

1845.

APPROVAL, NOTES OF CLARIDON RURAL NO. 2 SCHOOL DISTRICT,  
GEAUGA COUNTY, OHIO—\$424.00.

COLUMBUS, OHIO, November 9, 1933.

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

1846.

MOTHERS' PENSION—COUNTY COMMISSIONERS MAY NOT INCLUDE IN BUDGET THEREFOR MORE THAN AMOUNT AUTHORIZED BY SECTION 1683-9, GENERAL CODE—SUPPLEMENTAL APPROPRIATIONS EXCEEDING FULL AMOUNT AUTHORIZED IN BUDGET MAY BE MADE WHEN.

*SYLLABUS:*

1. *When the commissioners of a county have included in their budget the full amount authorized by section 1683-9, General Code, such commissioners may in addition thereto make supplemental appropriations from their general fund for mothers' pensions as provided by section 5625-32, General Code.*

2. *The county commissioners may not include in their budget for mothers' pensions an amount greater than the amount authorized by the levy in section 1683-9, General Code.*

COLUMBUS, OHIO, November 9, 1933.

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

GENTLEMEN:—I acknowledge receipt of your recent communication in which you ask the following questions:

“QUESTION 1: When the commissioners have included in their budget the full amount authorized by Section 1683-9, may such commissioners, in addition thereto, make appropriations from their general fund for Mothers' Pensions?”

QUESTION 2: May the county commissioners include in their budget for Mothers' Pensions an amount greater than that authorized by the levy provided for in Section 1683-9?”

Section 1683-9, General Code, reads as follows:

“It is hereby made the duty of the county commissioners to provide out of the money in the county treasury such sum each year thereafter as will meet the requirements of the court in these proceedings. To provide the same they shall levy a tax not to exceed one-fifth of a mill on the dollar valuation of the taxable property of the county. Such levy shall be subject to all the limitations provided by law upon the aggregate amount, rate, maximum rate and combined maximum rate

of taxation. The county auditor shall issue a warrant upon the county treasurer for the payment of such allowance as may be ordered by the juvenile judge."

Prior to the enactment of section 5625-5, General Code, it was held by this office that the levy of a tax not to exceed one-fifth of a mill was the only method by which the township and county commissioners could provide the sum necessary to meet the allowances made by the juvenile court for mothers' pensions, and that the county commissioners could not appropriate money therefor out of the general fund. Opinions of the Attorney General for 1913, Vol. II, page 1275; Opinions of the Attorney General for 1927, Vol. I, page 285.

Section 5625-5, General Code, reads in part as follows:

"\* \* \* Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary \* \* \* in the case of counties \* \* \* for mothers' pension fund \* \* \*."

It is seen therefore that the amount certified to be necessary for the mothers' pension fund is now included in the general levy for current expenses. The question therefore is whether the provision of section 1683-9, General Code, that a levy for mothers' pensions of not to exceed one-fifth of a mill is repealed by implication or modified by section 5625-5, General Code. There being no express repeal of the former section, both statutes should be harmonized if that is possible. Section 5625-5 also provides:

"\* \* \* The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. \* \* \*"

It follows therefore that a levy for mothers' pensions not exceeding one-fifth of a mill must still be made, the only difference being that now the county commissioners are to include this in their general levy, and they will then appropriate from the general fund. Section 1683-9, General Code, limits the amount that may be levied for this purpose, and consequently the commissioners could not include in their budget for this purpose an amount greater than is authorized by this section. However, if this amount becomes insufficient, there is ample authority for the commissioners to make supplemental appropriations under section 5625-32, General Code. This construction gives effect to both statutes.

I am of the opinion therefore that:

1. When the commissioners of a county have included in their budget the full amount authorized by section 1683-9, General Code, such commissioners may in addition thereto make supplemental appropriations from their general fund for mothers' pensions as provided by section 5625-32, General Code.
2. The county commissioners may not include in their budget for mothers' pensions an amount greater than the amount authorized by the levy in section 1683-9, General Code.

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