

does not exceed the amount of funds appropriated by the county commissioners for this purpose.

The local school board should then on the first of the fiscal year make their appropriations for the following fiscal year, taking into consideration the amount which will be deducted from their tax settlement by the county auditor to reimburse the county general fund.

The retaining of the amount of money paid out by the county board of education, by the county auditor, as authorized by Section 7610-1 of the General Code, is not in compliance with Section 5649-3g, but it is believed that this is an exception to that section. If there is no balance unappropriated and unobligated in the county general fund then the county board of education would not operate under Section 7610-1 of the General Code.

Your third question is whether it is possible for a board of education to borrow money after January 1, 1926, under Sections 5655 and 5656 of the General Code.

Section 5655 of the General Code, found in 111 Ohio Laws, page 379, provides as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such settlement."

This section is part of the Vorys Act which contains Section 5649-3d, and is intended to prevent the borrowing of money and the use of the same, except in the fiscal year for which the tax was levied.

The tax distribution made in February of any year under the new budget bill is for the fiscal year beginning January 1st. Prior to such distribution due to the fiscal year commencing prior to the tax distribution some means has to be provided for the securing of funds necessary to start the fiscal year. This section will permit the borrowing of money in anticipation of the February collection, but does not permit the use of the same for the payment of obligations of the prior fiscal year.

Respectfully,

C. C. CRABBE,

Attorney General.

3044

APPLICATION OF SECTIONS 5660 AND 5661, G. C., AS ENACTED IN
AMENDED SUBSTITUTE SENATE BILL No. 94, DISCUSSED.

SYLLABUS:

1. *Under Amended Substitute Senate Bill No. 94, tax collections and other sources of revenue for the year of 1926 may not be used to pay overdrafts or obligations incurred in preceding fiscal years.*

2. *Application of Sections 5660 and 5661, as enacted in Amended Substitute Senate Bill No. 94, discussed.*

COLUMBUS, OHIO, December 29, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"In case the general fund of a county is overdrawn on December 31, 1925, in an amount in excess of the entire amount which will be received from the tax levy and all other sources of revenue for the year 1926 for such fund, may the county commissioners legally contract for the necessary stationery and blank books for the use of the courts and in listing property for taxation and preparation of tax lists and duplicates without first securing the certificate of the county auditor under Section 5660, G. C., as amended, 111 O. L. 375? It would seem that these are absolutely essential to carry out the mandates of the Constitution and laws. The question might be stated generally as follows:

"*Question:* Where it is necessary to provide stationery and supplies to carry out the mandatory provisions of the constitution and by reason of the lack of funds the county auditor is unable to make the certificate required by Section 5660, General Code, may the county commissioners legally enter into a contract for such supplies without such certificate, and would the person furnishing such supplies have a legal claim against the county for the same?"

Your question is asked on the assumption that the general fund of the county is overdrawn on December 31, 1925, in an amount in excess of the entire amount which will be received from the tax levy and all other sources of revenue for the year 1926 for such fund.

I may state at this time that I am unable to see in what manner the overdraft for 1925 would affect the funds which are received for 1926.

Section 5649-3f of the General Code, found in 111 Ohio Laws, page 371, which is a part of amended substitute Senate Bill No. 94, known as the Vorys Bill, provides in part as follows:

"In addition to its other duties, the county budget commission of each county shall, from the information furnished by the budget and accompanying data, and from other sources of information available to it, determine with respect to its county * * * the probable amount of the free and unencumbered balances at the beginning of the succeeding fiscal year, and of the revenues from each and every source which will be respectively available for the use of the county * * * for and during such fiscal year, * * *. Not later than the 15th day of October the budget commission shall certify said determinations respectively to the appropriate taxing and appropriating authorities of the county * * *, each of which certifications shall be the official estimate of balances and revenues for such fiscal year and govern the aggregates of the appropriations *in and for such fiscal year.*"

By this section the budget commission in their official estimate of revenues and balances limits the amount and the purpose for which the revenues for the succeeding fiscal year may be used.

Section 5649-3g in part provides as follows:

"At the beginning of each fiscal year, the county commissioners of every county, * * * shall make appropriations classified for the several pur-

poses for which expenditures are to be made for and during the said fiscal year, from the funds of such county * * *. The aggregate of all appropriations of or from the funds of any county, * * * for any fiscal year shall not exceed the amount of the official estimate of revenues and balances of such county * * *. No appropriation shall become effective until there is filed with the appropriating authorities by the county auditor a certificate that the appropriations taken together with all other outstanding appropriations, does not exceed said official estimate and in every case in which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith, upon receiving from the appropriating authorities a certified copy of the appropriating measure."

The Vorys Bill so-called, had as its underlying purpose the operation of the various subdivisions within the revenue which is available for the fiscal year so as to put the different subdivisions upon a pay as you go basis and the above sections limit the appropriation and expenditure of money in a fiscal year for the purposes for and during the said fiscal year.

It cannot be maintained that overdrafts in county funds are made for and during the coming fiscal year. Such overdrafts were made in the year of 1925 or prior thereto and cannot be considered the purposes for which revenue is needed for the operation of the different subdivisions for the next fiscal year.

Overdrafts in the funds of the subdivision can only exist at the present time through the use of funds other than the general fund for the purpose of maintaining the general expenses of the subdivision, or through the borrowing of money for the purpose of carrying on the current activities of the subdivision, all of which is at present prohibited by the statutes so that such overdrafts may be deemed illegal overdrafts from such funds.

The Constitution of Ohio, Section 5, Article XII, provides as follows:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

Section 5627 of the General Code of Ohio, provides as follows

"The county commissioners, at their March or June session, annually, shall determine the amount to be raised for ordinary county purposes, county buildings, the support of the poor, interest and principal of the public debt, and for road and bridge purposes. They shall specifically set forth in the record of their proceedings the amount to be raised for each of such purposes."

Section 5630 of the General Code limits the amount which may be levied for county purposes other than roads, bridges, county buildings, sites and the purchase of lands for infirmity purposes to three mills on each dollar.

Various other sections of the statute provide for the levying of taxes for specific purposes but nowhere is found any authority for making a levy of tax for the purpose of paying overdrafts in any funds.

The above quoted section of the Constitution and statutes would prohibit the use of funds levied for general county purposes for the next fiscal year for any other purpose, and as no authority is granted to levy for overdrafts it is my opinion that the tax collection for the next fiscal year may not be used to pay obligations or overdrafts incurred in the preceding fiscal year.

Section 260-1, a part of the so-called Vorys Bill, in part provides as follows:

"Taxes or other revenues collected in or on hand in any fiscal year for the purposes of the next or any subsequent fiscal year, shall not be appropriated or expended prior to such next or subsequent year."

This section places beyond all doubt the question as to whether taxes and other revenues collected for the next fiscal year may be used to pay obligations of the prior fiscal year.

Taking the Vorys Bill as a whole, together with the section of the Constitution and related sections of the General Code, I can come to but one conclusion and that is that obligations incurred or overdrafts made in funds cannot be paid from the taxes and revenues collected or on hand for the next fiscal year.

In making appropriations under Section 5649-3g of the General Code, at the beginning of the fiscal year, the appropriating authorities should take into consideration and provide the supplies and blanks necessary to carry out the mandatory provision of the Constitution for the next fiscal year. These requirements should be considered and provided for before other expenses which are not mandatory.

This brings us to the question as to whether the county commissioners may at this time contract for such necessary supplies without a certificate of the county auditor that there are sufficient funds available and unappropriated to cover such contracts.

Section 5660 of the General Code as it formerly existed, was repealed by Amended Substitute Senate Bill No. 94, which act became effective July 21, 1925. The title to said act is as follows:

"To provide for a balanced budget system for all taxing districts and political subdivisions of the state, to establish a uniform fiscal year for the state and its subdivisions, and to make certain administrative readjustments, by enacting new sections, by amending sections 253, 2692, 2987, 5649-3a, 5655, 7587, and 7689 and by repealing sections 260-1, 260-2, 260-3, 2507, 2508, 2509, 2980, 3797, 3798, 3800, 3806, 3807, 3810, 4287, 4288, 4289, 5649-3d, 5649-3e, 5660 and 5661 of the General Code."

In no part of this act is any waiving clause found for Sections 5660 or 5661, providing that the repeal of said section shall not take effect as of the effective date of the act. It would therefore seem that Sections 5660 and 5661 as existing prior to this act are repealed to all intents and purposes as of the effective date thereof, to wit: July 21, 1925.

Sections 5660 and 5661, enacted by this same act, vary in some details and no direct statement as to when such sections are effective can be found in the act. However, Section 260-1, the first section of said act, in part provides as follows:

"All provisions of law heretofore or hereafter enacted and relating to the levying of taxes, the collection, appropriation or expenditure of revenues or the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined, * * *"

The fiscal year as herein defined may be found in the preceding sentence of the same section, which is as follows:

"Beginning with January 1, 1928, the fiscal year of the state and beginning with January 1, 1926, the fiscal year of every county, municipal corporation, including charter municipalities, school district, township or other political subdivision or taxing district, and of every officer, department, com-

mission, board or institution thereof, shall begin at the opening of the first day of January of each calendar year and end at the close of the succeeding thirty-first day of December."

Under the above section the fiscal year as therein defined does not begin until January 1, 1926, and it would seem by reason of this provision that Sections 5660 and 5661, as herein enacted, are not effective until January 1, 1926.

This construction of this section would apparently leave an interim between July 21, 1925, and January 1, 1926, in which there would be no law requiring a certificate of the auditor in order to make a valid contract.

As there is some doubt as to whether Sections 5660 and 5661 as existing prior to the effective date of the Vorys Bill are operative at this time, it is believed that all doubts should be resolved in favor of the operation of such sections.

However, as it has been pointed out in this opinion that the tax collection and revenues for the year 1926 may not be used to pay obligations or overdrafts of preceding fiscal years, it is believed that the operation of the above section will not prevent the entering into of contracts for the stationery and supplies necessary to carry out the mandatory provisions of the Constitution as such contracts may be entered into upon January 1, 1926, upon the passing of the necessary appropriation measure and the securing of the certificate of the auditor that there are sufficient funds in process of collection to cover such contracts.

Respectfully,

C. C. CRABBE,

Attorney General.

3045.

APPROVAL, OHIO CANAL LAND LEASE.

COLUMBUS, OHIO, December 29, 1925.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I have your letter of December 28, 1925, in which you enclose the following lease, in triplicate, for my approval:

OHIO CANAL.

	Valuation.
To The Columbus Railway, Power and Light Company, land lease	
for railway, electrical power transmission, etc.....	\$50,000.00

I have carefully examined said lease, find it correct in form and legal, and am, therefore, returning the same with my approval endorsed thereon.

Respectfully

C. C. CRABBE,

Attorney General.