

1742.

COUNTY COMMISSIONERS — WHERE UNDER AMENDED SUBSTITUTE SENATE BILL 40, 93rd GENERAL ASSEMBLY, MONEY BORROWED IN ANTICIPATION OF RECEIPT OF ITS DISTRIBUTION OF MOTOR VEHICLE LICENSE FUNDS FROM STATE—QUANTUM OF BORROWING LIMITED TO NINETY PER CENTUM OF RECEIPT OF CONTEMPLATED REVENUES WITHIN ONE YEAR NEXT AFTER RESOLUTION TO BORROW ADOPTED.

SYLLABUS:

*When, under authority of Amended Substitute Senate Bill No. 40, as enacted by the Ninety-third General Assembly, the board of county commissioners borrow money in anticipation of the receipt of its distribution of motor vehicle license funds from the State, the quantum of such borrowing is limited to ninety per centum of the revenues contemplated to be received within the period of one year next after the adoption of the resolution authorizing such borrowing.*

Columbus, Ohio, January 19, 1940.

Hon. Charles L. Sherwood, Director, Department of Public Welfare,  
Columbus, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads:

“The second paragraph of Section 3a of Amended Substitute Senate Bill No. 40 contains the following sentences:

‘County Commissioners establishing such poor relief distributing fund may, by resolution adopted by a two-thirds vote, and in anticipation of the receipt of moneys transferable to such fund as hereinabove provided, transfer from any fund of the county, excepting the proceeds or balances of loans or bond issues, or the proceeds of levies for the payment thereof, not to exceed in the aggregate ninety per centum of the amount so anticipated within one year thereafter, as estimated by the county auditor, anything in section 5625-13a of the General Code to the contrary notwithstanding.’

‘The taxing authority of any subdivision of a county, which

shall have created a poor relief distributing fund, may, in the resolution requesting participation in the poor relief distributing fund, or by resolution subsequently adopted and certified to the county commissioners, request the county commissioners to make an appropriation for a specified future period not exceeding one year, to and for the use of such subdivision out of moneys estimated to come into such poor relief distributing fund during such period.'

The wording of these sentences in this part of the act indicates that the Legislature in framing this act intended that the subdivision could borrow in anticipation of collection of automobile license revenues, but that such borrowing should be for a limited period of time.

Therefore, we would respectfully request a formal opinion from your office on the following points:

1. Does this act specifically authorize the borrowing in anticipation of the collection of such revenues only for the balance of the calendar year 1939, or,
2. Does this act authorize the borrowing in anticipation of the collection of such revenues for the calendar year April 1, 1939, to March 31, 1940, or,
3. Does this act authorize the borrowing in anticipation of the collection of such revenues from the effective date of this act, May 29, 1939, to May 28, 1940, or,
4. Does this act authorize the borrowing in anticipation of the collection of such revenues for one year in advance from the date of the resolution of the proper taxing authority?"

The matter referred to in your request as "Section 3a" of Amended Substitute Senate Bill No. 40 is subparagraph 3a of Section 6309-2, General Code, as amended by such Act. Such section of the General Code provides that:

"The county commissioners of any county may, by a two-thirds vote, and if the taxing authority of any subdivision, wholly or partly within the county, administering poor relief, by resolution adopted by a majority vote of such taxing authority and certified to the county commissioners, shall request it, they shall, create a poor relief distributing fund and direct the county auditor of such county to transfer and credit to such fund not to exceed twenty-five per centum of the moneys collected from and after the effective date of this act to and including April 15, 1941, and received by such county auditor under each and all of the three preceding paragraphs of this section, including moneys received for the use of municipal corporations."

The moneys referred to in such subparagraph 3a are the moneys paid by the State from the proceeds of the motor vehicle registration and license

taxes, twenty-five per centum of which has been allocated to the use of the municipality or county from which the vehicle was registered. Five per centum is distributed equally between the counties of the State. Forty-seven per centum of the taxes is allocated to the counties from which the owner registered the vehicle. The statute, in levying such tax, states the specific purposes for which such moneys so allocated may be used.

Such subparagraph 3a merely authorizes the county commissioners to lend funds derived from a tax levied for the maintenance and repair of bridges, etc., to the poor relief funds of the districts within the county to be repaid from the general fund of the county not later than May 31, 1941. The Act provides that the resolution of the county commissioners "providing for such transfer shall specifically provide that each of the funds from which such transfer is made shall be reimbursed by the county auditor on or before May, 31, 1941, by transfer from the general fund of the county."

The language of such subsection 3a as quoted in your letter authorizes the board of county commissioners to borrow from funds of the county other than bond funds in anticipation of the receipt of such moneys from the State, but limits the amount of the borrowing to "ninety per centum of the amount so anticipated *within one year thereafter.*" Such moneys must be repaid on or before May 31, 1941. From the express language of such section it is evident that the legislature merely placed a limitation on the amount which might be borrowed and did not attempt *by that language* to prescribe the time during which the borrowings may be made. I find no language in the Act that attempts to place any limitation on the time of borrowing other than that which prescribes that any such borrowing must be repaid on or before May 31, 1941. Such language would at least infer that the borrowing must be at some time prior to the due date thereof, even though it be but a day or an hour.

The language "within one year thereafter," when given a grammatical interpretation, would refer to and modify the adoption of the resolution authorizing the transfer. As stated by Mr. Justice Brewer in *United States v. Goldenberg*, 168 U. S., 95, 102, "He (the lawmaker) is presumed to know the meaning of words and the rules of grammar," and it is to be presumed that the legislature, in enacting a statute, used the words it has used and with the arrangement which it has adopted to express the meaning

most obvious from such use, unless the context clearly indicates that the legislative intent was otherwise.

McCluskey v. Cromwell, 11 N. Y., 593, 601; D. T. Woodbury & Co. v. Berry, 18 O. S., 456; Slingluff v. Weaver, 66 O. S., 621.

In many places in the General Code the legislature has used the phrase "calendar year" when it has meant the period from January 1 to December 31 of a given year. In other places it has used the phrase "tax year" to designate a different period of time containing three hundred and sixty-five days. However, I do not find anything in the context of the statute in question that would indicate that the legislature has used the language to express other than three hundred and sixty-five or three hundred and sixty-six days next ensuing after the adoption of the resolution. It therefore seems to me that your fourth inquiry should be answered in the affirmative.

Specifically answering your inquiry, it is my opinion that when, under authority of Amended Substitute Senate Bill No. 40, as enacted by the Ninety-third General Assembly, the board of county commissioners borrow money in anticipation of the receipt of its distribution of motor vehicle license funds from the State, the quantum of such borrowing is limited to ninety per centum of the revenues contemplated to be received within the period of one year next after the adoption of the resolution authorizing such borrowing.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.