

February 15th of the following year, with certain exceptions not here material. T. D. 4523, Feb. 11, 1935.

Both Section 147, *supra*, and the regulation use the term "persons." This term was obviously not intended to include officers or employees of the United States, since a special provision was made with reference to them in Section 147, *supra*. It seems apparent that Congress did not intend the term "persons" to include the officers and agents of the sovereign state with reference to the information concerning compensation paid by such state which can not be taxed under the Constitution.

In the light of the foregoing it is my opinion that compensation paid to special deputy superintendents of banks, assistants, agents, clerks, auditors and examiners appointed under Section 710-94, General Code, is exempt from taxation by the Federal Government under the Constitution of the United States.

This being true I find no basis in law for the demand of the Collector of Internal Revenue that you furnish him with payrolls listing their positions in the various banks in your possession for liquidation.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4022.

FIREMEN'S PENSION—REVENUES DERIVED FROM SEC. 4605 AND 4621, G. C.,
MAY NOT BE USED FOR TAX COMMISSION, BOARD OF ELECTIONS
AND STATE EXAMINATION EXPENSES.

SYLLABUS:

Revenue derived from the levies provided in and by Sections 4605 and 4621, General Code, cannot be used for expenses incurred by the Tax Commission of Ohio under Section 5624-7, General Code, expenses incurred by the Board of Elections under Section 4785-20, General Code, and the state examination expenses under Section 288, General Code.

COLUMBUS, OHIO, March 7, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication which reads as follows:

"We are inclosing copy of letter received from Andrew J. Hagan, Secretary of the Board of Trustees of the Relief Fund of Cleveland, and we would greatly appreciate you. opinion on the question contained therein."

The enclosed letter from the Secretary of the Board of Trustees of the Relief Fund of Cleveland reads as follows:

"The Board of Trustees of the Police Relief Fund respectfully requests an opinion from the Attorney General on the following matter.

Can the City of Cleveland charge against, and deduct from, the revenue derived from the levies provided for in sections 4605 and 4621 of the General Code for the services rendered by the tax commission, the board of elections and the state examiners office?

In the past it has been the custom for charges for these services to be made against and deducted from the funds for general operating purposes and it seems to us to be illogical and unfair to deduct any portion thereof from the funds derived from a specific levy which we believe was never a part of the general operating fund."

A supplemental letter from your office states:

"In regard to the opinion requested by Andrew J. Hagan, Secretary of the Board of Trustees of the Relief Fund of the City of Cleveland, which we submitted to you under date of February 16, 1935, we are forwarding the following additional information as to the deductions referred to.

TAX COMMISSION EXPENSE. This evidently covers expense incurred by the Tax Commission with respect to the annual assessment of real property in the City of Cleveland, which expense is paid by the county and deducted from the particular taxing subdivision in accordance with the provisions of section 5624-7, G. C. Since a change in the assessed valuation made after investigation by the Tax Commission would affect the tax collections distributable under each and every levy made for municipal purposes, it would appear equitable that this expense be apportioned and deducted from the proceeds of each particular levy, although we do not know whether or not this would be legal.

ELECTION EXPENSE. Section 4785-20, G. C. relative to the apportionment of election expense, reads in part as follows:

"* * * Such expense shall be apportioned among the county and the village subdivisions as hereinafter provided and the amount chargeable to each subdivision shall be withheld by the county 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 shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year."

In paragraph (b) of this section, it enumerates certain expenses incurred in conducting primaries and elections which in odd numbered years shall be charged to the subdivisions in and for which such primaries or elections are held. Referring to the section in this act concerning budget estimates, it would appear that if the city, in preparing its budget, provided for election expense from its general operating fund, that no part of this expense would be deducted from the county auditor except from the proceeds of tax levies for the general fund.

STATE EXAMINATION COST. Section 288 G. C., reads in part as follows:

"All expense pertaining to the inspection and auditing of public accounts and reports of a taxing district shall be borne by the district, subject to the following limitations: * * * The auditor of state shall certify the amount of such expense, including the charges for services herein provided for, to the auditor of the county in which the

district is situated. The county auditor shall forthwith issue his warrant in favor of the auditor of state on the county treasurer, who shall pay it from the general fund of the county, and the county auditor shall charge the amount so paid to the taxing district in the next semi-annual settlement.'

The above quoted section makes no reference as to an apportionment of this deduction from the proceeds of various levies for municipal purposes, but we find it has been customary to make deduction of the entire amount from the levy for general fund purposes."

Section 4605, General Code, mentioned in your inquiry, relates to firemen's pension funds and provides that the council of a municipality availing itself of the provisions of law for the firemen's pension fund shall levy a tax each year of not to exceed three-tenths of a mill on each dollar upon all the real and personal property listed for taxation in such municipality, the purpose being "to provide for the payment of all pensions granted to firemen under existing laws."

Section 4621, General Code, is a similar provision relating to pension funds for policemen, and the stated purpose here is "to provide funds for the payment of all pensions granted to policemen under existing laws."

Section 5624-7, General Code, relative to the Tax Commission of Ohio to which you refer in your inquiry, provides for the payment of expenses incurred by such Commission with respect to the annual assessment of real property in any district. First to be paid out of the "general fund of the county" and then to be "charged against the proper district."

Section 288, General Code, relative to the inspection and auditing of public accounts and reports of a taxing district, provides that such expense, with certain enumerated limitations, shall be borne by the taxing district, the expense first to be paid "from the general fund of the county, and the county auditor shall charge the amount so paid to the taxing district at the next semi-annual settlement."

Section 4785, General Code, provides inter alia that the expenses of the election board "shall be paid from the county treasury, in pursuance of an appropriation by the county commissioners" and that "such expenses shall be apportioned among the county and the various subdivisions, and the amount chargeable to each sub-division shall be withheld by the county 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 shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year." Paragraph (b) of Section 4785-20, General Code, referred to in your inquiry provides:

"b. The compensation of judges and clerks 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 and instruction and other election supplies; and all 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."

It would appear from a reading of the statutes referred to supra that the expenses of the Tax Commission of Ohio, the expenses of the State auditing examination and the election expenses, are all to be eventually paid by the taxing district, in this instance, the City of Cleveland, but I am unable to find any statutory authority for

such subdivision to deduct these charges from the funds derived from the special levies provided for by virtue of Sections 4605 and 4621, General Code, referred to supra. Since no particular fund is mentioned in the statutes it would appear that such expenses should be paid from the general fund of the subdivisions.

With reference to special levies, such as the special levies provided in and by virtue of Sections 4605 and 4621, General Code, Section 5625-9, General Code, specifically provides in part:

"Each subdivision shall establish this following funds:

* * * * *
 (d) A special fund for each special levy.
 * * * * *

Section 5625-10, General Code, provides in part:

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

Although your request does not raise the question your attention is directed to the provisions of House Bill No. 492, enacted in the regular session of the 90th General Assembly. (See Sections 5625-13a to 5625-13g, inclusive, General Code). By virtue of these provisions public funds may be transferred from one fund to another fund by the taxing authorities of any political subdivision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof if certain procedure is followed including the approval of the Tax Commission and of the Common Pleas Court of the county.

However, specifically answering your question it is my opinion that the revenue derived from the levies provided in and by Sections 4605 and 4621, General Code, cannot be used for expenses incurred by the Tax Commission of Ohio under Section 5624-7, General Code, expenses incurred by the Board of Elections under Section 4785-20, General Code, and the state examination expenses under Section 288, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4023.

RUMEX SPECIES—DEFINED AS NOXIOUS WEEDS BY SECTION 5805-3, G. C., WHICH INCLUDES SHEEP SORREL.

SYLLABUS:

The words "Rumex species," as the same appear in section 5805-3 of the General Code, include all of the Rumex species, both docks and sorrel, and Rumex Acetosella, commonly known as sheep sorrel, is defined as a noxious weed by section 5805-3, General Code, supra.

COLUMBUS, OHIO, March 7, 1935.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

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