

ing commission fund becomes available for their payment, when they also should be paid from said building fund."

The last item about which you inquire is one of maintenance. You do not state whether this item is to provide for maintenance during construction or after the completion of the building. I assume the latter. Upon such assumption, this inquiry must be answered in the negative. Section 2334, *supra*, relates to the cost of construction of the building and has no reference to the cost of maintenance after the building is constructed. The building commissioners only serve until the building is completed and are appointed for such time only as provided in Section 2333, *supra*. Section 2338, relating to powers and duties of the building commission, provides that it may determine all questions connected with the building "until the building is completed and accepted."

In specific answer to your questions, it is my opinion:

1. The cost of acquiring a site in connection with the construction of a county tuberculosis hospital and the compensation to members of a building commission, both of which items are payable from moneys received by the county from taxes raised or from the sale of bonds for such purpose, may be considered in computing the maximum amount of compensation which may be received by the building commission under Section 2334, General Code.

2. Remaining funds raised from such source which are set aside for maintenance of the building after completion may not be taken into consideration in computing such compensation.

Respectfully,

JOHN W. BRICKER,

Attorney General.

132.

COUNTY AUDITOR—UNAUTHORIZED TO WITHHOLD TAX MONEYS FOR DISTRICT HEALTH FUND WHERE NO PROVISION MADE FOR SAME IN TAX BUDGET.

SYLLABUS:

A county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.

COLUMBUS, OHIO, February 13, 1933.

HON. CHARLES W. LYNCH, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The Monroe County Board of Health and the Auditor of Monroe County have presented a question upon which we respectfully request your opinion.

If a County Board of Health has failed to submit an estimated budget on or about the first Monday of April, 1932, for the fiscal year next ensuing, as in Section 1261-40, G. C., and in the past it has not

been the practice of the County Auditor to request an estimated budget, then on January 6, 1933, the Board of Health passed their annual appropriation resolution, asking for Six Thousand Dollars, which said annual appropriation resolution was passed on by the Budget Commission on January 10, 1933, and said annual appropriation resolution was reduced to Three Thousand Dollars.

No budget having been filed by the Monroe County District Board of Health, notice could not be given to the taxing authorities of each subdivision and municipality before the thirtieth day of June, as to the amount to be withheld for the Board of Health, so that each subdivision could include that amount in their budget, which is filed with the County Auditor on, or before, the twentieth day of July.

The question is this: Can the County Auditor legally withhold from such taxing districts and municipalities, money for the County Health Fund without the said taxing districts and municipalities being duly notified of the estimated amount to be withheld and taken into consideration at the time of making up their annual budget?"

Section 1261-40, General Code, provides:

"The board of health of a general health district shall annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such districts for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item of the aggregate of all items. The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valuation in such townships and municipalities.

The district board of health shall certify to the county auditor the amount due from the state as its share of the salaries of the district health commissioner and public health nurse and clerk, if employed, for the next fiscal year which shall be deducted from the total of such estimate before an apportionment is made. The county auditor, when making his semi-annual apportionment of funds shall retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality. Such monies shall be placed in a separate fund, to be known as the 'district health fund.'

When a general health district is composed of townships and municipalities in two or more counties, the county auditor making the original apportionment shall certify to the auditor of each county concerned the amount apportioned to each township and municipality in such county. Each auditor shall withhold from the semi-annual apportionment to each such township or municipality the amount so certified, and shall pay the amounts so withheld to the custodian of the funds of the health district concerned, to be credited to the district health fund. Where any general health district has been united with a city health district located therein, the mayor of the city shall annually on or before the first day of June certify to the county auditor the total amount due for the ensuing fiscal

year from the municipalities and townships in the district as provided in the contract between such city and the district advisory council of the original health district. The county auditor shall thereupon apportion the amount so certified to the townships and municipalities, and withhold the sums so apportioned as herein provided."

The foregoing section as enacted in 1919 providing funds for the district health fund, which funds are raised by taxation, and the provisions of the Budget Law as contained in Sections 5625-1, et seq., as enacted in 1927, providing for the levying of taxes by local subdivisions and their method of budget procedure are clearly in *pari materia* and must be construed together. *Maxfield vs. Brooks*, 110 O. S. 566.

It is obvious that the district health fund is made up of moneys derived from levies made by the taxing authorities of the various townships and municipalities within the general health district. The amount to be withheld by the county auditor from each such taxing subdivision is the amount apportioned by the county auditor to that subdivision after the budget commission has passed upon the total amount certified by the board of health of the general health district. In the enactment of the Budget Law, the legislature has provided that a tax be levied for this district health fund by the various taxing authorities within the general health district as will be hereinafter shown.

A board of health of a general health district is a "district authority" as expressly defined in paragraph J of Section 5625-1, General Code, as follows:

"'District authority' shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children's homes, district board of health and other boards."

Section 5625-20, General Code, provides in part:

"On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. The taxing authority shall include in its budget of expenditures the full amounts requested therefrom by district authorities, not to exceed the amount authorized by the law applicable thereto, if such law gives such authorities the right to fix the amount of revenue they are to receive from the subdivision. * * * ."

It is obviously the duty of the board of health of a general health district to request from the taxing authorities of each township and municipality within the general health district the amount apportioned to such township or municipality by the county auditor for the district health fund. This request should be made

on or before the first of June in each year instead of the 30th day of June as mentioned in your letter. The annual tax budget of each township or municipality containing an item showing the amount which that subdivision must raise for the district health fund shall, after adoption, be submitted to the county auditor on or before the 20th day of July or at such later time as may be prescribed by the Tax Commission. Section 5625-22, General Code.

Sections 5625-23, 5625-24 and 5625-25 relate to the revision of the annual tax budget of each subdivision by the budget commission and the authorization by each subdivision of the necessary tax levies and their certification to the county auditor. Section 5625-26, General Code, provides for the official certificate of estimated resources and further provides that the annual tax budget after revision shall be the basis of the annual appropriation measure. This annual appropriation measure passed on or about the first day of each year, as well as any supplemental measures thereafter passed, must be "based on the revised tax budget and the official certificate of estimated resources or amendments thereof." Section 5625-29, General Code.

The board of health of a general health district has obviously no authority to appropriate any money for the district health fund when no provisions therefor have been previously made in the tax budgets of the subdivisions within the general health district. It appears to me that the appropriation of Six Thousand Dollars would be of no effect and wholly invalid since under the circumstances which you present there are no moneys to appropriate. I find no authority whereby, under the law as now in force and effect, a district authority may appropriate or receive any part of the proceeds of taxation when no provision has been made for such funds under Sections 5625-20, et seq., of the General Code.

Prior to the enactment of the Budget Law, the procedure of indiscriminately retaining out of the entire amount collected in the villages or townships within a general health district, moneys for the district health fund without the inclusion of such items by the taxing authorities of the several subdivisions within such district was held to be valid. I refer to the case of *State, ex rel. vs. Zangerle*, 103 O. S. 566. The language of the court appearing on pp. 582, 583 is pertinent:

"It is also insisted that it is shown that this law provides for the diversion of funds raised for village and township purposes; that, inasmuch as the agreed statement of facts shows that the amount retained was indiscriminately retained out of the entire amount collected in the village for the general fund and other funds stated, such retention and reversion violate the constitution. It is contended that these are regular levies for local purposes, subject to the limitations prescribed by law for local levies, and the provisions for the retention of the amount apportioned is without qualification and its legal significance is to be determined from its possibilities and not from its probabilities.

It is true that the agreed statement shows that the amounts retained by defendant were retained indiscriminately out of the entire amount of taxes collected in the village for the different funds named above; that is, that the amount he retained was retained out of the total lump sum collected. But it does not appear that there will not still be sufficient left in the 'amount collected' to fully supply the sinking fund and funds other than the general fund and public health fund, as fixed by the proper authorities.

It is elementary that where there are two possible interpretations of a statute, one of which would render it valid and the other invalid, the court will adopt the former, so as to bring it into harmony with the constitution."

In view of the express provisions of the subsequently enacted Budget Law hereinabove commented upon, it is my judgment that the legislature has expressly provided a different method for the raising and distribution of revenue for the district health fund, consequently before moneys may be appropriated for such purpose, the provisions of the statutes for the raising of such moneys must be complied with.

Summarizing, and in specific answer to your question, it is my opinion that a county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.

Respectfully,

JOHN W. BRICKER,
Attorney General.

133.

PUBLICATION—DELINQUENT LANDS—METHOD OF PUBLICATION
IN COUNTIES OF LESS THAN THREE HUNDRED THOUSAND.

SYLLABUS:

The provision contained in Section 5704, General Code, is mandatory in its requirement that the county auditor in counties having a population of less than three hundred thousand, shall cause a list of the delinquent lands to be published once each week for two consecutive weeks in two newspapers of opposite politics in the English language.

COLUMBUS, OHIO, February 13, 1933.

HON. HOWARD D. BARNES, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion in answer to the following question:

"Are the provisions of Section 5704 as amended, mandatory as to publication of the delinquent land lists, by the auditor?"

Your inquiry arises by reason of the statement of the purpose of the advertisement as set forth in the second paragraph of Section 5704, General Code, which, in so far as is material to your inquiry, reads:

"* * Within thirty days after delivery of the duplicate the county auditor *shall* cause a list of the lands on such delinquent list and duplicate to be published once a week for two consecutive weeks in two news-