

3528.

COUNTY HOME—PURCHASE OF LIVE STOCK—CREATION OF RESERVE FUND FOR SUPERINTENDENT PROHIBITED WHEN—COUNTY POOR FUND CREATED BY COMMISSIONERS.

*SYLLABUS:*

1. *There is no lawful way by which the county commissioners may set apart for the superintendent of a county home a reserve fund in excess of \$200.00.*

2. *What are "emergency supplies and expenses," as that term is used in section 2528, General Code, is a question of fact to be determined from the circumstances of each particular case.*

3. *Purchases of live stock for an infirmary may be paid for out of the money appropriated by the county commissioners from the general fund for the county home, provided such purchases are made by the superintendent of the county home in accordance with the rules prescribed by the county commissioners.*

4. *The expenditures outlined in section 2531, General Code, may likewise be paid out of the money appropriated from the general fund of the county for that purpose.*

5. *The proceeds from the sale of products of the infirmary farm not necessary for the use of the county home, which section 2526, General Code, provides should be paid into the county treasury to the credit of the poor fund, should now be credited to the general fund of the county.*

6. *There is no authority for the establishment of a county poor fund from the proceeds of taxes levied by the county commissioners upon real, public utility or tangible personal property.*

COLUMBUS, OHIO, November 30, 1934.

HON. GEORGE L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

"We have been requested by the Superintendent of the Columbiana County Home, and by the Board of Visitors of Columbiana County, for an opinion as to whether or not there could be set up a reserve fund out of the revenue from the County Home farm of two or three thousand dollars, to be used by the Superintendent of the County Home for purchasing live stock to consume the surplus products of the farm, which live stock is later sold when not needed for use on the farm and in turn replaced with other live stock purchased.

It is our understanding that when the County Home Superintendent sells products of the County Home not necessary for the use of the Home the proceeds therefrom are being paid into the County general fund, and that this surplus of farm products arises because of the operation of the farm to the extent of its most efficient productive capacity, and that to continue to operate the farm to its most efficient productive capacity the Superintendent needs to use these proceeds for the purpose of purchasing additional live stock for replacement from time to time. In other words, the Superintendent feels that he can more efficiently operate the

farm by feeding the products of the farm and selling the stock thus raised than by selling the products in the first place.

We will appreciate your opinion on the following questions:

1. Is there any lawful way by which a reserve of two or three thousand dollars, as above explained, could be established?

2. Would expenditures for live stock, as above explained, be considered as 'emergency supplies and expenses' under the provisions of Section 2528 G. C.?

3. Should such purchases of live stock be considered as emergency supplies and expenses, and although a reserve fund could not be established in excess of \$200 pursuant to G. C. 2528, could the same be paid for out of the County Home appropriation of the general fund when Section 2528 provides that such reserve fund of \$200 shall be set apart from the poor fund?

4. May the expenditures outlined in Section 2531 G. C. be paid from the part of the general fund appropriated for County Home when G. C. 2531 provides that the expenditures mentioned therein shall be paid from the "County Poor fund?"

5. In view of the repeal of the statute which provided for the making of a levy for a poor fund, as shown on page 434 of Volume 102 of Ohio Laws, and the repeal of the statute which permitted the establishment of a poor fund as shown on pages 396 and 397 of Volume 112 Ohio Laws, is it now necessary that the proceeds from the sale of all products of the farm not necessary for the use of the County Home be paid into the County treasury to the credit of the County poor fund, as is provided in the latter part of Section 2526 G. C.?

6. Is it necessary for the County, pursuant to 5625-9 and 5625-10 G. C., to establish a County poor fund in spite of the above laws repealing the statutes which provided for a levy for County poor fund and for the establishment of a County poor fund, when 5625-9 provides in Subdivision F 'That a special fund for each class of revenue derived from a source other than the general property tax which the law requires to be used for a particular purpose,' shall be established, and when 5625-10 also provides that money 'from sources other than the general property tax, unless the law prescribes the use for a particular purpose, shall be paid into the general fund,' and also in the fourth paragraph where 5625-10 provides 'all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose shall be paid into a special fund for such purpose'?

7. If a County poor fund must be established pursuant to the provisions of 5625-9 and 5625-10, into which the proceeds from the sale of live stock as above mentioned must be paid, is there any other source of funds which can be paid into this County poor fund for the purpose of operating the County Home?

8. If there are no other revenues which should be paid into the County poor fund, if such a fund can legally be established, except those provided for in Section 2526 G. C., may the County Commissioners, pursuant to the provisions of 5625-5, appropriate out of the general fund of the County such additional sum as shall be needed for the maintenance, operation and repair of the County Home, pursuant to that part of Section 5625-5 which provides for an appropriation 'in the case of counties

for the maintenance, operation and repair of public buildings, for the relief and support of the poor \* \* \*?

9. If an appropriation may be made from the general fund for the purpose of operating, maintaining and repairing the County Home, may expenditures be made therefrom for such maintenance, operation and repair when Sections 2528 G. C. and 2531 G. C. seem to provide that the costs of operating the County Home shall be paid from the County poor fund and not from any appropriation of the general fund?"

Section 2528, General Code, reads as follows:

"At the request of the superintendent, the county commissioners shall set apart from the poor fund a reserve fund not to exceed at any time \$200.00, which upon their order shall be paid to the superintendent and expended by him as needed for emergency supplies and expenses. The superintendent shall keep an accurate account of such funds in a book to be provided at the expense of the county for that purpose and all expenditures therefrom shall be audited by the board and the poor fund shall be reimbursed by the superintendent in full for any and all items by him expended from such fund which are not allowed by the board. When, and as often as such amount is entirely disbursed, on the order of the commissioners, the county auditor shall pay to the superintendent the amount so appropriated."

Section 2526, General Code, reads in part as follows:

"The superintendent and matron of the infirmary shall require all persons received therein to perform such reasonable and moderate labor, without compensation, as is suited to their age and bodily strength. The superintendent and matron shall make such purchases as may be authorized by the rules prescribed by the county commissioners. As far as practicable, all supplies shall be purchased on competitive bids, except those ordered from the state as required by law, and all supplies of whatever kind purchased and delivered to the superintendent, or to the infirmary, shall be accompanied by itemized bills, showing quantities, qualities and price, which shall be checked by the superintendent as having been received, and the correctness of the bill or claim shall be duly certified by him before the same may be allowed by the commissioners. The superintendent, under the direction of the commissioners, shall sell all products of the infirmary farm not necessary for the use of the infirmary, and pay all moneys arising therefrom into the county treasury, at least monthly, to the credit of the county poor fund. \* \* \*"

Section 2531, General Code, reads as follows:

"The auditor shall receive vouchers given by the commissioners and countersigned by the clerk to any person, other than the commissioners themselves, for labor, provisions, medical attendance or supplies of any kind furnished to the institution and give the person a warrant on the county treasurer for the proper amount. The treasurer shall pay the warrant from the county poor fund, and the vouchers shall show the

specific item or items allowed by the commissioners or shall be accompanied by a statement in writing showing the items."

Since section 2528, G. C., provides for the establishment of a reserve fund of not to exceed \$200.00, it follows that the county commissioners could not lawfully set apart a reserve fund of two or three thousand dollars.

The term "emergency supplies and expenses" as used in this section is not defined, and while expenditures for live stock would not ordinarily come within that term, I am not prepared to say that such expenditures could never be considered as emergency expenses. What is an emergency expense is a question of fact to be determined from the circumstances of each particular case, and the determination by the superintendent of a county home that a certain item is an emergency supply or expense would not be set aside in the absence of an abuse of discretion, where the amount of such expenditure is within the amount of his reserve fund. All expenditures for purchases made by the superintendent, except those made from this reserve fund, must, before being paid, be allowed by the commissioners, and when allowed, the auditor draws his warrant for the proper amount thereof upon the treasurer, who pays the same. The purpose of setting up a reserve fund is to allow the superintendent himself to pay for purchases of such small items as may arise for the payment of which it would be impractical or cumbersome to go through the ordinary routine of payment of county bills. For this reason, I do not believe that purchases of live stock should ordinarily be paid from this reserve fund.

Referring to your third question, even though such purchases could be paid from the reserve fund, they nevertheless could be paid in the ordinary way from the money appropriated from the general fund for the county home, provided such purchases are made in accordance with the rules prescribed by the county commissioners.

As to your fourth question, it is true that section 2531, General Code, as well as some of the other statutes, refers to the county poor fund. However, the county poor fund, as it existed prior to the enactment of the Budget Act, no longer exists. Sections 2529 and 2530, General Code, which provided for such a fund and a levy of taxes therefor, were repealed when the Budget Act was passed. 112 O. L. 409. Section 5625-5, General Code, provides that the general levy for current expenses shall in the case of a county include the amount certified to be necessary for the relief and support of the poor. In Opinions of the Attorney General for 1931, Volume II, page 1214, it was held that funds derived from the general levy may be legally expended for the relief of the poor in the case of a county. Consequently, the expenditures as outlined in section 2531 may now be paid out of the money appropriated for that purpose from the general fund.

It likewise follows, in answer to your fifth question, that the proceeds from the sale of surplus products of the infirmary farm, which section 2526, General Code, provides shall be paid into the county treasury to the credit of the poor fund, should now be credited to the general fund of the county.

Referring to your sixth question, there is now no authority for the establishment of a county poor fund from the proceeds of taxes levied upon real, public utility or tangible personal property. It might be noted here that the proceeds of the excise tax on public utilities levied for poor relief, as well as the proceeds of taxes on cosmetics, malt, beverages and admissions (sometimes referred to as the selective sales taxes) which a county receives are

credited to the county poor relief excise tax fund, which is a special fund. However, neither these proceeds nor the proceeds of bonds issued in anticipation thereof, as authorized by section 3 of Amended Senate Bill No. 4 of the first special session of the 89th General Assembly, as amended by Senate Bill No. 2 of the second special session of the 89th General Assembly, as amended by Senate Bill No. 63 of the 90th General Assembly, as amended by House Bill No. 7, House Bill No. 42 and Amended Substitute Senate Bill No. 85 of the second special session of the 90th General Assembly, can be used for the maintenance of a county home. See section 2 of said Amended Senate Bill No. 4, as amended by House Bill No. 7 of the first special session of the 90th General Assembly. On the other hand, section 7 of said Amended Senate Bill No. 4, as amended by House Bill No. 7 of the first special session of the 90th General Assembly, expressly provides that the proceeds of bonds issued by a county under authority of said section 7 may be used for the maintenance of a county home.

In view of the foregoing, it is unnecessary to answer your seventh, eighth and ninth questions.

Specifically answering your questions, I am of the opinion that,

1. There is no lawful way by which the county commissioners may set apart for the superintendent of a county home a reserve fund in excess of \$200.00.

2. What are "emergency supplies and expenses," as that term is used in section 2528, General Code, is a question of fact to be determined from the circumstances of each particular case.

3. Purchases of live stock for an infirmary may be paid for out of the money appropriated by the county commissioners from the general fund for the county home, provided such purchases are made by the superintendent of the county home in accordance with the rules prescribed by the county commissioners.

4. The expenditures outlined in section 2531, General Code, may likewise be paid out of the money appropriated from the general fund of the county for that purpose.

5. The proceeds from the sale of products of the infirmary farm not necessary for the use of the county home, which section 2526, General Code, provides should be paid into the county treasury to the credit of the poor fund, should now be credited to the general fund of the county.

6. There is no authority for the establishment of a county poor fund from the proceeds of taxes levied by the county commissioners upon real, public utility or tangible personal property.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*