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POOR RELIEF — BOARD OF COUNTY COMMISSIONERS, COUNCIL OR OTHER LEGISLATIVE BODY OF CITY MAY BORROW MONEY TO ANTICIPATE RECEIPT OF REVENUES PRODUCED BY LEVY OF EXCISE TAXES — EXTENT AUTHORIZED — NOTES ISSUED MUST BE DUE AND PAYABLE ON OR BEFORE MARCH 1, 1942 — AMENDED SENATE BILL 462, 117 O.L. 868 — HOUSE BILL 741, SECTION 1, 117 O.L. 753, 868 — SUBSTITUTE HOUSE BILL 172, 94TH GENERAL ASSEMBLY.

SYLLABUS:

The board of county commissioners of a county or the council or other legislative body of a city may, under authority of Section 2 of Amended Senate Bill No. 462 (117 O.L., 868), borrow money in anticipation of the receipt of the revenue produced by the levy of excise taxes by Section 1 of House Bill No. 741 (117 O.L. 753) as amended in 117 O.L., 868, as further amended by Substitute House Bill No. 172 of the present General Assembly, for poor relief purposes, to the extent authorized by such section, but the notes issued as evidence thereof must be due and payable on or before March 1, 1942.

Columbus, Ohio, June 13, 1941.

Hon. William A. Ambrose, Prosecuting Attorney,
Youngstown, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

“I request your opinion in the following matter.

Sub. H.B. No. 172 amends section 1 of H.B. No. 741 by providing for the continuance of certain taxes for poor relief and repeals certain sections of the Ohio General Code, including G.C. 5544-17.

At this juncture I would like to point out that Sections 1, 2, 3, 4 and 5 of H.B. No. 741 were amended by Amended S.B. No. 462, effective July 11th, 1938, and not of a general and

permanent nature. Section 2 of S.B. No. 462 provided that:

‘subdivisions may borrow in anticipation of revenues for poor relief.’

Under the provisions of S.B. No. 462, Mahoning County issued bonds, after a vote of the people, in the sum of \$418,000.00.

Sub. H.B. No. 172, passed sometime in the last month, provides for a continuance of the tax as provided in Sec. 1 of H.B. 741 and provides that it be distributed to the subdivisions:

‘As soon as revenues hereby provided for are collected by the State Treasurer, the Auditor of State shall draw a voucher and warrant payable to the County Treasurer of each county for an amount equal to the county’s share. * * *’

I note that Sub. H.B. No. 172 does not provide for the issuance of bonds in anticipation of the collection of the taxes.

Is there any provision in law for issuing bonds or a note in anticipation of the collection of taxes as provided for in Sub. H.B. No. 172?”

House Bill No. 741, referred to in your letter, is the act found in 117 O.L., 753, which act was amended in 117 O.L., 868. Such act levied an excise tax of sixty-five one-hundredths of one per centum of the gross receipts of certain public utility companies during the years 1938, 1939 and 1940, the proceeds of which were to be distributed among the counties of the state in the proportions to which the aggregate of the amounts shown on their tax duplicates bore to the aggregate of the amounts shown on all such duplicates in the state, for poor relief purposes with any excess to the general fund. The amendment to Section 1 of such act in 117 O.L., 868, extended the duration of the levy through the years 1940 and 1941. Section 2 of the act in 117 O.L., 868, changed the method of allocating the funds to the counties.

Section 1 of House Bill No. 172, enacted by the recent General Assembly, extends the duration of the levy through the year 1943. Section 2 of such act amends the method of allocation of the proceeds among the counties during the years 1942 and 1943.

Section 2 of Amended Senate Bill No. 462 (117 O.L., 873) authorized the poor relief authorities of a poor relief area to borrow in anticipation of

the receipt of "the revenue herein provided for poor relief purposes." Such section, in so far as presently material, reads:

"In anticipation of the collection and distribution of the revenue herein provided for poor relief purposes, the board of county commissioners of any county, or the council or other legislative body of any municipality or the trustees of any township may borrow money not in excess of ninety per centum of such anticipated revenue as determined by the bureau of inspection of the office of the auditor of state, and may from time to time issue notes of the county, municipality or township therefor; * * *

Such notes shall be issued on forms provided by the bureau of inspection, pursuant to a resolution of such county commissioners, council or township trustees, which sets forth the amount of notes to be issued, the denomination thereof, the rate of interest to be paid, and that such notes are issued pursuant to this act, and a complete report covering the details of the issuance of such notes shall be filed with the auditor of state on such forms as he may prescribe.

Such notes shall be payable on or before March 1, 1942, and shall bear interest from date at a rate not exceeding four per centum per annum, interest to be payable when notes are paid, shall be signed as provided in the uniform bond act of Ohio, and shall recite on their face that they are issued pursuant to this act and the resolution authorizing the same. The proceeds of such notes shall be allocated to a special fund in such subdivision for poor relief and the administration thereof, including payment of premiums to the industrial commission of Ohio for the public work-relief employes' compensation fund. The principal and interest of such notes shall be paid from the proceeds of the taxes provided in this act or any amendment thereto. The notes may be sold at not less than par and accrued interest.

Said notes may be issued pursuant to the provisions hereof notwithstanding and irrespective of the provisions of section 2293-4 of the General Code and/or any other provisions of the General Code."

You will note that such section contains two specific limitations on the borrowing. First, the borrowing must be "in anticipation of the collection and distribution of the revenue herein (in such Amended Senate Bill No. 472) provided for poor relief purposes." Second, the "notes shall be payable on or before March 1, 1942."

In construing an amended section of a statute, the courts have laid down certain rules as a guide, one of which is stated in the first para-

graph of the syllabus of the case of State, ex rel., v. Cincinnati, 52 O.S., 419, as follows:

“An amended section of a statute takes the place of the original section, and must be construed with reference to the other sections, and they with reference to it; the whole statute, after the amendment, has the same effect as if re-enacted with the amendment, * * * .”

It would thus appear that Section 1 of House Bill No. 741 (117 O.L., 753), as amended in Amended Senate Bill No. 462 (117 O.L., 868) and as again amended in Substitute House Bill No. 172, must be construed with reference to Section 2 of Amended Senate Bill No. 462 (117 O.L., 868) as though Section 1 of such act were at all times as it reads in such Substitute House Bill No. 172, at least after Substitute House Bill No. 172 became effective. When we make such substitution, the phrase “in anticipation of the collection and distribution of the revenue herein provided for poor relief purposes” would refer not only to the revenue to be received from taxes levied by Section 1 as amended in such act, but from the revenues to be collected by reason of the taxes levied by the amendment of such Section 1 in Substitute House Bill No. 172. It would thus appear that Section 2 of Amended Senate Bill No. 462 (117 O.L., 868), in terms, authorizes the borrowing of moneys in anticipation of the collection and distribution of tax funds under the levy made by Section 1 of House Bill No. 741 (117 O.L., 753) as amended in Amended Senate Bill No. 462 (117 O.L., 868) as amended by Substitute House Bill No. 172 enacted by the present General Assembly.

Specifically answering your inquiry, it is my opinion that the board of county commissioners of a county or the council or other legislative body of a city may, under authority of Section 2 of Amended Senate Bill No. 462 (117 O.L., 868), borrow money in anticipation of the receipt of the revenue produced by the levy of excise taxes by Section 1 of House Bill No. 741 (117 O.L., 753) as amended in 117 O.L., 868, as further amended by Substitute House Bill No. 172 of the present General Assembly, for poor relief purposes, to the extent authorized by such section, but the notes issued as evidence thereof must be due and payable on or before March 1, 1942.

Respectfully,

THOMAS J. HERBERT,
Attorney General.