

that authorizes the payment of these sums from the "public school fund" thereby created.

I am therefore of the opinion in conclusion, that in the event Substitute House Bill 688 is enacted into law in the form in which it was introduced in the legislature and a "public school fund" as provided by Section 6 thereof, is thereby created, no part of that fund may be used for "personal service" or the incidental expense of the state board of vocational education or any of its appointees in directing and supervising the administration of the Smith-Hughes Act or the Tracey-Copps Act in co-operation with the federal government; nor may any part of this fund be expended to pay the cost of administration of the division of schools for deaf, blind and crippled children in the Department of Education.

I am also of the opinion that in the administration of the Smith-Hughes Act and the Tracey-Copps Act in co-operation with the federal government, no part of the state's cost may be paid from the "public school fund" referred to above, except such as may be included within the amounts authorized to be paid to the several school districts by Sections 7 and 8 of the proposed act for pupils of school age actually receiving instruction in classes in elementary schools and high schools. No part of the cost of training teachers, supervisors and directors or in furtherance of "schemes of placement" or of co-operation with the Industrial Commission in rehabilitation work or of giving instruction to persons other than children of school age in regularly established classes in the public schools, may be paid from the said "public school fund."

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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956.

COUNTY COMMISSIONERS — UNAUTHORIZED TO APPROPRIATE FUNDS TO PAY EMPLOYES OF COUNTY SURVEYOR FOR SERVICES RENDERED IN 1932 WHEN APPROPRIATION EXISTED WHEN SERVICES RENDERED.

*SYLLABUS:*

*County commissioners are not authorized to make an appropriation in 1933 for the purpose of paying the employes of a county surveyor for services rendered in the last half of December, 1932, when there was no appropriation therefor at the time those services were rendered.*

COLUMBUS, OHIO, June 14, 1933.

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

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

"You are respectfully requested to furnish this department with your written opinion upon the following:

The amount of money appropriated by the board of county commissioners of a certain county for the employes in the office of the county surveyor, was exhausted on the 15th of December, 1932. The commissioners, at that time, refused to make any additional appropriation. The employes continued to serve for the last half of December, 1932.

QUESTION: May the county commissioners make an appropriation in the year 1933 for the purpose of paying these employes for the last half of December, 1932?"

I assume that the entire amount appropriated for such purpose by the commissioners for the year 1932 was expended before the end of the year.

Section 5625-29, General Code, provides for the annual appropriation measure and such supplemental appropriation measures as may be necessary, based on the revised tax levy and the official certificate of estimated resources or amendments thereof.

Section 5625-30, General Code, reads as follows:

"The total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the tax commission of Ohio. No appropriation measure shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the total appropriations from each fund taken together with all other outstanding appropriations, do not exceed such official estimate, and if amended the last amended official estimate, and in every case in which the appropriation does not exceed such official estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established."

Section 5625-32, General Code, provides that any appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law relating to an original appropriation.

Section 5625-33, General Code, reads in part as follows:

"No subdivision or taxing unit shall:

(a) Make any appropriation of money except as provided in this act; \* \* \*.

(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. §§5625-1 to 5625-39).

(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.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole or in part, in an ensuing fiscal year, the amount required to meet the same in

the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances."

The certificate referred to in clause (d), quoted from above, does not apply to current pay rolls, provided the expenditure is made upon the authority of a proper appropriation for such purpose. Section 5625-38, General Code. There clearly would be no legal obligation on the part of the county to pay these salaries. In an opinion to you, dated May 27, 1933, I held:

"In the event no appropriation is made for the payment of the salaries of policemen and firemen in a city operating upon the general laws the said policemen and firemen have no claim against said municipality for their salaries, although they continue in the service."

The question now arises as to whether the county commissioners have the authority to pay such salaries if they desire to do so. One of the main purposes of the budget act is to compel political subdivisions to live within their income. The appropriations for a year must not exceed the estimated receipts for that year, and all expenditures for that year must be within those appropriations. To allow an appropriation to be made in 1933 for payment of salaries for services rendered in 1932 when there was no appropriation therefor, would, in my opinion, violate both the spirit and letter of this act. To say that obligations can thus be incurred without any appropriation therefor, to be paid by appropriations in subsequent years, would be to permit a political subdivision to create indebtedness for current operating expenses in one year far in excess of its income for that year.

I am of the opinion therefore that county commissioners are not authorized to make an appropriation in 1933 for the purpose of paying the employes of a county surveyor for services rendered in the last half of December, 1932, when there was no appropriation therefor at the time those services were rendered.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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957.

APPROVAL, NOTES OF NELSONVILLE CITY SCHOOL DISTRICT,  
ATHENS COUNTY, OHIO—\$8,500.00.

COLUMBUS, OHIO, June 16, 1933.

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