

in question, but that it was distinctly prohibited from so doing by the section of the city charter above cited and quoted.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1957.

COUNTY COMMISSIONERS—BOUND BY SECTION 5625-38 G. C.—CANNOT RESTRICT COUNTY AUDITOR IN PAYMENT OF SERVICES TO DEPUTIES, ASSISTANTS, CLERKS, ETC.—APPROPRIATION SHALL BE ANNUAL NOT MONTH TO MONTH MEASURE.

SYLLABUS:

1. *County commissioners cannot restrict the county auditor in the matter of payment for services rendered by deputies, assistants, clerks, etc., to county officers, beyond the limitations contained in Section 5625-38, General Code.*

2. *County Commissioners cannot make a month to month appropriation for deputy, assistant and clerk hire for a county officer for the reason that Section 5625-28, General Code, provides that they shall adopt an annual appropriation measure.*

COLUMBUS, OHIO, February 21, 1938.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date, as follows:

"A situation has arisen in this county by reason of which the following question has been submitted to this office. I should like to have your opinion upon the situation.

Section 2981 of the General Code provides that the compensation of deputies, assistants, clerks, bookkeepers or other employees of the county officials shall not exceed in the aggregate the amount fixed by the commissioners by such office. The county commissioners do not desire to appropriate sufficient money to enable the county surveyor to pay the salaries which he has fixed for the assistants in his office. Your predecessor in office, in 1929, in Opinion 1216, held substantially that in

such an event the county official may certify payrolls for the first half of the fiscal year which do not exceed 6/10 of the appropriation. The county commissioners desire to limit the county auditor from issuing warrants which exceed 1/12 of the appropriation for any one month. Can this be done, and, if so, how?

If the auditor cannot be so limited, is it proper for the county commissioners to make a monthly appropriation for the office of the county surveyor?"

I have read Opinion 1216, Opinions of the Attorney General for 1929, and the former opinions therein referred to, and I may say I do not see any reason for departing therefrom.

As I take it, your questions are:

First: Can the board of county commissioners prevent the county auditor from issuing warrants to deputies, assistants, clerks and other employees of county officers for more than one-twelfth of the annual appropriation in any one month?

Second: If the county auditor cannot be so limited, may the county commissioners make a monthly appropriation for the office of the county surveyor?

The opinion of my predecessor, to which you refer, and the former opinions were to some extent based on Section 2980 of the General Code, which, in substance, required county officers, on the first Monday of each November, to file with the county commissioners a detailed statement of the probable amount necessary to be expended by the particular office for assistants, deputies, clerks, etc., for the year beginning January first next thereafter. Not later than five days thereafter the county commissioners were required to fix an aggregate sum to be expended for such period for such purposes, which sum should be reasonable and proper but within certain limitations therein provided. It was further provided that in case of emergency, the county commissioners could increase the allowance for a particular office and such allowance and additional allowances were required to be transferred to a separate salary fund for each of said offices, popularly designated as the "Officers' Fee Fund."

This section further provided that the county auditor should not draw any warrant for compensation of deputies, assistants, clerks, etc., in excess of the amount transferred to the salary fund for each of said officers, and if he did so he and his bondsmen were made liable. This law became effective May 19, 1920 (108 O. L., Pt. 2, p. 1203, et seq.), and remained the law until the new Budget Law went into effect on July 20, 1925 (111 O. L., pp. 371, et seq.), which law repealed Section 2989 of the General Code.

A county budget commission act, making the county auditor, county treasurer and prosecuting attorney members of such board, was originally passed in 1915 (106 O. L., p. 180), Section 5649-3b, General Code, which was repealed in 1927 (112 O. L., 399), and reenacted as Section 5625-19, General Code, and such is the status of the law at the present time.

Section 5625-20, General Code, in effect provides that the taxing authority of all subdivisions shall prepare budgets which, in the case of counties, shall be laid before the budget commission by the county auditor, as provided in Section 5625-23 of the General Code. After the Budget Commission has adjusted and approved the budget, it is certified to the taxing authority as provided in Section 5625-25, General Code, and tax levies are made in accordance therewith.

Under the provisions of Section 5625-28, General Code, if any taxing authority is dissatisfied with the action of the Budget Commission, it may appeal to the Tax Commission of Ohio and said Commission must forthwith approve or disapprove such budget and certify its finding to the county auditor, and the taxing authority of the subdivision makes the necessary levies in accordance with the provisions of the budget.

Section 5625-29, General Code, provides in substance that on or about the first day of each year the taxing authority of each subdivision, in your case *the county commissioners, shall pass an annual appropriation measure.*

Section 5625-38, General Code, provides:

“Each political subdivision shall have authority to make expenditure for the payment of current pay rolls upon the authority of a proper appropriation for such purpose provided that the positions of such employees and their compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law. The total expenditures for such purpose during the first half of any fiscal year shall not exceed six-tenths of the appropriation therefor unless the taxing authority of such subdivision by a three-fourths vote of all members thereof waives such limitation, and in the resolution waiving such limitation there shall be set forth their reason therefor.”

The Budget Law did, to some extent, lessen the power and authority of the county commissioners in the matter of levy and appropriation. The section last above referred to was part and parcel of the Budget Law. There was reason for the enactment of this section. It was a

matter of common practice for the auditor and treasurer to make advance payments to deputies, assistants, clerks, etc. This was unwarranted. However, the General Assembly sensed this human frailty and indulged it to some extent when it enacted Section 5625-38, supra.

Under this section, after the appropriation had been regularly made for deputies, assistants, clerks, etc., for a particular county office, such deputies, assistants, clerks, etc., could not draw, during the first six months of the fiscal year, more than six tenths of the appropriation therefor unless the taxing authority, in your case the county commissioners, by a three-fourths vote, waived the limitation by resolution and set forth in such resolution the reasons therefor. All three members of the board of county commissioners would have to vote for such resolution as a matter of political mathematics.

It is evident that in the enactment of Section 5625-38, General Code, it was the legislative intent to curb advance withdrawals from the treasury by deputies, assistants, clerks, etc., and they did. True, the General Assembly did indicate some slight liberality during the first six months of the year and in all probability deputies, assistants and clerks were accommodated by the county auditor and county treasurer, but it is not likely that county commissioners made a practice of waiving the limitation. Let us see just how it would operate. Suppose a deputy had his salary fixed at \$2,400.00. He would be entitled to \$200.00 per month for the year. If he became pressed for money during the first six months of the year and could prevail on the auditor and treasurer to so permit, he could draw \$240.00 for the first six months, but he would have to be content with \$160.00 for the last six months. As a matter of fact, when the deputy, assistant or clerk received such advance, he was being paid \$40.00 per month more than his contract of employment called for.

I have endeavored to touch all the law that in anywise bears on the questions you submit, and from it all I must conclude, in answer to your specific questions, that the county commissioners cannot limit the county auditor in the matter of drawing warrants for deputy, assistant and clerk hire for county officers beyond the limitations contained in Section 5625-38, General Code, and the county commissioners cannot make a month to month appropriation for deputy, assistant and clerk hire for a county officer, because Section 5625-28, General Code, requires that they *shall adopt an annual appropriation measure*. Besides, monthly appropriations would be cumbersome and expensive and most certainly out of step with our present system of taxation.

Respectfully,

HERBERT S. DUFFY,
Attorney General.