

1632.

MUNICIPALITY — COUNCIL MAY, WITH BUREAU'S APPROVAL,
CREATE POLICE RELIEF FUND BY TRANSFERRING MONEYS
FROM GENERAL FUND.

SYLLABUS.

The council of a municipality may, with the approval of the bureau, establish a police relief fund by transferring to such fund moneys in the general fund, provided that there is not transferred from such general fund in any one year revenues derived from the general property tax in excess of three tenths of a mill on each dollar upon all the real and personal property as listed for taxation in such municipality.

COLUMBUS, OHIO, March 18, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“Section 4614, General Code, provides that a municipal corporation may establish and maintain a police relief fund. Section 4621, General Code, provides that a tax shall be levied for the payment of all pensions. Other sections provide for contributions by members and the deposit in the police relief fund of receipts of certain character. Section 5625-11 provides that taxing authorities may establish, with the approval of the Bureau, funds which may be necessary and desirable in addition to those provided for in Section 5625-9, General Code. Section 5625-12, General Code, provides that a municipality may establish, in the manner provided by law, a firemen's pension fund, a police relief fund, etc. Section 5625-13, item F, provides that moneys appropriated may be transferred from the General Fund of the subdivision to a fund authorized by Sections 5625-11-12 of the General Code.

May the council of a city at this time create a Police Relief Fund and provide for a transfer out of the General Fund to such Police Relief Fund?”

Section 4616 of the General Code (113 O. L. p. 64) authorizes the council of a municipal corporation having a police department to “declare the necessity for the establishment and maintenance of a police relief fund.” The succeeding sections of the Code detail the method of selecting the board of trustees for the administration of the fund, and Section 4621, as amended by the last Legislature, provides:

“In each municipality availing itself of these provisions to maintain the police relief fund the council thereof each year in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law shall levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality, but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen under existing laws.” In the matter of such levy the board of trustees of the police relief fund shall be subject to the provisions of law controlling the heads of the departments in the municipality and shall discharge all the duties required of such heads of departments.”

Prior to the amendment, Section 4621 read as follows:

"In each municipality availing itself of these provisions, to maintain the police relief fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, may levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality. In the matter of such levy, the board of trustees of the police relief fund shall be subject to the provisions of law controlling the heads of departments in such municipality, and shall discharge all the duties required of such heads of departments."

A comparison of the section before and after amendment discloses that the change makes the levy, which was optional, now mandatory, but the maximum of three-fourths of a mill is still retained. I feel, therefore, that the present section prevents a levy in any one year for the purpose of the police relief fund in excess of three-tenths of a mill, but the duty of a municipality is mandatory to levy a sufficient tax within that limitation to provide for the payment of pensions granted to policemen. The existence of this maximum is of materiality in the consideration of your question.

By the terms of Section 5625-5 of the General Code, the purpose and intent of the general levy for current expenses of the various subdivisions of the State are explained. That section provides in part as follows:

"Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary * * * in the case of municipalities * * * for a firemen's pension fund, police relief fund and sanitary fund; * * *"

The levy for the police relief fund is accordingly made as a part of the general levy for current expenses. It does not follow, however, that the proceeds of the levy need be turned into the general fund of the subdivision. As you point out, Section 5625-11, as amended by the last Legislature, relates to the establishment of additional funds and provides as follows:

"In addition to the funds provided for by Sections 5625-9 and 5625-12 of the General Code, the taxing authority of a subdivision may establish, with the approval of the bureau, such other funds as may be necessary and desirable, and may provide by ordinance or resolution that moneys derived from specific sources other than the general property tax shall be paid directly into such funds."

Section 5625-12, General Code (113 O. L. 673), provides:

"Without prejudice to the generality of the authority to create other special funds with the approval of the bureau, a municipality may establish in the manner provided by law, a firemen's pension fund, a firemen's indemnity fund, a police relief fund, a sanitary police pension fund, or a cemetery fund; and a township may establish by law a cemetery fund."

These sections clearly authorize the establishment of the police relief fund, which is, of course, authorized by the provisions of Section 4621, *supra*. The proceeds of the levy for this purpose, which are a portion of the general levy, may therefore be paid into a special fund established by the municipality, with the approval of the bureau. Your specific question, however, deals with the right

to transfer moneys from the general fund to the police relief fund when the latter fund is being established, and you cite as authority therefor the provisions of Section 5625-13 of the Code (113 O. L. 673), which, so far as pertinent, are as follows:

“Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by Sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority.”

Clearly there exists authority for the transfer contemplated, but I am of the view that the maximum limitation of levy heretofore discussed in connection with Section 4621 of the Code must be borne in mind. For the most part, the general fund will consist of moneys derived from the general property tax and there exists no authority to devote, from the proceeds of the general property tax in any one year, to the purposes of the police relief fund more than a levy of three-tenths of a mill. It is conceivable, of course, that there may be in the general fund revenues derived from a source other than the general property tax, and, so long as the law requires such revenue to be used for no particular purpose, I believe that it might be utilized for the purposes of the police relief fund. This is clearly indicated by the language of Section 5625-11 of the Code, *supra*. I am of the opinion, however, that funds arising from taxation may not be transferred from the general fund to the police relief fund beyond the three-tenths of a mill limitation imposed by the provisions of Section 4621 of the Code.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the council of a municipality may, with the approval of the bureau, establish a police relief fund by transferring to such fund moneys in the general fund, provided that there is not transferred from such general fund in any one year revenues derived from the general property tax in excess of three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in such municipality .

Respectfully,
GILBERT BETTMAN,
Attorney General.

1633.

APPROVAL, BONDS OF GRAND TOWNSHIP, MARION COUNTY—
\$6,649.48.

COLUMBUS, OHIO, March 18, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1634.

APPROVAL, NOTES OF GROVER HILL RURAL SCHOOL DISTRICT,
PAULDING COUNTY—\$45,000.00.

COLUMBUS, OHIO, March 18, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.