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APPROVAL, BONDS OF VAN BUREN TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, March 7, 1933.

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

191.

APPROVAL, BONDS OF MARION CITY SCHOOL DISTRICT, MARION COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, March 7, 1933.

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

192.

APPROPRIATION—COUNTY COMMISSIONERS MAY AMEND APPROPRIATION WITHIN CERTAIN LIMITATIONS.

SYLLABUS:

County commissioners may change the amount of any appropriation subject to two limitations:

1. *That the change violated no laws which govern the taxing authority in making an original appropriation.*

2. *That it does not reduce the appropriation below an amount sufficient to cover all unliquidated contracts or obligations certified from or against said appropriation.*

COLUMBUS, OHIO, March 7, 1933.

HON. GRACE FERN HECK, *Prosecuting Attorney, Urbana, Ohio.*

DEAR MADAM:—This will acknowledge receipt of your recent communication which reads as follows:

“The County Commissioners and the Tax League of Champaign County have requested me to ask your opinion as to whether, after the Commissioners have passed the budget resolution, they may reconsider the budget and change the amount of any appropriation made therein.”

Section 5625-19, General Code, provides for the creation of a county budget commission, which is authorized to make up a budget for the county. When the

budget commission completes its work it is authorized by section 5625-25, General Code, to certify its action to the taxing authority of each subdivision together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority and what part thereof is without and what part within the fifteen mill limit.

After the action of the budget commission is certified to the taxing authority its function is complete. The taxing authority, however, can, if dissatisfied with any action of the budget commission, appeal to the tax commission of Ohio. The taxing authority is defined in section 5625-1c as follows:

“‘Taxing authority’ or ‘bond issuing authority’ shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees.”

This taxing authority makes the appropriations as specified in section 5625-29, which reads as follows:

“On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit until not later than April first of the current year, and the appropriations made therein shall be chargeable to the appropriations in the annual appropriation measure for that fiscal year when passed. Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; provided that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, custody and control of the funds of the university, such funds shall be appropriated as a lump sum for the use of the university.”

However, this is not final as can be seen by section 5625-32, which states that:

“Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and provided further, that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Transfers may be made by resolution or ordinance from one appropriation item to another. At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations; provided,

however, that funds unexpended at the end of such fiscal year and which had theretofore been appropriated for the payment or performance of obligations unliquidated and outstanding, shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year.

The annual appropriation measure or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure."

It is obvious from the latter section that the taxing authority may either supplement or amend any appropriation ordinance or measure only within the limitations set out in section 5625-32, supra, in the following language:

"* * * provided that such amendment or supplement shall comply with all the provisions of law governing the taxing authority in making an original appropriation and provided further, that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose."

In answering your question I have assumed that you are referring to the power of the taxing authority to amend an appropriation after the same has been made and do not have in mind any question relative to changing or amending the budget.

Basing my answer on that assumption, I am of the opinion that the county commissioners may change the amount of any appropriation subject to two limitations:

1. That the change violates no laws which govern the taxing authority in making an original appropriation.
2. That it does not reduce the appropriation below an amount sufficient to cover all unliquidated contracts or obligations certified from or against said appropriation.

Respectfully,
JOHN W. BRICKER,
Attorney General.