

1015.

POOR RELIEF — ADMINISTRATION — HOUSE BILL 675 REPEALS HOUSE BILL 91, 93RD GENERAL ASSEMBLY, EFFECTIVE JUNE 30, 1939 — LOCAL RELIEF AUTHORITY — EXPENDITURE FUNDS — CREDIT — MATCH STATE FUNDS — SECTION 3391-11, G. C. — GRATUITY FROM STATE — NO VESTED RIGHT IN CONTINUED EXISTENCE.

SYLLABUS:

1. *Even though House Bill No. 675, as enacted by the Ninety-third General Assembly fails to expressly repeal Section 1 of Amended Substitute House Bill No. 91 of such General Assembly, nevertheless by reason of the express provisions of House Bill No. 675, such House Bill No. 91 becomes ineffective on and after June 30, 1939, since the legislature evidently intended the provisions of the latter Act as a substitute for the former as of such date.*

2. *If a county or political subdivision, which under the definition contained in the House Bill No. 675 of the Ninety-third General Assembly becomes a local relief authority, has expended its own funds for poor relief purposes during the year 1939, it is entitled to credit for such amount for purposes of matching state funds for poor relief purposes to the extent authorized in Section 3391-11, G. C.*

3. *Since Amended Substitute House Bill No. 91 of the Ninety-third General Assembly was a law fixing the terms and conditions upon which a gratuity from the state might be granted, no subdivision could obtain a vested right in its continued existence.*

COLUMBUS, OHIO, August 10, 1939.

HON. LEO J. SCANLON, *Prosecuting Attorney, Bucyrus, Ohio.*

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

“In connection with Sub. House Bill No. 675, which was recently enacted by the Legislature of the State of Ohio, an examination of a copy of this Act, which was forwarded to me, reveals that the same is

‘An Act to provide for the administration of poor relief in the state to repeal Sections 2, 3 and 4 of Amended Substitute House Bill No. 91, passed February 1, 1939. * * *.’

Substitute House Bill No. 675, as you will note, fails to repeal Section 1 of Amended Substitute House Bill No. 91, and among other provisions Section 1 of Amended Substitute House Bill No. 91 provides:

“* * * Any subdivision having made any expenditures or encumbrances in 1939 for poor relief requirements arising after January 1, 1939, from funds other than herein appropriated shall receive credit for such expenditures or encumbrances in matching State funds.”

Question 1.

In view of the failure of Substitute House Bill No. 675 to repeal Section 1, of Amended Substitute House Bill No. 91, would not said Section 1 of Amended Substitute House Bill No. 91 be still in full force and effect?

Question 2.

Would not any county or political subdivision which has expended its own funds for poor relief purposes during the year 1939 be entitled to a credit in an amount equal to such expenditures in matching State funds for relief purposes?

In the event it is admitted, for the sake of argument, that Substitute House Bill No. 675 by implication repealed Section 1 of Amended Substitute House Bill No. 91:

Question 1.

Would not such act on the part of the Legislature constitute an act impairing a right arising under a contract in instances where counties relying upon Section 1 of Amended Substitute House Bill No. 91 spent their own funds?

Question 2.

Can the Legislature by its own act pass legislation repealing a prior Act which had given the political subdivision relying upon the same, a vested interest in and to certain funds of the State appropriated for relief purposes?”

Section 1 of Amended House Bill No. 91 of the Ninety-third General Assembly reads:

“There is hereby appropriated to the emergency board, created by Section 2312 of the General Code, out of any moneys

in the state treasury to the credit of the general revenue fund and not otherwise appropriated, the sum of five million dollars for poor relief from the effective date of this act to and including June 30, 1939.

It shall be the duty of the director of public welfare to ascertain and certify to the emergency board the needs for poor relief in each of the counties of the state. All township, village, municipal, county and state public officials shall, upon request of the director of public welfare, furnish such information as they may possess and which the director of public welfare may request for use in ascertaining the needs for poor relief in any county.

Upon certification to it by the director of public welfare of the needs for poor relief in each of the counties of the state, the emergency board shall allocate monthly such portion of the sum herein appropriated, as it may deem proper, among the several counties of the state upon the basis of such needs, provided, however, that the allocations by the emergency board to all of the counties of the state shall not exceed in any month twenty-five per cent of the total amount herein appropriated, provided further, if at any time from the effective date of this act to and including June 30, 1939, the poor relief funds of any county including the subdivisions therein, together with the funds herein allocated and distributed shall equal 100% of needs, no further distribution shall be made to such county, provided however no allocation shall be made to any county unless the county and the local subdivisions therein which will administer the fund so allocated, shall, by appropriate action of the proper taxing authorities, first agree to match from local funds all of the state funds so allocated.

Any subdivision having made any expenditures or encumbrances in 1939 for poor relief requirements arising after January 1, 1939, from funds other than herein appropriated shall receive credit for such expenditures or encumbrances in matching state funds.

Upon making an allocation to a county after receiving from the county auditor a certificate certifying that local funds in a sum equal to one hundred per cent of the state funds allocated to the county, have been duly appropriated and set aside for use for poor relief purposes and will not be expended for any other purposes, the emergency board shall certify the allocation to the auditor of state who shall cause a warrant for the amount allocated to be drawn upon and presented to the treasurer of state who shall thereupon pay to the county the amount called for in such voucher.

The word 'needs' as used in this act shall mean the total

requirements for poor relief of a county including the requirements of the subdivisions therein from the effective date of this act to and including June 30, 1939."

You will note that such Section 1 provides the method for the determination of the amount to be paid by the state toward expenditures for "work relief" and "direct relief" in the various counties of the state. According to the terms of such Act the appropriation for such purpose expired on June 30, 1939. Such section further defines the formula to be used in the determination of the matching of the funds by the subdivision in which the poor relief is to be dispensed.

Section 12 of House Bill No. 675 of the Ninety-third General Assembly, now Section 3391-11, G. C., defines the method of determining the amount to be contributed by the state for "work relief" and "direct relief" purposes in the various county areas. Such section further specifies the appropriate fund from which state monies shall be paid for the purpose of matching county poor relief funds. Such section further provides the formula to be used in the determination of the funds to be matched by state funds in local relief areas. Such section reads:

"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.

Payments of contributions shall be made by the treasurer of state upon warrants of the auditor of state in accordance with vouchers issued by the state director, but no such voucher shall be issued by the state director for any such payment unless and

until he shall find that the amount thereof has been matched, as herein provided.

The payment by a local relief area of its obligations for poor relief lawfully incurred during the month, in an amount equal to the contribution to such local relief area by the state with respect to that month, or the delivery to the state director of a certificate by the fiscal officer of the local relief area that the amount of money required for the payment of such obligations has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of the appropriate fund free from any previous encumbrance, as provided for by section 5625-33 of the General Code, or that during the period July 1 to December 31, 1939, such local relief area has otherwise made expenditures for poor relief, encumbered any funds other than the proceeds of taxes earmarked for bond or note retirement in the process of distribution from the state or from other sources which have not been included in any certificate of estimated resources, shall be considered as the matching of the contribution by the state for such month for the purposes of this act, and such matching of contributions shall also be considered as the matching of state funds or state grants for poor relief, as referred to in Amended Substitute Senate Bill No. 40, passed May 22, 1939, and in Amended Senate Bill No. 4, passed May 17, 1939.

The percentage of the appropriations to the department of public welfare for poor relief for the calendar year, which may be applied to the payment of contributions to local relief areas, as above provided, shall not, in each of the months of January, February, March and December, exceed ten per centum thereof, and shall not, in each of the months of April, May, June, July, August, September, October and November, exceed seven and one-half per centum thereof; provided however, that the total unencumbered balance of the appropriation to the department of public welfare for contributions for poor relief for the calendar year 1939, remaining as of July 1, 1939, may be applied by the state director for contributions to local relief areas for the last six months of the calendar year 1939, but the percentage, of such balance which may be so applied shall not, in each of the months of July, August, September and October, exceed fifteen per centum thereof, and shall not, in each of the months of November and December, exceed twenty per centum thereof.

If the total amount of the contributions to the local relief areas for any month is less than the percentage of appropriation for such month, as above provided, the state director may add the difference, or any part thereof, to the total amount of appro-

priations which may be applied to contributions to local relief areas, in any month thereafter.”

As you have observed Section 1 of House Bill No. 91 was not expressly repealed by the enactment of House Bill No. 675. In fact, the legislature in Section 3391-12, G. C. (Section 13 of Act No. 675), has expressly recognized the continued existence of House Bill No. 91 after the effective date of the new Act by the following language:

“For the months of May and June, 1939, funds shall be allocated and distributed to counties pursuant to Section 1 of Amended Substitute House Bill No. 91 of the Ninety-third General Assembly, passed February 1, 1939.”

However, such section further provides that:

“The first contribution under Section 12 of this act shall be made in the month of August, 1939, with respect to obligations incurred during the month of July, 1939.”

It is a well established rule of law that repeals by implication are not to be favored, and that the courts will not construe a later act to repeal an earlier provision if the conflicting statute may be reconciled by any manner of interpretation so as to make them both effective. *State vs. Cameron*, 89 O. S., 214; *Goff v. Gates*, 87 O. S., 230. However, it is also a well established rule of law that when two sections of the General Code contain inconsistent provisions relating to the same subject matter, the later enactment must prevail and the earlier will be construed to have been repealed by the implication, insofar as it may be inconsistent with the earlier Act. *Western and Southern Indemnity Co. v. Chicago Title and Trust Co.*, 128 O. S., 422; *Rogers v. State*, 129 O. S., 108.

Section 12 of the Act, now Section 3391-11, G. C., makes the following provision with reference to the matching of funds by local relief areas:

“The payment by a local relief area of its obligations for poor relief lawfully incurred during the month, in an amount equal to the contribution to such local relief area by the state with respect to that month, or the delivery to the state director of a certificate by the fiscal officer of the local relief area that the amount of money required for the payment of such obligations has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of the appropriate fund free from any previous encumbrance, as provided for by Section 5625-33 of the General Code, or that during the period July 1 to December 31, 1939, such local relief area

has otherwise made expenditures for poor relief, encumbered any funds other than the proceeds of taxes earmarked for bond or note retirement in the process of distribution from the state or from other sources which have not been included in any certificate of estimated resources, shall be considered as the matching of the contribution by the state for such month for the purposes of this act, and such matching of contributions shall also be considered as the matching of state funds or state grants for poor relief, as referred to in Amended Substitute Senate Bill No. 40, passed May 22, 1939, and in Amended Senate Bill No. 4, passed May 17, 1939."

It seems to me that it would be impossible for any act of circumstances to come within the provisions of that section above quoted and at the same time within the provisions of Section 1 of Amended House Bill No. 91 as quoted in your inquiries. If such be true, then there is an irreconcilable conflict between the provisions of such acts, and the later must control. I am, therefore, of the opinion that after the first day of July, 1939, the provisions of Section 1 of Amended Substitute House Bill No. 91 of the Ninety-third General Assembly are superseded by the provisions of House Bill No. 675, enacted by such General Assembly, and that your first inquiry should be answered in the negative.

Your second inquiry is answered by the portion of Section 3391-11, G. C., quoted in the second preceding paragraph.

In answer to your first alternative inquiry, it should be remembered that no person, firm or corporation, whether public or private, has any vested right to the continued existence of any statute, nor in the policy of the law expressed therein. *Sandusky City Bank v. Wilbor*, 7 O. S., 418; *State etc. v. Sherwood*, 13 O. App., 403; *Chandler v. Horne*, 23 O. App., 1. In fact, such would necessarily follow from the provisions of Section 2, Article 1, of the Ohio Constitution which prevents the legislature from enacting an irrevocable law. It might be further observed that the provisions of Section 1 of Amended Substitute House Bill No. 91 are provisions fixing the terms and conditions upon which a gratuity from the state may be granted. Under such type of law, no vested right may be obtained. (See Annotations in 7 A. L. R., 1657; 15 A. L. R., 1539; and 54 A. L. R. 943). I am, therefore, of the opinion that your first and second alternative inquiries should be answered in the negative. In specific answer to your inquiries that:

1. Even though House Bill No. 675, as enacted by the Ninety-third General Assembly fails to expressly repeal Section 1 of Amended Substitute House Bill No. 91 of such General Assembly, nevertheless, by reason of the express provisions of House Bill No. 675, such House Bill No. 91 becomes ineffective on and after June 30, 1939, since the legisla-

ture evidently intended the provisions of the latter Act as a substitute for the former as of such date.

2. If a county or political subdivision, which under the definition contained in the House Bill No. 675 of the Ninety-third General Assembly becomes a local relief authority, has expended its own funds for poor relief purposes during the year 1939, it is entitled to credit for such amount for purposes of matching state funds for poor relief purposes to the extent authorized in Section 3391-11, G. C.

3. Since Amended Substitute House Bill No. 91 of the Ninety-third General Assembly was a law fixing the terms and conditions upon which a gratuity from the state might be granted, no subdivision could obtain a vested right in its continued existence.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1016.

BONDS—CITY OF TOLEDO, LUCAS COUNTY, \$30,000.00.

COLUMBUS, OHIO, August 11, 1939.

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

GENTLEMEN:

RE: Bonds of the City of Toledo, Lucas County, Ohio,
\$30,000. (Unlimited)

The above purchase of bonds appears to be part of a \$2,300,000 issue of Maumee River Bridge Bonds, Third Series, of the above city dated May 1, 1929. The transcript relative to this issue was approved by this office in an opinion rendered to your Board under date of December 4, 1933, being Opinion No. 1951.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.