

195

SYLLABUS:

Boards of county commissioners have no jurisdiction or authority to transfer money required to be deposited in the "real estate assessment fund" provided for by Section 325.31 of the Revised Code to any other fund.

Columbus, Ohio, May 3, 1963

Honorable Edwin F. Sawicki
Chairman
Board of Tax Appeals
State of Ohio
Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads:

“It has been brought to the attention of the Board of Tax Appeals that certain Boards of County Commissioners are authorizing the transfer of moneys credited to the ‘real estate assessment fund.’ provided by section 325.31, R. C., to the general fund or other funds of the county. It is the view of the Board of Tax Appeals that such transfers are not authorized and in order to have a uniform rule throughout the state, we respectfully request your opinion on the following questions:

1. Do county commissioners have jurisdiction and authority to authorize the transfer of funds from the ‘real estate assessment fund’ provided for by R. C. 325.31, to any other fund?
2. If so, what transfers are authorized, and under what circumstances?”

Section 325.31, Revised Code, provides:

“On the first business day of each month, and at the end of his term of office, each officer named in section 325.27 of the Revised Code, shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances, and perquisites collected by his office during the preceding month or part thereof for official services, except fifty per cent of the fees allowed the county auditor by division (A) of Section 319.54, of the Revised Code, which shall be paid into the county treasury to the credit of the ‘real estate assessment fund’ hereby created. Moneys to the credit of the ‘real estate assessment fund’ may be expended upon appropriation by the board of county commissioners, only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713 of the Revised Code. None of such officers shall collect any fees from the county. Each of such officers shall, at the end of each calendar year make and file a sworn statement with the board of county commis-

sioners of all such fees, costs, penalties, percentages, allowances, and perquisites which have been due in his office and unpaid for more than one year prior to the date such statement is required to be made.”

Your request does not indicate under what authority the transfers referred to have been made. Provisions for the transfer of funds may be found at Sections 319.18, 5705.14, 5705.15 and 5705.16, Revised Code, and by a process of elimination it is apparent that Section 5705.14, Revised Code, is the one involved.

Section 319.18, Revised Code, cannot be involved because it deals with transfers from undivided tax funds in the treasury to exhausted funds, which is obviously not the issue here.

Likewise, Sections 5705.15 and 5705.16, Revised Code, cannot be involved because the first is a general transfer section and the second sets forth the procedure to be followed in effecting transfers authorized by the first. Among other things these procedures require the approval of the Board of Tax Appeals and an order of a court of common pleas, which are obviously not circumstances of your inquiry.

This leaves Section 5705.14, Revised Code, which provides in part:

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

* * * * *

“(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

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Section 5705.09, Revised Code, referred to in the above quote provides in part:

“Each subdivision shall establish the following funds:

* * * * *

“(F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;

“* * * * * * * * *”

It appears that the “real estate assessment fund” created by Section 325.31, Revised Code, is of the type referred to in Section 5705.09 (F), Revised Code. However, reference to Section 5713.01, reveals that with respect to the assessment of real estate the auditor is required to appraise “each lot or parcel of real estate and the improvements located thereon at least once in each six-year period beginning with the year 1943.” Thus it follows that the appraisal of real estate is a continuing, and more or less continuous, process. Consequently, it cannot be said, in the language of Section 5705.14 (D), Revised Code, that there has been a termination of the activity, service, or other undertaking for which such special fund, i.e., the “real estate assessment fund,” existed.

The powers and duties of boards of county commissioners are discussed in 14 Ohio Jurisprudence 2d, 258, *et seq.* At page 259 it is stated:

“Boards of county commissioners, being the creatures of statute, have such powers, and such only, as are conferred by statute or as are necessarily implied from those expressly given * * *”

Further, at page 260, the following appears:

“Statutes which confer authority upon county commissioners are delegations of power by the state, which reserves to itself all power not thus delegated, and are, therefore, to be strictly construed in favor of the state and against the board. Moreover, in the exercise of their powers, county commissioners must follow the terms of the law and proceed in the manner prescribed thereby. * * *”

It is apparent that the authority granted to county commissioners by the provisions of Section 325.31, Revised Code, with respect to that money required by law to be deposited to the credit of the “real estate assessment fund,” is limited. It may be expended upon appropriation by the board of county commissioners only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713, Revised Code. It is also apparent that the jurisdiction of the county

commissioners with respect to a transfer from said fund to any other fund is limited by the conditions of Section 5705.14, Revised Code. Since the conditions prescribed therein cannot occur in this instance, the county commissioners have neither jurisdiction nor authority to effect the transfers in question.

Accordingly, it is my opinion and you are advised that boards of county commissioners have no jurisdiction or authority to transfer money required to be deposited in the "real estate assessment fund" provided for by Section 325.31 of the Revised Code to any other fund.

Respectfully,

WILLIAM B. SAXBE

Attorney General