

2927.

TRANSFER OF FUNDS—MONEY FOR DITCH IMPROVEMENT FUND
TRANSFERABLE TO AND FROM GENERAL FUND.

SYLLABUS:

The special ditch improvement fund provided by Section 6492, General Code, has by virtue of the terms of House Bill No. 80, Sections 5625-1 to 5625-36, General Code, become one of the subdivisions of the general fund of the county and money may be transferred to and from it pursuant to the provisions of Section 5625-13, General Code.

COLUMBUS, OHIO, November 26, 1928.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

“Under the provisions of Section 6494, G. C., the Board of County Commissioners of Warren County, Ohio, made a small levy for the general ditch improvement fund for the year 1928.

The proceeds therefrom were soon expended, and shortly thereafter two petitions were filed by land owners under the provisions of Section 6695 requesting that two different county ditches be recleaned.

The county surveyor, having heretofore been appointed ditch supervisor, made his apportionment of the cost of recleaning these ditches according to the estimated benefits, filed the same with the Auditor, a date was set by the Commissioners, upon their notification by the Auditor, notices were served upon all the owners of land, and as a result thereof, many protests were filed upon the apportionment.

The estimated cost of cleaning one ditch is about \$1,000.00, and of the other, \$9,000.00. As practically all of the land owners are protesting their apportionment, it will probably be necessary to sell this work as provided in Sections 6700 and 6701, G. C.

Section 6700, G. C., providing in part that:

‘Payment to the contractor shall be made out of the general ditch improvement fund upon the certificate of the ditch supervisor and the approval of the commissioners.’

The question now arises: Does the Board of County Commissioners have the legal right to transfer the sum of \$10,000.00 from the county fund to the general ditch fund, in order to pay for this work, under Section 6493 of the General Code, and later, when the cost thereof has been collected by taxation from the landowner (Section 6702, G. C.) return this sum to the general county fund?”

Authority for the transfer of money from the general fund to another fund is now confined to Section 5625-13, General Code (112 v. 397), which reads as follows:

“No transfers shall be made from one fund of a subdivision to any other fund, by order of court or otherwise, except that transfers may be made from the general to special funds established for purposes within

the general purposes of the general fund, and from such special funds to the general fund; but no transfers shall be made from any such special fund to the general fund, except of moneys theretofore transferred from the general fund. Such transfers shall only be made by authority of an appropriation in the annual or supplemental appropriation measure, or by resolution of the taxing authority adopted by a three-fourths vote. Before any transfer shall be made, the fiscal officer of the subdivision shall certify in writing that the amount so to be transferred is not encumbered by any obligation or appropriation and is in the treasury or in process of collection. At the end of a fiscal year any balance in a special fund to which a transfer has been made shall revert to the general fund but not in excess of the amount that was originally transferred during such fiscal year. In determining the balance in the general fund at the close of such fiscal year, balances which have so reverted shall be included."

The provision of this statute is so clear in these respects that I will assume, in answering your question, that the amount of \$10,000.00 proposed to be transferred "is not encumbered by any obligation or appropriation, and is in the treasury or in the process of collection." Also that the transfer is proposed to be made by "authority of an appropriation in the annual or supplemental measure, or by resolution of the taxing authority adopted by a three-fourths vote."

The only remaining restriction upon the transfer from the general fund is that it shall be to "special funds *established for purposes within the general purposes of the general fund.*"

Since your question is as to the legal rights of the county commissioners of your county to transfer \$10,000.00 from the general fund to the general ditch fund, our question then becomes: Is the general ditch fund a special fund established within the general purpose of the general fund?

I assume that the general ditch fund to which you refer is the "general ditch improvement fund" created under Section 6492, General Code, which reads as follows:

"The commissioners of each county shall provide and establish a fund, to be known as the general ditch improvement fund, which shall be used as a sinking fund for all bonds issued under the provisions of this chapter (G. C., Sections 6442 to 6508). Said fund shall consist of all funds in any ditch fund at the time this act takes effect, that are not then specifically appropriated, of any taxes then or thereafter levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of, the proceeds of all bonds issued and sold under this chapter, the collections from all special assessments for benefits to property, as provided in this chapter, and such other funds as by law are or may be provided to be paid therein."

Section 6494, General Code, provides for the levy of a special tax to be credited to that fund.

Section 5625-9, General Code, classifies the funds required to be established by political subdivisions, as follows:

"(a) General fund.

(b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.

- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.
- (h) Special funds to be created by transfer in accordance with the provisions of this act.
- (i) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

The funds described in divisions (b) to (i), inclusive, of the above section, excepting division (h), are evidently not established for "purposes within the general purposes of the general fund."

Division (h) refers to the funds created from the general fund and includes all funds to and from which transfers may be made to and from the general fund by appropriation under authority of Section 5625-13, *supra*. Further examination of the composition of the ditch improvement fund, Section 6492, *supra*, in connection with Section 5625-9, discloses that since the effective date of the latter act the ditch fund will contain only the proceeds of the special levy provided in Section 6494. In deciding the present question we must, therefore, determine whether the ditch fund is "a special fund for a special levy," under division (d) of Section 5625-9, or a "special fund to be created by transfer," under division (h) of that section.

Section 5625-10, General Code, prescribes the manner in which the various funds set forth in Section 5625-9 shall be created, and reads as follows:

"All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund.

All revenue derived from general or special levies for debt charges, whether within or without the fifteen mill limitation, which is levied for the debt charges on serial bonds or on notes or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.

All proceeds from the sale of a bond, note or certificate of indebtedness issue except premium and accrued interest shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund, or the bond retirement fund of the subdivision.

If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a permanent improvement or improvements.

Money paid into any fund shall be used only for the purposes for which such fund is established."

In determining whether the ditch fund comes within class (d) or (h), above, we must now decide whether it is derived from "the general levy for current expenses within the fifteen mill limitation", under the first paragraph of said Section 5625-10, or "derived from a special levy" under the third paragraph of the section, within the meaning of the act. In the absence of definitions contained in the act itself, we would have little difficulty in adopting the obvious conclusion that the ditch fund is composed of revenues derived from a "special levy" and not from a "levy for current expense". However, Section 4 of the act (5625-4) classifies the taxes which may now be levied, as follows:

"The taxing authorities of each subdivision shall divide the taxes levied into the following separate and distinct levies:

1. The general levy for debt charges within the fifteen mill limitation.
2. The general levy for current expense within the fifteen mill limitation.
3. Special levies authorized by the provisions of this act within the fifteen mill limitation.
4. The general levy for debt charges authorized by law or by vote of the people outside of the fifteen mill limitation.
5. Other special or general levies authorized by law or by vote of the people outside of the fifteen mill limitation."

Section 6 then specifies the special levies which may be made without a vote of the people, and reads as follows:

"The following special levies are hereby authorized without vote of the people:

- a. For any specific permanent improvement which the subdivision is authorized by law to acquire, construct or improve, or any class of such improvement which could be included in a single bond issue.
- b. For the library purposes of the subdivision, in accordance with the provisions of the General Code authorizing a levy or levies for such purposes, but only to the extent so authorized.
- c. In the case of a municipality for a municipal university under Section 7908 of the General Code, but only to the extent authorized therein.
- d. In the case of a school district, for the purposes of Section 7575 of the General Code, or for any school equalization levy which may be authorized.
- e. In the case of a county, for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges thereon.
- f. In the case of a county, for paying the county's proportion of the cost and expense of the construction, improvement and maintenance of state highways.

g. In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses."

This classification does not include the special ditch fund levy as one of the special levies enumerated in divisions "a" to "g", inclusive, although such levy is authorized without a vote and is within the fifteen mill limitation. Since this section is obviously intended to define the special levies contemplated in division (d) of Section 9 of the act, supra, and paragraph 3 of Section 10, supra, we would be forced to the conclusion that Section 6492, providing for the special ditch fund levy, is repealed by implication, unless some other class is found to include such levy. Such a repeal is, of course, not favored in law and, in my opinion, is not necessary by reason of the language contained in the concluding paragraph of Section 6, supra, which in substance provides that any authority granted by a provision of the Code to levy a tax within the fifteen mill limitation for "current expense", shall be construed as authority to provide for such expense by the general levy for "current expense". As previously noted, Section 10 provides that revenue derived from the general levy for "current expense" shall be paid into the general fund, and, in turn, divided into the special funds under division (d) of Section 9, pursuant to Section 13.

In determining whether the special ditch improvement fund levy provided by Section 4894, General Code, and the fund created thereby under Section 4892, General Code can be properly classed as "current expense" within the meaning of the three sections of the act, 4, 6 and 10, supra, we are assisted first by Section 1 of the act (G. C. 5625-1), division (f) of which is as follows:

"'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision."

The same definition appears in division (f) of Section 1 of the Uniform Bond Act (G. C. 2293-1).

We are further assisted by the language of Section 5 (G. C. 5625-5), which reads as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditure for current expense of any kind may be made, and the taxing

authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but except the construction, reconstruction, resurfacing or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary for the payment of final judgments, the amounts necessary for general, special and primary elections; for boards and commissioners of health and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision; in the case of municipalities, for the maintenance, operation and repair of public buildings, wharves, bridges, parks and streets, for a firemen's pension fund, police relief fund and sanitary fund; in the case of counties for the maintenance, operation and repair of public buildings, for the relief and support of the poor, for the relief of needy blind, for the relief of honorably discharged soldiers, indigent soldiers, sailors and marines, for mothers' pension fund and for the county's share of the compensation to be paid judges; in the case of a school district, for tuition, teachers' retirement fund and the maintenance, operation and repair of schools; and in a township, for the relief of the poor. Provided that nothing herein shall require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized to be made under the provisions of this act."

Having in mind that the purpose of the act, Sections 5625-1 to 5625-39, is to provide "for levying of taxes by local subdivisions and their method of budget procedure", and recognizing the very apparent intention to classify all taxes and funds without expressly repealing the special ditch improvement fund levy, I am of the opinion that it was the intention of the Legislature to include said special levy, and the fund created thereby, within the meaning of the term "current expenses", as used in the sections herein discussed. More specifically the special ditch levy provided by Section 6494, General Code, is included under division 2 of Section 4 and within the last paragraph of Section 6. The special ditch improvement fund, provided by Section 6492, General Code, is likewise included in division (h) of Section 8.

It is therefore, of course, one of the funds established for a purpose within the general purposes of the general fund and money may be transferred into it from the general fund by appropriation in the manner and subject to the conditions and limitations prescribed by Section 13 (G. C. 5625-13) of the act. In like manner money may be transferred from such special fund to the general fund, as in the statute specifically provided.

Respectfully,

EDWARD C. TURNER,

Attorney General.