

4071.

BOARD OF HEALTH OF CITY UNAUTHORIZED TO EXPEND FUNDS OBTAINED UNDER SECTION 1080-17, G. C., UNLESS SUCH FUNDS APPROPRIATED BY CITY COUNCIL.

*SYLLABUS:*

*A city board of health may not expend funds distributed to it under section 1080-17 of the General Code unless said funds are first appropriated by the city council.*

COLUMBUS, OHIO, March 19, 1935.

HON. WALTER H. HARTUNG, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent letter requesting my opinion upon the following:

“This department has been asked by the health commissioners of several city health districts what distribution is to be made of the funds paid to city health districts by the Ohio Milk Marketing Commission, as provided in Section 1080-17 of the General Code.

The question seems to be as to whether the amount received from the Milk Marketing Commission shall be paid into the general fund of the city and appropriated by council to the board of health or if on receipt of the State Warrant the amount shall be credited by the fiscal officer of the city to the health fund and be available to the board of health without appropriation.

It would seem to me that the provision, ‘any amount so paid to the fiscal officer of such health district shall be used in order to supplement local funds in the enforcement of regulations pertaining to the production and marketing of milk,’ would be sufficient appropriation to place these funds immediately available to the board of health without intervention of council.”

Sections 1080-1 to 1080-23, inclusive, known as the Burk Act, among other things requires a license on the part of all milk dealers, as the term is defined in the act, before engaging in business. Section 1080-16 sets forth the schedule of fees to be paid by such license. Section 1080-17, to which you refer, provides in part:

“An amount equal to twenty per centum of each fee collected pursuant to this act shall, excepting as otherwise provided in this section, be paid on the voucher of the chairman and executive secretary of the commission and the warrant of the auditor of state to the proper fiscal officer of the city or general health district or districts in which such fees originated. An amount equal to ten per centum of each fee collected pursuant to this act shall, as otherwise provided in this section, be credited to the state department of agriculture for inspection purposes required by this act. The commission shall by rules and regulations define the district of origination and provide for allocation between or among two or more districts, as occasion may require; and, if in its opinion the health authorities of any such health district are not adequately enforcing existing health regulations or have omitted to prescribe proper health regulations governing the production or distribution of milk, the commission may omit the making of such payment to the fiscal officer of such district. Any amount so paid to the fiscal officer of such health district shall

be used in order to supplement local funds in the enforcement of regulations pertaining to the production and marketing of milk."

As suggested in your letter the section above quoted provides for the payment of a portion of such fund to the "fiscal officer" of the health districts. In analyzing the statutes governing the organization of health boards there will be found no "fiscal officer" for a city health district other than the auditor of the municipality. Of course, the county auditor is designated as an official for a General Health District in section 5625-1, General Code.

Section 1261-38 of the General Code, important to consider in connection with your inquiry, reads:

"The treasurer of a city which constitutes a health district shall be the custodian of the health fund of such city health district. The county treasurer of a county which constitutes all or the major portion of a general health district shall be the custodian of the health fund of that health district. The auditor of a county which constitutes all or a major portion of a general health district shall act as the auditor of the general health district. The auditor of a city which constitutes a city health district shall act as the auditor of a city health district. Expenses of the district board of health of a general health district shall be paid on the warrant of the county auditor issued on vouchers approved by the district board of health and signed by the district health commissioner. Expenses of a board of health or health department of a city health district shall be paid on the warrant of the auditor of the city issued on vouchers approved by the board of health or health department of a city health district and signed by the city health commissioner."

An examination of section 5625-5 and 5625-9 of the General Code discloses that the municipality is required to provide for one general operating fund, and there is no provision for a health fund except in those instances in which the Bureau of Inspection and Supervision of Public Offices approves the establishment of such a separate fund under section 5625-11, General Code.

From the above it is thought that the payment from the state to the city health district should be made to the credit of the general fund unless, of course, a separate health fund has been established in the manner hereinbefore referred to. The statutes are clear, however, that the funds of a city health district are under the custody and control of the city treasurer and city auditor the same as other city funds. Of course the board of health approves the vouchers for such expenditures which must be signed by the health commissioner.

In connection with your problem section 5625-33 must be considered which provides, among other things, that no subdivision or taxing unit shall:

"(b) Make any expenditure of money unless it has been appropriated as provided in this act.

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn."

In view of section 5625-33 supra, and other related sections, it appears that it is

necessary that the monies to which you refer must be appropriated by the legislative authority of the city before they may be expended. It is clear, however, that such funds may not be expended for any other purpose than that mentioned in section 1080-17, *supra*.

In the case of *City of Fostoria et al vs. State*, 125 O. S. 1, the court clearly indicated that the city council has control over the expenditures of a city health district.

In specific answer to the question propounded, it is my opinion that a city board of health may not expend the funds distributed to it under section 1080-17 of the General Code unless said funds are first appropriated by the city council.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4072.

ASSESSMENT FOR HIGHWAY PURPOSES LEVIED AGAINST SCHOOL  
LANDS UNDER SECTION 5330, G. C., PAID WHEN.

*SYLLABUS:*

*Assessments for highway purposes duly levied against school lands under section 5330, General Code, and which are not in excess of the benefits conferred by such improvement, should be paid out of the net rentals of such lands so assessed, and if there is no money in fund from such rentals to pay said assessments, notes for the required sum should be executed and sold payable in the number of years that will be required for such rentals to meet said assessments as are not already obligated for the payment of prior assessments.*

COLUMBUS, OHIO, March 19, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“An assessment of \$418.05 was made against the N. ½ (320 acres) of Section 16, Marion Twp., Hardin County, Ohio, original surveyed School Lands, by the Commissioners of Hardin County, Ohio, for the construction of what is known as the Stambaugh & Huston Pike, along the North Side of said lands.

The Auditor of said county has presented a bill of \$418.05 to the State Auditor, acting as State supervisor of School & Ministerial Lands, requesting that said assessment be paid.

Please give us your written opinion as to the legality of payment of said assessment.”

I understand that the lands in question are held on leases for terms not renewable forever, and I assume that the assessments were duly levied in accordance with the laws relating thereto.

Section 5330, General Code, reads in part as follows: