compliance with the provisions of this act and the rules, regulations and orders of the state director, there shall be contributed monthly to each local relief area an amount equal to, but not exceeding, fifty per centum of the obligations lawfully incurred by such local relief area from poor relief funds during the preceding month, as approved by the state director; provided, however, that the total amount of such contributions for any calendar month shall not exceed that percentage of such appropriations for the calendar year hereinafter specified. If such percentage of such appropriations for any calendar month shall amount to less than the total amount of money required to contribute to each local relief area an amount equal to fifty per centum of its obligations lawfully incurred for poor relief in such month, the contribution to each local relief area for such month shall be reduced proportionately. The state director shall have the authority to determine the kinds of obligations and the cost thereof which will be included in the obligations for poor relief and the administration thereof with reference to which the contribution by the state shall be calculated."

This arrangement sometimes led to unusual results as may be illustrated by a hypothetical example.

Assume that X county in a particular year made expenditures for poor relief of \$100,000 and in the same year received \$60,000 as its distributive share from the county poor relief excise fund. In this situation, since under the provisions of Section 3391-11, *supra*, it was permitted a reimbursement of 50% of the amount actually expended, such county would receive through the Department of Public Welfare the additional sum of \$50,000. This, of course, resulted in a surplus of \$10,000, which remained in the county poor relief fund as an unexpended balance.

It seems clear that the General Assembly intended to remedy this situation in the revision of the poor relief laws of 1949 and for that

reason placed the following provision in Section 3391-24, General Code, which became effective on October 20, 1949:

“Within the limits of funds appropriated to the state department of public welfare by the general assembly, each local relief authority shall be reimbursed monthly not to exceed 50% of its expenditures for poor relief and the administration thereof; provided, however, that no local relief authority shall receive directly or indirectly from the state for poor relief purposes in any calendar year an amount in excess of 100% of its expenditures for poor relief and poor relief administrative costs for such calendar year. * * *”

The specific question presented by your inquiry is, therefore, whether the language “100% of its expenditures for poor relief and poor relief administrative costs for such calendar year,” as used in this section, is such as to comprehend the interest and amortization charges payable in 1951, incident to an issue of bonds sold under the provisions of Amended Senate Bill 395, 98th General Assembly. The first three sections of this act are as follows, 123 O.L., pp. 408, 409:

“Section 1. Whenever, within the calendar year 1949, the county commissioners of any county adopt a resolution finding that it is necessary to issue bonds for emergency poor relief within the county, the county commissioners of such county may borrow money to provide funds for emergency poor relief within the county and evidence such indebtedness by the issuance of negotiable bonds or notes in the amount approved by the tax commissioner. On submission of such resolution to the tax commissioner he shall estimate the amount which will probably be allocated to such county from public utility excise taxes levied by Sections 5474, 5475, 5483, 5485, 5486, 5487, 5487-1 and 5491 of the General Code, and shall calculate the total amount of bonds, the principal of and interest on which can be paid out of such estimated allocation, and the tax commissioner shall not approve the issue of an amount of bonds by any county in excess of the total amount so calculated nor in excess of one million dollars, whichever is the lesser. So much of the installments of interest falling due prior to the receipt of the taxes so allocated to such county shall be paid out of the proceeds of the bonds, and the amount thereof as calculated by the tax commissioner shall be set aside out of such proceeds in a special fund and held in trust for the payment of such interest; or if the treasurer of state has been appointed paying agent for such county under the provisions of section 3 of this act, shall be paid to the treasurer of state as such paying agent.

"The maximum maturity of such bonds shall be ten years after the issuance thereof. Bonds issued in anticipation of such public utility taxes shall mature in annual installments. The maturities shall be fixed by the tax commissioner and shall be so arranged that the total amount of principal and interest payable at each maturity shall not exceed the amount of taxes anticipated by such bonds as are estimated to be allocated to such county and available for the payment of the principal and interest of such bonds at such maturity. Issuance, sale and characteristics of said bonds or notes shall conform to article XII, section II of the constitution and to the provisions of the uniform bond act governing the issuance and sale and characteristics of bonds or notes issued without a vote of the people except as otherwise provided in this act and except that the indebtedness evidenced by such bonds or notes shall not be subject to any limitations except those provided in this act.

"The proceeds of the bonds issued under the provisions of this section shall be expended for poor relief."

"Section 2. The proceeds of the sale of any such bonds or notes, heretofore or hereafter issued under section 1 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 for the purpose only for which the bonds or notes were issued. Any unincumbered 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 3 of this act, 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 1 of this act."

"Section 3. At the time of the issuance of bonds under the provisions of Section 3 of this act the county commissioners of any county may adopt and deliver to the treasurer of state a resolution appointing the treasurer of state the paying agent of the county as to such bonds. In such event the treasurer of state out of the total amount called for by the warrant of the auditor of state shall retain such amount as may in his opinion be necessary to pay the principal and interest on the bonds of the county issued under section 1 of this act, and hold the same as the paying agent of said county, and pay over only the balance if any to the treasurer of the county. After the adoption of such resolution by the county commissioners such appointment may not be revoked as long as any bonds issued under the provisions of section 1 of this act are unpaid. If the general bond of the

treasurer of state does not and cannot be made to cover the custody of such funds he shall give a special bond in favor of the state of Ohio for the benefit of the county or counties affected in an amount to be fixed by the governor."

If we adhere to the literal meaning of the language used in Section 3391-24, *supra*, we could hardly reach the conclusion that the words "expenditures for poor relief * * * for such calendar year" could refer to expenditures to retire bonds issued in *prior* years, especially since such bonds, to the extent that they relate to expenditures for poor relief purposes at all, plainly relate to poor relief expenditures made in prior years and not in "such calendar year." This is true for the reason that the interest and amortization charges on such bonds are not themselves poor relief expenditures but rather are payments made to service a bonded debt, the proceeds of which were expended in prior years for relief purposes.

We may, however, examine briefly the circumstances in which the two statutes here under scrutiny were enacted. Amended Senate Bill No. 395, 98th General Assembly, was an emergency act effective June 29, 1949. Section 3391-24, General Code, was enacted some weeks later and became effective on October 20, 1949.

It would appear that by the enactment of Amended Senate Bill 395, the General Assembly intended, for the purpose of meeting an emergency, to permit the several counties to borrow money on bonds issued thereunder, using such money for immediate relief needs; and to allocate for the servicing of such bonds the county's future receipts from a source which then constituted, as it does now, the primary source for meeting the cost of the county's share of local poor relief expenditures. Here we may readily infer a legislative intent that as soon as the receipts in an ensuing year from this source were allocated to this use, the deficiency, if any, in the county's share of funds available in such year for poor relief expenditures, would of necessity be met by the county authorities by the use of funds obtained from other taxation sources at the local level.

With this possibility presumably in mind, the General Assembly a few weeks after the emergency enactment of Amended Senate Bill No. 395 enacted Section 3391-24, General Code, forbidding payment to a local relief authority directly or indirectly, in any calendar year, of state funds in excess of 100% of its "expenditures for poor relief or poor relief

administrative costs for such calendar year.” The plain inference from this action is that the General Assembly intended to prohibit the building up of a surplus in a county poor relief fund, as we have already noted was possible under the operation of prior Section 3391-11, General Code, from which surplus it would be possible to meet the service charges on poor relief bond issues of prior years. In short, there appears to have been a legislative intent to insure that the local relief areas were to meet their share of local relief budgets, both past and present, from utility excise tax sources, or from other local sources of taxation, as the occasion should require.

This view is supported by the evident difference in meaning which must be ascribed to (a) amounts received “directly or indirectly from the state for poor relief purposes,” and (b) “expenditures for poor relief,” as this language is used in Section 3391-24, *supra*. Where varying expressions are found in a statute, different meanings must be ascribed to them. 37 Ohio Jurisprudence, 570, Section 307. Moreover, unless it be conceded that receipts “for poor relief purposes” is broader in scope than “expenditures for poor relief,” there would obviously have been no necessity for the enactment of the “100% limitation” in Section 3391-24. In other words, if the two expressions are synonymous, it would clearly be impossible for the aggregate of receipts from the state for poor relief purposes to exceed expenditures for poor relief, even in the absence of a statutory limitation to that effect. Thus, since it is necessary to attribute some meaningful purpose and effect to this provision, it must follow that the aggregate of receipts for relief *purposes* may, in certain circumstances, exceed the aggregate of *expenditures* for poor relief.

As already observed herein, it could hardly be supposed that funds allocated to service a bond issue under the provisions of Senate Bill 395, *supra*, could be deemed to be an expenditure for poor relief in the current year. Such funds are, however, clearly “received from the state” and, in view of the use to which they are put, must be considered to be expended, at least indirectly, “for poor relief purposes.”

For these reasons, and in view of the unambiguous literal meaning of the language here under examination, it is my opinion that in determining the amount, under the provisions of Section 3391-24, General Code, which a local relief authority receives directly or indirectly from the state for poor relief purposes in any calendar year, the amount used by

a county to retire emergency poor relief excise bonds issued under authority of Amended Senate Bill 395, 98th General Assembly, should be deemed to be included in the amount so received "directly or indirectly from the state for poor relief purposes in any calendar year" and excluded from the computation of the amount which such relief authority has expended "for poor relief and poor relief administrative costs for such calendar year."

Respectfully,

C. WILLIAM O'NEILL
Attorney General