

Specifically answering your inquiry, it is my opinion that by virtue of Section 3496, General Code, if a soldier who is an inmate of the Ohio Soldiers' and Sailors' Home at Sandusky dies, and does not leave an estate sufficient to cover his burial expenses, the board in control of such institution should pay the expenses of the burial and send an itemized bill of the expenses thereof to the county commissioners of the county from which such indigent person was sent to the institution, and such county should immediately pay such expenses of burial to the board in control of such institution.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1815.

COUNTY AUDITOR—UNAUTHORIZED TO TRANSFER FUNDS TO SINKING FUND OR BOND RETIREMENT FUND TO MAKE UP FOR DEFICIENCY IN COLLECTING TAX LEVY FOR SUCH FUND.

SYLLABUS:

When a taxing district levies a tax for its general fund, and also a tax for its bond retirement or sinking fund, and the taxes levied are not collected in full, the county auditor of that county has no authority to allocate to the latter fund the whole amount which should have been realized from such levy had all taxes been fully paid by transferring the deficiency from the amount received from the general fund levy of such district.

COLUMBUS, OHIO, November 3, 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 your written opinion upon the following:

When a taxing district levies its taxes at a certain rate for the general fund of such district, and a tax for the bond retirement fund or sinking fund, is the county auditor, in making distribution of the taxes collected to such district, required to allocate to the bond retirement fund or the sinking fund the whole amount requested by the taxing district for the bond retirement fund or sinking fund purposes, regardless of the amount of taxes collected, thereby reducing the amount levied for the general fund; or, should the auditor pro rate the delinquencies to the general fund and to the bond retirement fund or sinking fund, and distribute to the taxing district the amount so determined by such pro rating?"

Section 11 of article XII of the Constitution of Ohio reads as follows:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under

which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

Section 2293-26, General Code, provides that the resolution or ordinance authorizing a bond issue "shall provide for the levying of a tax sufficient in amount to pay the interest on and retire at maturity all of the bonds covered by said resolution or ordinance."

Section 2293-36, General Code, reads as follows:

"After the issue of any notes or bonds, the taxing authority shall annually include in its budget a sufficient amount to pay the interest on and to retire at maturity such bonds or notes; and shall levy a tax therefor."

Section 5625-3, General Code, reads in part as follows:

"* * * The taxing authority of each subdivision and taxing unit shall, subject to the limitations and restrictions of this act (G. C. Secs. 5625-1 to 5625-39), levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes and certificates of indebtedness of such subdivision and taxing unit including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness. * * *"

Section 5625-23, General Code, reads in part as follows:

"The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification.

(a) All levies outside of the fifteen mill limitation.

(b) All levies for debt charges not provided for by levies outside of the fifteen mill limitation, including levies necessary to pay notes issued for emergency purposes.

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If any debt charge is omitted from the budget, the budget commission shall include it therein."

The Supreme Court has frequently held that this levy to retire bonded indebtedness is mandatory, even though by reason thereof a subdivision may not be able, on account of constitutional or statutory limitations, to levy a sufficient amount or any amount for other purposes. In *Rabe vs. Board of Education*, 88 O. S. 403, the court says on page 423:

"* * * In other words, under this provision of the constitution, the payment of interest and the retirement of bonds are to be provided for first, and the current expenses become a secondary consideration. * * *"

See also *State, ex rel., vs. Zangerle*, 94 O. S. 447; *State, ex rel., vs. Dean, Auditor*, 95 O. S. 108; *State, ex rel., vs. School District*, 112 O. S. 729; *State, ex*

rel., vs. *Van Wert*, 126 O. S. 78. The above constitutional provision is satisfied if in the ordinance or resolution authorizing a bond issue, provision is made for levying and collecting annually an amount sufficient to pay the interest on and to retire said bonds at their maturity. Such levy must be made annually in accordance with said ordinance or resolution.

In *Link vs. Karb*, 89 O. S. 526, the following is held:

"This provision of the constitution does not require that at the time the issue of bonds is authorized there shall then be levied any specified amount or any specific rate, but it does require that provision shall then be made for an annual levy during the term of the bonds in an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity, which levy must be made annually in pursuance of the provisions of the original ordinance or resolution requiring the same. The amount necessary to be levied for the purposes specified is to be determined by the taxing officials at the time the levy is made."

The provisions of the above quoted statutes are satisfied if such levy is actually made. Of course, under section 5625-2, General Code, such levy can be made on the taxable property only on the general duplicates of public utilities, real and tangible personal property, and not on the classified duplicates.

Section 5625-4, General Code, reads as follows:

"The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

1. The general levy for debt charges within the fifteen mill limitation.
2. The general levy for current expenses within the fifteen mill limitation.
3. Special levies authorized by the provisions of this act (G. C.

Secs. 5625-1 to 5625-39) within the fifteen mill limitation.

4. The general levy for debt charges authorized by law or by vote of the people outside of the fifteen mill limitation.
5. Other special or general levies authorized by law or by vote of the people outside of the fifteen mill limitation."

Section 5625-3, General Code, says:

" * * The proceeds of any tax levied by or for any subdivision when received by the fiscal officer thereof shall be deposited in its treasury to the credit of the appropriate fund."

Section 5625-9, General Code, provides:

"Each subdivision shall establish the following funds:

- (a) General Fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.

- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (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.
- (g) A special fund for each public utility operated by a subdivision.
- (h) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

In addition to these funds, other funds are authorized by sections 5625-11 and 5625-12, General Code.

Section 5625-10, General Code, reads in part as follows:

"All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax unless the law prescribes its use for a particular purpose, shall be paid into the general fund.

All revenue derived from general or special levies for debt charges, whether within or without the fifteen mill limitation, which is levied for the debt charges on serial bonds or on notes or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made."

From these statutes it will be seen that the taxes levied by a taxing district are divided into separate and distinct levies, and that the proceeds from each such levy must be placed to the credit of the fund for which such tax was levied.

Section 2683, General Code, provides for the settlements by the county treasurer with the county auditor.

The following sections refer to the distribution of tax funds to the subdivisions:

Section 2692, General Code, reads in part as follows:

"When the local authorities by resolution so request the county auditor shall draw, and the county treasurer shall pay on such draft to township, city and village treasurers, and the treasurer of any board of education and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer any money that may be in the county treasury to the accounts of such local authorities respectively and lawfully applicable to the purposes of the current fiscal year in which such request is made; provided that the county auditor and treasurer shall retain any amounts that may be needed to make such payments of the

obligations of the local political subdivisions or taxing districts as are required by law to be paid directly by the county authorities.”

Section 2689, General Code, reads as follows:

“Immediately after each semi-annual settlement with the county auditor, on demand, and presentation of the warrant of the county auditor therefor, the county treasurer shall pay to the township treasurer, city or village treasurer, the treasurer of the school district, or the treasurer of any legally constituted board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated offices delegated with authority to receive such funds or proceeds by such boards and subdivisions, all moneys in the county treasury belonging to such boards and subdivisions.”

Section 5639, General Code, provides how the undivided classified property tax fund shall be hereafter distributed. Among other things, it provides what portion shall be distributed to each municipality in the county, and then says:

“All moneys received into the treasury of a municipal corporation shall be apportioned among and credited to the funds established under paragraphs (a), (b), (c) and (d) of section 5625-9 of the General Code, in the same proportion in which the funds derived from the levy for the previous year on the general tax list and duplicate are divided between such funds; * * *.”

This allocation is apparently to be done by the fiscal officer and not by the county auditor. The February and August settlements between the county auditor and treasurer will show the amount received from each levy and when a portion of such taxes are unpaid, the amount collected from the sinking fund or bond retirement fund levies will be less than the amount levied, to the extent of the percentage of the taxes that are unpaid. I know of no authority in the statutes whereby the county auditor can transfer to those funds money which has been received from levies made for other purposes to make up such deficiency. Of course, after tax money is received by a subdivision, it may by virtue of paragraph e of section 5625-13, General Code, transfer unappropriated and unencumbered moneys from the general fund to the bond retirement or sinking fund to meet a deficiency in either of the latter funds. In fact, it is the duty of the taxing authority so to do. In the case of *State, ex rel., vs. School District, supra*, the court ordered the Clinton Township Rural School District to set aside from the funds received by it from the collection and distribution of taxes a sufficient amount to take care of the principal and interest maturities of its bonds.

I am of the opinion therefore that when a taxing district levies a tax for its general fund, and also a tax for its bond retirement or sinking fund, and the taxes levied are not collected in full, the county auditor of that county has no authority to allocate to the latter fund the whole amount which should have been realized from such levy had all taxes been fully paid by transferring the deficiency from the amount received from the general fund levy of such district.

Respectfully,

JOHN W. BRICKER,
Attorney General.