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COUNTY SCHOOL DISTRICT—*NOT A* SUBDIVISION UNDER §3501.17 RC—COUNTY AUDITOR HAS NO AUTHORITY TO WITHHOLD MONEY UNDER §3501.17 RC TO MEET EXPENSE OF ELECTION IN ODD-NUMBERED YEARS WHEN MEMBERS OF COUNTY BOARD OF EDUCATION ARE TO BE ELECTED.

SYLLABUS:

A county school district is not a subdivision within the meaning of Section 3501.17, Revised Code, and there is no authority under the provisions of that section for the county auditor to withhold, from any moneys payable to such district in an ensuing tax settlement, an amount designed to meet the expense of conducting an election in the odd-numbered years at which members of the county board of education are elected.

Columbus, Ohio, June 14, 1957

Hon. Richard F. Liggett, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would greatly appreciate your opinion on the following matter: Section 3501.17 of the Revised Code of Ohio provides that the expenses of conducting elections in odd-numbered years shall be charged to the subdivision in and for which such elections are held.

“Members of the county board of education are elected in odd-numbered years.

“My question is whether or not any part of the expenses of such an election in odd-numbered years should be charged back against the county board of education. I have found in this connection an Attorney General’s Opinion No. 3130 which was rendered in 1928 to the effect that no expense of such elections should be charged to the county board of education, however, this opinion appears to be based in part on two sections of law which have since been repealed by the legislature.”

In the 1928 opinion, to which you refer, the syllabus was as follows:

“Sections 5053 and 5054 of the General Code, which must be considered together, do not require election expenses therein mentioned to be charged against a county board of education.”

In Section 5054, General Code, there under scrutiny, it was provided that:

“County commissioners, township trustees, councils, boards of education or other authorities, authorized to levy taxes, shall make the necessary levy to meet such expenses, which levy may be in addition to all other levies authorized or required by law.”

Construed *in pari materia* with the foregoing provision was the following language in Section 5053, General Code:

“In November elections held in odd-numbered years, such compensation and expenses shall be a charge against the township, city, village or political division in which such election was held, and the amount so paid by the county shall be retained by the county auditor from funds due such township, city, village or political division, at the time of making the semi-annual distribution of taxes. The amount of such expenses shall be ascertained and apportioned by the deputy state supervisors to the several political divisions and certified to the county auditor. * * *”

The provisions comparable to these are presently found in Section 3501.17, Revised Code. With respect to the cost of elections in the odd-numbered years, this section provides:

“* * * The compensation of judges and clerk of elections; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instruction, and other expenses of conducting primaries and elections in the odd-numbered years shall be charged to the subdivisions in and for which such primaries or elections are held.

“The entire cost of special elections held on a day other than the day of a primary or general election, both in odd-numbered

years or in even-numbered years, shall be charged to the subdivision. * * *

The meaning of the language "charged to the subdivisions," as used above, is apparent from an earlier provision in this section which reads as follows :

"* * * Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year. * * *"

The "tax settlement" to which reference is thus made is the semi-annual settlement by the county auditor and the county treasurer, required under the provisions of Sections 319.43 and 321.24, Revised Code, and the proceeds involved are primarily the funds realized from the collection of real property taxes, penalties and special assessments.

The distribution to the several subdivisions following such semi-annual settlement is provided for in Section 321.31, Revised Code, which reads as follows :

"Immediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the township clerk, treasurer of a municipal corporation, the clerk of the school district, or the treasurer of any board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated by the boards and subdivisions to receive such funds or proceeds, all moneys in the county treasury belonging to such boards and subdivisions."

The language "all moneys in the county treasury belonging to such boards and subdivisions," quite evidently has reference to the proceeds of all levies made by the taxing authorities of the several subdivisions by ordinance or resolution as provided in Section 5705.34, Revised Code. On this point, it was said in Opinion No. 7420, Opinions of the Attorney General for 1956, dated November 23, 1956:

"It is my opinion that the absence of any express statutory direction for the division of the proceeds of a levy, the proceeds of all tax levies must go to the taxing authority of the taxing

unit which levied the tax as provided in Section 5705.34, Revised Code.”

By referring to Section 5705.34, Revised Code, it will be noted that the ordinance or resolution of levy is actually made by “the taxing authority of each subdivision.”

The term “taxing authority” is defined in Section 5705.01, Revised Code, as meaning “in the case of a school district, the board of education.”

It is to be noted, however, that in the same section the term “subdivision” means “any * * * school district, *except the county school district.*”

It is thus obvious that the expression “taxing authority of each subdivision” does not include the board of education of a county school district, and that that board is not authorized to levy a tax under the provisions of Section 5705.34, Revised Code. It thus follows that no funds will be distributed, after each semi-annual tax settlement, to such county school board under the provisions of Section 321.31, Revised Code, this for the reason that since such board has levied no tax, there are no moneys in the county treasury “belonging to such board(s).”

It would thus be impossible in a case of a county school district to charge any amount whatever to such district, as a subdivision, by withholding from it a portion of the “moneys payable thereto at the time of the next tax settlement,” as provided in Section 3501.17, Revised Code.

Actually, it may be noted, as a matter of incidental interest, that provision is made in Section 3317.13, Revised Code, for the operating expenses of a county school district. A portion of this is paid, on a formula set out in this section, by the state board of education by the expenditure of state funds, and the remainder of the county board’s budget is apportioned, also by statutory formula, among the several local school districts in the county school district, such apportionment being made by the state board of education and certified to the clerks of the several local school districts concerned. Following such certification, the state board is required to deduct the amounts so certified from the funds allocated to such districts and distributed to them by way of state subsidies (school foundation funds) as provided in Section 3317.02, Revised Code.

It is thus to be seen that none of the funds provided for the operating budget of the county board of education is derived from funds which are distributed by the county auditor following each semi-annual tax settle-

ment, within the meaning of Section 3501.17, Revised Code. Hence, we must conclude that although the election statutes providing for the apportionment of the cost of elections in odd-numbered years have been materially changed since the rendition of the 1928 opinion, these changes are not of such a nature as to change the conclusion therein reached.

Accordingly, in specific answer to your inquiry, it is my opinion that a county school district is not a subdivision within the meaning of Section 3501.17, Revised Code, and there is no authority under the provisions of that section for the county auditor to withhold, from any moneys payable to such district in an ensuing tax settlement, an amount designated to meet the expense of conducting an election in the odd-numbered years at which members of the county board of education are elected.

Respectfully,
WILLIAM SAXBE
Attorney General