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FINES AND BOND FORFEITURES—FUNDS DERIVED FROM SAME — PAID INTO MUNICIPAL TREASURY — EXPENDITURE PRESCRIBED IN SECTION 5503.04 RC—NO AUTHORITY IN LAW TO TRANSFER FUND TO MUNICIPAL GENERAL FUND—SECTIONS 5705.15, 5705.16 RC.

SYLLABUS:

There is no authority in law for the transfer to the municipal general fund, by proceedings under Sections 5705.15 and 5705.16, Revised Code, of funds derived from fines and bond forfeitures paid into the municipal treasury for expenditure as prescribed in Section 5503.04, Revised Code.

Columbus, Ohio, June 29, 1954

Board of Tax Appeals, Department of Taxation, State of Ohio
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“The Board of Tax Appeals of the Department of Taxation of Ohio received a duplicate of a petition addressed to the Court of Common Pleas, Wood County, Ohio, prepared by the council of the village of Portage, requesting the court for an order to transfer \$15,000 from moneys deposited in the motor vehicle tax fund to the general fund of said village.

“Under the provisions of Sections 5705.15 and 5705.16, Revised Code, the taxing authority is required to file a duplicate copy of the petition addressed to the court of common pleas of the county in which the funds are held, with the board of tax appeals for its examination and approval. If the petition is disapproved by the board, it shall be returned within 10 days to the officer who submitted it, with a memorandum of the board's objection. This disapproval shall not prejudice a later application for approval.

“Transfer of the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose is prohibited by the provisions of section 5705.15, Revised Code.

“In this particular case, the taxing authority of the village of Portage is not attempting to transfer either the proceeds of the gasoline tax or motor vehicle license fees, but is requesting authority to transfer the proceeds of fines credited to the auto license funds in compliance with the provisions of section 5503.04, Revised Code, which reads, in part, as follows :

“All fines collected from, or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid one half into the state treasury and one half to the treasury of the municipal corporation where such case is prosecuted. If such prosecution is in a trial court outside a municipal corporation such money shall be paid one half into the county treasury. Such money paid into the state treasury shall be credited to the 'state highway maintenance and repair fund.' The money paid into a county treasury and the money paid into the treasury of a municipal corporation shall be deposited

to the same fund and expended in the same manner as is the revenue received from the registration of motor vehicles.'

"We respectfully request your formal opinion in regard to the following question :

"Should a petition be approved or disapproved by the board of tax appeals when the taxing authority is requesting an order from the court of common pleas, authorizing the transfer of the proceeds of fines collected from, or moneys arising from bond forfeited by persons apprehended or arrested by state highway patrolmen, and credited to either the Street Maintenance and Repair Fund, Motor Vehicle Licenses Fund or Auto License Fund, to the General Fund, or some other fund, thereby enabling the taxing authority to expend the proceeds of fines and forfeiture, contrary to the provisions of section 5503.04, Revised Code?

"We are attaching and making a part of our request a copy of the duplicate petition filed by the village of Portage, Wood County."

The language quoted in your inquiry from Section 5503.04, Revised Code, is clearly mandatory in nature and provides that funds derived thereunder, when paid into the municipal treasury "*shall be deposited to the same fund and expended in the same manner* as is the revenue received from the registration of motor vehicles." (Emphasis added.)

The expression "in the same manner," as used in this provision refers, in my opinion, to the purposes of expenditure rather than to the mere mechanics of disbursement, and it thus becomes pertinent to note the purposes for which funds derived from motor vehicle registration fees may be expended.

The constitutional provision in this regard is found in Article XII, Section 5a, Ohio Constitution, which reads :

"No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways."

Similar limitations are imposed both in the statute imposing the tax and in that providing for distribution of the proceeds thereof to local subdivisions. See Sections 4503.02 and 4501.04, Revised Code.

In this situation the question presented is whether the provisions of Sections 5705.15 and 5705.16, Revised Code, are sufficient to authorize the transfer of moneys so received in the municipal treasury to the general fund of the municipality. Section 5705.15, Revised Code, reads:

“In addition to the transfer authorized in Section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section, and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds, or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose.”

In Section 5705.16, Revised Code, there is prescribed a procedure for obtaining a judicial approval of such transfers, following administrative consideration by the board of tax appeals.

A somewhat similar question was under consideration in *Lakewood v. Rees*, 132 Ohio St., 399, in which there was involved a conflict between the general provisions of Section 5625-13a General Code, now Section 5705.15, Revised Code, relating to transfer of funds, and the special provisions of Section 3959, General Code, specifying and limiting the use of revenues derived from water rents. The second paragraph of the syllabus in this decision is as follows:

“No power to authorize or direct the transfer of waterworks funds is conferred upon the Common Pleas Court or the state Tax Commission by Sections 5625-13a to 5625-13g, General Code. Those provisions relate solely to the transfer of funds derived from taxation and have no reference to funds derived from the maintenance and operation of municipal waterworks.”

This ruling was modified in part in *City of Niles v. Union Ice Corp.*, 133 Ohio St., 169, the first paragraph of the syllabus in which reads as follows:

“The provisions of Section 5625-13a, General Code, relate to the transfer of funds of a political subdivision, whether tax derived or not, and include, in their authorization to transfer,

funds derived from the maintenance and operation of an electric light and power system, but do not apply to waterworks funds by reason of the provisions of Section 3959, General Code. (Paragraph 2 of the syllabus in the case of *City of Lakewood v. Rees*, 132 Ohio St., 399, modified in part.)”

Since it is clear that this decision did not disturb the holding in the Rees case that the special provisions of Section 3959, General Code, prevailed over the general provisions of Section 5625-13a, General Code, it becomes pertinent to observe the court's reasoning on this point in the Rees case. In the opinion in this case Judge Matthias said, pp. 402, 403:

“It is to be observed that, under the specific provisions of Section 3959, General Code, surplus revenues derived from water rents may be applied only to repairs, enlargement or extension of the works, or of the reservoirs, and to the payment of any interest on a loan made for their construction, or the creation of a sinking fund for the liquidation of a waterworks' debt. As was said by Marshall, C.J., in the Roettinger case, *supra*:

“‘Municipalities get their authority for levying taxes and raising revenues from the Legislature, and the Legislature must be held to have the power to place proper limitations thereon. It being provided that the surplus may be used for extensions, and for interest and loans for waterworks construction, it will be presumed that the legislative intent has thereby been exhausted and that it was not intended that the city should have any power over the surplus beyond the terms of the power expressly granted. For the purpose of determining the legislative intent the maxim *expressio unius est exclusio alterius* has direct application. That maxim has peculiar application to any statute which in terms limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise.’

“Under well-established and universally recognized canons of statutory construction, the general provisions of Section 5625-13a et seq., General Code, cannot control or affect the specific provisions of Section 3959, General Code, which are clearly applicable to the situation under consideration.”

In considering a somewhat similar problem in Opinion No. 1159, Opinions of the Attorney General for 1946, p. 615, the writer commented on the decisions in the Rees and Niles cases as follows, pp. 617, 618:

“While Section 5625-13a, hereinabove quoted, after providing in general terms for the transfer of public funds from one fund to another, also contains certain exceptions to the exercise of such authority, it was in effect held in *Niles v. Union Ice Corpora-*

tion, 133 O.S., 169, and Lakewood v. Rees, 132 O.S., 399, that *these exceptions were not in all cases exclusive*. In other words, that the *General provisions of Section 5625-13a authorizing the transfer of funds do not apply when in conflict with the express provisions of another statute which specify and limit the uses to which a particular fund may be applied*, such as Section 3959, General Code, relating to waterworks funds." (Emphasis added.)

In the instant case it would seem that when the Legislature enacted the mandatory provision in Section 5503.04, Revised Code, for the use of these funds for particular purposes, it can be said in the words of Marshall, C.J., that "it will be presumed that the legislative intent has thereby been exhausted." This view is strongly supported by the consideration that the special provisions of this section must be deemed to prevail over the general provisions of Section 5705.15, Revised Code.

Finally it should be borne in mind that Section 5503.04, Revised Code, was reenacted as Section 1183-4, General Code, as recently as 1945, some ten years after the enactment in Section 5625-13a, General Code, of a prohibition of the transfer of funds derived from excises levied for specific purposes. Accordingly, when the Legislature thus provided in mandatory language that the funds in question "shall be * * * expended in the same manner" as motor vehicle registration excises, and even deposited in the same fund with moneys so derived, we find a strong implication that none of the moneys thus commingled were intended to be used, in any circumstances, for purposes for which such motor vehicle registration fees could not be used under the then current provisions of law.

For these reasons it is my conclusion that there is no authority in law for the transfer to the municipal general fund, by proceedings under Sections 5705.15 and 5705.16, Revised Code, of funds derived from fines and bond forfeitures paid into the municipal treasury for expenditure as prescribed in Section 5503.04, Revised Code.

A final observation may here be added regarding the purely factual questions presented by the commingling in the same fund in the municipal treasury of moneys derived from the two sources in question. It would seem exceedingly difficult to make at this time any accurate segregation of the balance presently in this fund into two separate parts based on the source from which each was derived. Under the statute which requires moneys from both sources to be paid into "the same fund," it would not

appear legally possible to maintain any "sub-accounts" in such fund, and it would seem, therefore, that such a segregation at this time could be made only on the assumption that moneys heretofore expended from such fund were always drawn from that portion derived from registration fees, and in a situation where it could be shown that the balance in the fund had never been less than the amount now sought to be transferred from the fund, i.e., \$15,000.00.

In view of the statutory mandate that such moneys be commingled in the same fund, I doubt the validity of such an assumption, and I observe no allegation in the petition that the balance in the whole fund has never been so reduced.

Respectfully,
C. WILLIAM O'NEILL
Attorney General