

the acknowledgments of the several lessors to these leases did not in his certificate as to these acknowledgments fully comply with the provisions of section 123, General Code, as amended, 113 O. L. 56. That is, the name of the notary is not made a part of his official seal and neither is such name printed or type-written on the instrument, as required by this section of the General Code. However, I am quite clearly of the opinion that this irregularity does not affect the validity of these leases as instruments entitled to record. See *City Commission of Gallipolis vs. State*, 36 O. App. 258. I am accordingly approving these leases as to legality and form, as is evidenced by my approval endorsed upon the several leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2285.

APPROVAL—BONDS OF PIKE COUNTY, OHIO—\$12,140.00.

COLUMBUS, OHIO, February 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2286.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO—\$62,500.00.

COLUMBUS, OHIO, February 15, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2287.

TAX REVENUE—TRANSFER OF FUNDS RECEIVED UNDER H. B. NOS. 4, 5 AND 7 OF 90th G. A., FIRST SPECIAL SESSION—STATE EMERGENCY RELIEF FUND AND COUNTY RELIEF EXCISE FUND.

**SYLLABUS:**

1. *When by reason of the provisions of House Bill No. 4 (Section 6212-49a to 6212-49t, General Code) enacted by the 90th General Assembly, first special session, moneys were received into the state treasury, those moneys which were received prior to January 1, 1934, should have been credited to the state emergency relief fund and when and as received, should be transferred to the general revenue*

*fund of the state; until the appropriations from such fund by authority of Section 6212-49i have been reimbursed, any excess of such moneys over such amount so transferred, if received prior to January 1, 1934, were appropriated to the state relief commission.*

2. *When by reason of the provisions of Sections 10 and 20 of House Bill No. 5 as enacted by the 90th General Assembly, first special session, Section 5 of House Bill No. 7 as so enacted, Section 5543-10 and Section 5544-17, General Code, the moneys were received by the Treasurer of State from the tax levied by such House Bill No. 5 as well as from the so-called "cosmetic tax law" (Section 5543-1 to 5543-20, General Code) and the so-called "admissions tax law" (Section 5544-1 to 5544-18, General Code) should be credited to the general revenue fund of the state until such time as the appropriations therefrom from the administration of such acts by Section 20 of such House Bill No. 5 and Section 5 of House Bill No. 7, shall have been repaid, any surplus remaining if received prior to January 1, 1934, should be credited to the state emergency relief fund but if received after such date should be credited to the county relief excess fund.*

COLUMBUS, OHIO, February 15, 1934.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion concerning the following matters:

"1. Under Section 6212-49i, the moneys received into the state treasury until and including the 31st day of December, 1933, under the provisions of Sections 6212-49a to 6212-49t, both inclusive of the General Code, shall be credited to the State Emergency Relief Fund; and such money so received on and after January 1, 1934, shall be credited to the County Poor Relief Excise Fund. This section also makes appropriations from the General Revenue Fund amounting to \$127,500.00 for the use of the Treasurer of State and Tax Commission in the administration of Sections 6212-49a to 6212-49t of the General Code, during the period from the effective date of the sections to March 31st, 1935. The \$127,500.00 appropriated is to be transferred from the State Relief Fund to the General Revenue Fund from which the appropriations are made.

Question: What amount of the \$127,500.00 appropriated should be so transferred prior to January 1, 1934?

2. Section 20 of H. B. No. 5, appropriates \$62,500.00 from the State Emergency Relief Fund for the use of the Treasurer of State and Tax Commission in the administration of the act during the period from its effective date to June 30, 1935, and Section 10 of the act provides that moneys received into the State Treasury under the act shall be credited to the General Revenue Fund in an aggregate amount sufficient to cover any appropriations made by the act to defray the expenses of administering the act.

Question: What amount of the \$62,500.00 appropriated should be credited to the General Revenue Fund prior to January 1, 1934?

3. Section 5 of H. B. No. 7 appropriated from the General Revenue Fund to the Treasurer of State and the Tax Commission for

the administration of the law imposing the tax on the sale of cosmetics or toilet preparations, the sum of \$178,000.00.

Section 5543-10, General Code, provides that moneys received into the state treasury under the provisions of Section 5543-20 of the General Code, shall be credited to the General Revenue Fund in an aggregate amount sufficient to cover any appropriation made by the General Assembly to defray the expenses of administering said provisions.

Question: What amount of the \$178,000.00 appropriated should be credited to the General Revenue Fund prior to January 1, 1934?

4. Section 5 of House Bill No. 7, also appropriates \$140,000.00 to the Tax Commission for the administration of the law relating to the tax on admissions, dues and fees.

Section 5544-17, General Code, provides that the moneys received into the state treasury under the provision of Section 5544-1 to 5544-18 of the General Code, shall be credited to the General Revenue in an aggregate amount sufficient to cover any appropriation made by the General Assembly to defray the expense of administering said provisions.

Question: What amount of the \$140,000.00 appropriated should be credited to the General Revenue Fund prior to January 1, 1934?"

Section 6212-49i, General Code, to which you refer in your first inquiry, reads:

"The moneys received into the state treasury until and including the thirty-first day of December, 1933, under the provisions of sections 6212-49a to 6212-49t, both inclusive, of the General Code, shall be credited to the state emergency relief fund; and such moneys so received on and after January 1, 1934, shall be credited to the county poor relief excise fund therein, and shall be allocated to all counties in the state by the method provided by law for the allocation of moneys so credited to such fund. There is hereby appropriated from moneys in the treasury of state to the credit of the general revenue fund to the treasurer of state the sum of \$7,500.00 for personal service, and the sum of \$20,000.00 for the purpose of making refunds, and to the department of finance, division of tax commission of Ohio, the sum of \$50,000.00 for personal service, and the sum of \$50,000.00 for supplies and maintenance, to pay liabilities lawfully incurred in the administration of sections 6212-49a to 6212-49t, both inclusive, of the General Code, during the period commencing with the effective date hereof and ending on the 31st day of March, 1935; but when and as moneys are received into the state treasury under the provisions of sections 6212-49a to 6212-49t both inclusive, of the General Code, a sufficient amount thereof to supply the amounts so appropriated shall be and hereby is transferred from the state relief fund to the general revenue fund in reimbursement for expenditures made or to be made pursuant to such appropriations. The balance of the moneys in the treasury of state to the credit of the state emergency relief fund and received prior to January 1, 1935, is hereby appropriated to the state relief commission for the purposes defined in the act creating the state emergency relief fund."

It is apparent that the legislature, in the enactment of such section, has divided the receipts of the so-called "beverage tax" into two parts. Those moneys received prior to January 1, 1934, are placed in one class and credited to the "State Emergency Relief Fund"; those received after January 1, 1934, are credited to the "County Poor Relief Excise Fund." The legislature then makes certain appropriations from the General Revenue Fund of the state in the aggregate sum of \$127,500.00. Such section further provides that, "when and as moneys are received into the state treasury" under the provisions of the beverage tax "a sufficient amount thereof to supply the amounts so appropriated *shall be and hereby is* transferred from the *state relief fund* to the general revenue fund in reimbursement for", etc. The act then appropriates the remainder to the State Relief Commission. It is from this provision that your inquiry arises.

As above pointed out, the only funds to be credited to the State Emergency Relief Fund are those received prior to January 1, 1934. No funds received on or after such date are credited to such fund, but rather are credited directly to the County Poor Relief Excise Fund. It is thus apparent that the general revenue fund of the state is to be reimbursed from that portion of the funds derived by reason of the Beverage Tax Law (Sec. 6212-49a to 6212-49t, General Code) which is received prior to January 1, 1934, since no other part of such funds goes into or passes through the "State Emergency Relief Fund."

Section 20, of House Bill No. 5, as enacted by the 90th General Assembly, first special session, reads:

"There is hereby appropriated, from moneys in the treasury of state to the credit of the state emergency relief fund to the treasurer of state, the sum of twenty-five hundred dollars for personal service, and the sum of ten thousand dollars for the purpose of making refunds; and to the department of finance, division of tax commission of Ohio, the sum of thirty thousand dollars for personal service, and the sum of twenty thousand dollars for supplies and maintenance, to pay liabilities lawfully incurred in the administration of this act, during the period commencing with the effective date hereof and ending on the 30th day of June, 1935."

Section 10 of such House Bill No. 5, reads:

"The moneys received into the state treasury under the provisions of this act shall be credited to the general revenue fund in an aggregate amount sufficient to cover any appropriations made by this act to defray the expenses of administering this act; and the balance thereof, received hereunder and until and including the thirty-first day of December, 1933, shall be credited to the state emergency relief fund therein; and such balance received on and after January 1, 1934, shall be credited to the county poor relief excise fund therein, and shall be allocated to all counties in the state by the method provided by law for the allocation of moneys so credited to such fund. The general assembly may make appropriations therefrom for any lawful purpose for which said state emergency relief fund may be expended, and for the purpose of defraying the expenses of administering this act."

This section specifically states that the moneys received under the act shall be credited to the general revenue to the extent necessary to defray the expenses

of administering the act. Such section directs the crediting of all proceeds of the tax levied by such act, received prior to January 1, 1934, either to the general revenue fund of the state or the state emergency relief fund. If it were not for the provisions of Section 20, it would appear that the expenses of administering the act might be deducted from the proceeds at any time it became necessary; but in Section 20, the legislature has specifically appropriated \$62,000.00 from that portion of the moneys which come into the custody of the Treasurer of State to the credit of the state emergency relief fund. If we may assume that the legislature intended the appropriations made by such Section 20 to be paid from the proceeds of the act it would appear that such appropriations must be paid from moneys received from this tax prior to January 1, 1934, for no funds from this source are so credited after such date.

There is another possible interpretation that might be put upon the language of such Section 20. It is not entirely unreasonable to presume that the legislature intended to refund such appropriations from the state emergency relief fund from whatsoever source derived, and not to limit the moneys received from the tax levied by such House Bill No. 5. This view is given weight by reason of the language, "from moneys in the treasury of state to the credit of the state emergency relief fund."

Section 5 of House Bill No. 7, as enacted by the 90th General Assembly, first special session, reads:

"There is hereby appropriated from moneys in the state treasury to the credit of the general revenue fund, the following sums, for the purpose of administering the provisions of the law imposing the tax on the sale of cosmetics or toilet preparations:

To the treasurer of state, the sum of eight thousand dollars for personal service and forty thousand dollars for refunds.

To the department of finance, tax commission of Ohio, the sum of eighty thousand dollars for personal service and fifty thousand dollars for supplies and maintenance.

And for the purpose of administering the law relating to the tax on admissions, dues and fees, the following sums:

To the department of finance, tax commission of Ohio, the sum of one hundred thousand dollars for personal service and the sum of forty thousand dollars for supplies and maintenance;

To pay liabilities lawfully incurred from and after the effective date of this act and to and including the thirtieth day of June, 1935; provided, that from the appropriations hereby made there shall be transferred to the general revenue fund amounts sufficient to reimburse said fund for allowance heretofore made by the emergency board for said purposes and expended, and the appropriation to the emergency board shall be restored accordingly."

Such House Bill No. 7, amends certain provisions of the co-called "admissions tax law" (Section 5543-1 to 5543-20, General Code). Section 5543-10, General Code, is substantially the same as Section 10 of House Bill No. 5, above quoted, and reads as follows:

"The moneys received into the state treasury under the provisions of sections 5543-1 to 5543-20, both inclusive, of the General Code, shall

be credited to the general revenue fund in an aggregate amount sufficient to cover any appropriations made by the general assembly to defray the expenses of administering said provisions; and the balance thereof; received hereafter and until and including the thirty-first day of December, 1933, shall be credited to the state emergency relief fund therein; and such balance received on and after January 1, 1934, shall be credited to the county poor relief excise fund therein, and shall be allocated to all counties in the state by the method provided by law for the allocation of moneys so credited to such fund."

Such act also amends certain sections of the so-called "admissions tax law" (Sections 5544-1 to 5544-18, General Code). Section 5444-17, General Code, is substantially similar to Section 10 of House Bill No. 5, above referred to and also to Section 5543-10, General Code.

In each of these acts the legislature has made a specific appropriation to the general revenue fund for the purpose of reimbursing such fund for appropriations made therefrom of the expenses of administering such acts, and then has made certain appropriations of "the balance thereof." What is the meaning of the phrase "the balance thereof"? While the word "balance" has several meanings, most of which refer to weights, nevertheless, it is also used with reference to accounts, and "signifies that which is left after deduction, irrespective of the amount." (Ballentine's Law Dictionary.) In other words, it is synonymous with "remainder." It is the equivalent of "residue". *Davis vs. Hutchins*, 15 O. C. C. 174; *Lopez vs. Lopez*, 23 S. C. 269; *Skinner vs. Lamb*, 25 N. C. 155.

In Webster's New International Dictionary the following meanings are given to the word balance:

"An equality between the totals of two sides of an account; also, the excess on either side."

"The remainder; the rest."

The rule of statutory interpretation of words is quoted and followed by Justice Cardoza, in *Woolford Realty Co. vs. Rose*, 286 U. S., 318, 327, from *Maillard vs. Lawrence*, 16 How. 251, 261, as follows:

"The popular and received import of words furnishes the general rule for interpretation of laws."

See also *Keifer vs. State*, 106 O. S. 285, 289; *Smith vs. Buck*, 119 O. S., 101, 105.

If the commonly accepted meaning of the phrase "the balance thereof" is the residue or remainder thereof, the question arises as to what has been deducted in order to leave such residue or remainder. The legislature in each of such acts had the proposition before it of allocating and appropriating the funds to be derived from the tax imposed by the act.

In such House Bill No. 4, it contemplated that the state would during the productive period or life of such tax law, that is, from the effective date of the act until March 15, 1935, receive certain moneys in payment of the taxes levied. The funds to be received from this source from the effective date of the act until January 1, 1934, were to be credited to the "state emergency relief fund."

The legislature thereupon made specific appropriations from such fund in the aggregate sum of \$127,500.00 and the residue or remainder of such funds received prior to January 1, 1934, or after deducting the \$127,500.00 it appropriated to the purposes of the state relief commission.

In such House Bill No. 5, as well as in the acts with reference to tax on admissions and cosmetics, the statute directs that moneys be credited to the general revenue fund to the extent necessary to reimburse such fund for the amounts expended by reason of specific appropriations therefrom, the "balance" or as might well have been the language, the "residue or remainder" of the moneys received as the result of such tax levies, if received prior to January 1, 1934, is appropriated to the state emergency relief fund, the funds received thereafter from such sources if sufficient funds have already been received and credited to the general revenue fund of the state to reimburse it for appropriations therefrom for the purpose of administering the act, are appropriated to the county poor relief excise fund.

Specifically answering your inquiry it is my opinion that:

1. When by reason of the provisions of House Bill No. 4 (Section 6212-49a to 6212-49t, General Code) enacted by the 90th General Assembly, first special session, moneys were received into the state treasury, those moneys which were received prior to January 1, 1934, should have been credited to the state emergency relief fund and when and as received, should be transferred to the general revenue fund of the state. Until the appropriations from such fund by authority of Section 6212-49i have been reimbursed, any excess of such moneys over such amount so transferred, if received prior to January 1, 1934, were appropriated to the state relief commission.

2. When by reason of the provisions of Sections 10 and 20 of House Bill No. 5 as enacted by the 90th General Assembly, first special session, Section 5 of House Bill No. 7 as so enacted, Section 5543-10 and Section 5544-17, General Code, the moneys were received by the Treasurer of State from the tax levied by such House Bill No. 5 as well as from the so-called "cosmetic tax law" (Section 5543-1 to 5543-20, General Code) and the so-called "admissions tax law" (Section 5544-1 to 5544-18, General Code) should be credited to the general revenue fund of the state until such time as the appropriations therefrom from the administration of such acts by Section 20 of such House Bill No. 5 and Section 5 of House Bill No. 7 shall have been repaid, any surplus remaining if received prior to January 1, 1934, should be credited to the state emergency relief fund but if received after such date should be credited to the county relief excise fund.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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2288.

APPROVAL—NOTES OF MADISON TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$11,000.00.

COLUMBUS, OHIO, February 16, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*