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1. TAX REVENUES—PHRASE “YEAR OF SUCH TAX RECEIPTS”—REFERS TO YEAR IN WHICH TAX REVENUES ARE RECEIVED BY SUBDIVISION—SECTION 133.30 RC, FIRST PARAGRAPH.
2. TAXING AUTHORITY OF SUBDIVISION—MAY NOT BORROW MONEY TO ANTICIPATE RECEIPT OF REAL PROPERTY TAX REVENUES—PAYABLE IN DECEMBER PRIOR TO FOLLOWING FIRST DAY OF JANUARY.

## SYLLABUS:

1. The phrase, “year of such tax receipts,” used in the last sentence of the first paragraph of Section 133.30, Revised Code, refers to the year in which tax revenues are received by a subdivision.

2. Under the provisions of Section 133.30, Revised Code, the taxing authority of a subdivision may not borrow money in anticipation of the receipt of the real property tax revenues payable in December prior to the following first day of January.

Columbus, Ohio, January 21, 1955

Hon. Joseph W. McNERNEY, Prosecuting Attorney  
Muskingum County, Zanesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Ohio Revised Code Section 133.30 (G. C. 2293-4) provides, in part:

“In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one half of the amount estimated to be received from the next ensuing settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. When a partial, semiannual, or final tax settlement is delayed, such borrowing authority may be exceeded and money may be borrowed in anticipation of the receipt of taxes for debt charges to the extent necessary to meet such debt charges but not in excess of such estimated receipts, less all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run more than six months, and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected, and appropriated. *No subdivision shall borrow money or issue certificates in anticipation of such taxes before the first day of January of the year of such tax receipts.*’

(Emphasis supplied.)

“The practice in Muskingum County is to not open the real property tax books until after the new rates are figured subsequent to election, with collection and settlement both being accomplished in February rather than in December as provided by law. The question now arises as to whether a school board may borrow against such revenue before January 1, when such revenue would, under law, normally be *collected* in 1954, although not *settled* until February, 1955. I am speaking of the first half of the 1954 real property tax. It is tax of 1954, which is to be collected under law in December, 1954, but which will not be settled until February, 1955. As you can see, the statute uses the phrase, ‘The year of such tax receipts.’

“The 1946 O. A. G. No. 1422 provides that a subdivision may not borrow in anticipation of the collection and receipt of taxes after January 1, and 1928 O. A. G. No. 2708 provides that commissioners are without power to borrow money in anticipation of the February tax settlement, before January 1 of the year of such tax settlement. Here the word ‘settlement’ is used in place of the word ‘receipts’ as used in the statute and would seem to hold that no loan could be made this year upon the February, 1955, tax settlement. This is more obvious from the following statement on page 2349 of the latter opinion:

“The December tax collection of 1928 cannot in any event be available to augment the revenues to be expended during 1928, since such levies are made for expenditures during the fiscal year of 1929.’

“In view of the age of the 1928 opinion and the ambiguity of the word ‘receipts’ in the statute, our Auditor has requested an up-to-date ruling from your office on this question.”

Section 133.30, Revised Code, a part of the Uniform Bond Act, gives the taxing authority of a subdivision power to borrow money and issue notes in anticipation of the collection of current revenues. Your letter sets forth the entire first paragraph of that section. None of the other paragraphs has any bearing on the question presented by your request.

The legal question presented is whether the taxing authority of a subdivision may borrow money, under the provisions of Section 133.30, Revised Code, in anticipation of the receipt of the real estate tax payable in December prior to the following first day of January.

Before answering the above question certain other sections that pertain to the fiscal powers and obligations of a taxing authority should be mentioned. The term “taxing authority” includes the board of education of a school district. Section 133.01, Revised Code. The fiscal year of a school district begins at the opening of the first day of January of each calendar year and ends at the close of the succeeding thirty-first day of December. Section 115.08, Revised Code. The second paragraph of this section reads as follows:

“Taxes or other revenues collected in or on hand in any fiscal year for the purposes of the next or any subsequent fiscal year shall not be appropriated or expended prior to such next or subsequent year. Budgets shall be designated and known by the fiscal year for the purposes for which they are made.”

Particular attention should be paid to certain sections of the Uniform Tax Levy Law, Chapter 5705, Revised Code. The Uniform Bond Act and the Uniform Tax Levy Law are *in pari materia* and should be construed together as having one object and one system and policy. See State, ex rel. Strauss, v. County of Cuyahoga, 130 Ohio St., 64. Section 5705.03, Revised Code, reads as follows:

“The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47, inclusive, of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each sub-

division and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness. All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws, rules and regulations as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be deposited in its treasury to the credit of the appropriate fund.”

Section 5705.28, Revised Code, provides that, on or before the fifteenth day of July in each year, the taxing authority of each subdivision shall adopt a tax budget for the next succeeding fiscal year. The tax budget must set forth an estimate of contemplated revenue and expenditures for the ensuing fiscal year in the manner prescribed by Section 5705.29, Revised Code. The tax budget is submitted to the county auditor who presents it to the county budget commission. Sections 5705.30 and 5705.31, Revised Code. The county budget commission adjusts the estimated amounts required from the general property tax for each fund, as shown by the budgets of the several subdivisions. It may revise and adjust the estimate of balances and receipts from all sources and must determine the total appropriations that may be made from each fund. Section 5705.32, Revised Code.

Section 5705.34, Revised Code, reads, in part, as follows:

“When the budget commission has completed its work it shall certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. Each taxing authority by ordinance or resolution shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the board of tax appeals.  
\* \* \*”

Section 5705.35, Revised Code, provides that the certification of the budget commission must contain a summary, known as the “official certifi-

cate of estimated resources," which shows the total estimated resources of each fund of the subdivision. It further provides that, before the end of the year, the taxing authority of each subdivision must revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification. Such revised tax budget forms the basis for the annual appropriation measure required to be passed by a subdivision, on or about the first day of each year, by Section 5705.38, Revised Code.

Since your request refers specifically to real property taxes certain statutes concerning them are pertinent. Section 319.28, Revised Code, provides that the county auditor shall, annually, on or before the first Monday of August, compile and make up separate lists of the names of the several persons, etc., in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate, the value of each, and the value of the improvements thereon. The lists are to be prepared in duplicate and corrected on or before the first Monday of September. This section further provides that the auditor shall deliver a certified copy of the list to the county treasurer on the first day of October.

After the county auditor receives statements of the rates and sums to be levied for the current year from the officers and authorities empowered to levy taxes, he determines the sums to be levied upon each tract and lot of real property. Section 319.30, Revised Code.

Section 323.09, Revised Code, provides that the office of the county treasurer shall be kept open for the collection of real property taxes from the time of delivery of the duplicate to the treasurer until the twentieth day of June, except during such time as it may be necessary to close the office for the purpose of the February settlement of such taxes. Real property taxes are to be paid on or before the twentieth day of December, or one-half of such taxes before such date, and the remaining half on or before the twentieth day of June next ensuing. Section 323.12, Revised Code.

The county auditor and the county treasurer make a settlement of the real property taxes collected by the treasurer twice a year. Such settle-

ments are to be made on or before the fifteenth day of February and on or before the tenth day of August of each year. Sections 319.43 and 321.24, Revised Code.

Section 321.31, Revised Code, provides that immediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the proper officer of the board or subdivision all moneys in the county treasury belonging to such boards or subdivisions.

The sections referred to above will furnish valuable background information and serve as a frame of reference in ascertaining the meaning of the first paragraph of Section 133.30, Revised Code. It can hardly be denied that the last sentence of that paragraph, standing alone, is ambiguous. Such ambiguity can be resolved only by determining the meaning of the phrase "year of such tax receipts." Does "the year of such tax receipts" refer to the year when the tax revenues are received by the county treasurer, or by the subdivision?

When the last sentence of the first paragraph of Section 133.30, Revised Code, is construed in connection with the other provisions of this paragraph I find that the apparent uncertain meaning of this phrase becomes certain. The taxing authority may borrow money

"In anticipation of the collection of current revenues in and for any fiscal year, \* \* \* but the aggregate of such loans shall not exceed one half of the amount estimated to be received from the next ensuing settlement of taxes for such fiscal year as estimated by the budget commission \* \* \*."

In and for what fiscal year are the revenues obtained from the real property taxes payable in December to be used? Even though the payment in December is the payment of the first half of the real property taxes for that year, the statutory provisions concerning the subdivision's budget show that the proceeds of the December payment are to be used for the following fiscal year. The amount of taxes levied on real property is determined by the tax budgets which are submitted by the taxing authorities and certified by the budget commission between the months of July and October of each year. This budget is for the next *succeeding fiscal year*, Section 5705.28, Revised Code, or the *ensuing fiscal year*, Section 5705.29, Revised Code.

The words "such fiscal year" used in the phrase "the next ensuing settlement of taxes for such fiscal year" can only refer to the fiscal year

beginning after the December payment of real property taxes. There is no settlement of the taxes payable in December during the fiscal year in which that December is the last month. The next ensuing settlement is in February of the following year.

To be consistent with the other provisions of the first paragraph of Section 133.30, Revised Code, the last sentence of that paragraph can have only one meaning. The "year of such tax receipts" refers to the fiscal year for which such tax revenues are to be used. It means the year in which such revenues are received by the subdivision. The "first day of January" of such year comes after the December payment of real property taxes.

Attention should also be called to the fact that the first sentence of Section 133.30, Revised Code, speaks of the "collection" of current revenues, while the last sentence of the first paragraph uses the term "tax receipts." This indicates that the legislature distinguished between the "collection" and the "receipt" of taxes. The same distinction appears in Section 5705.03, *supra*, where it said that taxes shall be "collected" by the county treasurer and "received" by the fiscal officer of a subdivision.

Perhaps a specific example of the statutory provisions discussed above would be helpful. On or before July 15, 1954, the school board mentioned in your letter adopted a tax budget for "the next succeeding fiscal year," January 1, 1955, to December 31, 1955. On or before July 20, 1954, this budget was submitted to the county auditor who presented it to the county budget commission. When the budget commission completed its work it certified the adjusted budget to the school board. Then the school board authorized the necessary tax levies and certified them to the county auditor prior to October 1, 1954. The levy on real property, so authorized, and other levies by authorized taxing authorities were used by the auditor to determine the tax rate for the real property within that particular school district. Using that rate the real property tax, payable in December, 1954, and June, 1955, was computed. In February, 1955, the county treasurer will settle with the county auditor for the real property taxes collected prior to the time of the settlement. After the settlement the treasurer will pay to the school board its share of the real property taxes collected. Since the school board does not receive its share of the December, 1954, real property tax payment until February, 1955, the "first day of January of the year of such tax receipts" is January 1, 1955.

Since there is every indication that Section 133.30, Revised Code, permits a subdivision to borrow in anticipation of the collection of taxes

only after the opening of the fiscal year for which the taxes in question are to be used it is my opinion that, under the provisions of this section, the taxing authority of a subdivision may not borrow money in anticipation of the receipt of the real property tax revenues payable in December prior to the following first day of January. This ruling is in accord with the ruling in Opinion No. 1422, Opinions of the Attorney General for 1946, referred to in your letter. That opinion held that since a school district would not receive the proceeds of a tax levy approved at the November, 1946, election, effective for that year, until the tax settlements in 1947, it could not, prior to January 1, 1947, borrow money in anticipation of the collection of such levy.

It was similarly held in Opinion No. 2708, Opinions of the Attorney General for 1928, also mentioned in your letter. At that time the last sentence of Section 2293-4, General Code, read as follows:

“\* \* \* No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement.”

In that form the sentence was clear. The time of the February tax settlement was definite. The last sentence was changed to its present form in 1939. 118 Ohio Laws, 52. In my opinion this was merely a change in language, not a change in meanings.

Mention might well be made of two other sentences in the first paragraph of Section 133.30, Revised Code, which read as follows:

“\* \* \* The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run more than six months, and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected, and appropriated. \* \* \*”

The anticipated taxes, December, 1954, payment, were levied and collected for the purposes specified in the tax budget for the fiscal year 1955. They would form a part of the estimated resources certified to the school board by the budget commission as being available for expenditures in the fiscal year 1955. These resources form the basis for the appropriation measures of a subdivision required by Section 5705.38, Revised Code. Thus, the money borrowed could be used only for expenditures for the fiscal year 1955. This is consistent with the first sentence quoted above. The “sums so anticipated” in this case would be up to one half of the amount esti-



mated to be received from the February, 1955, settlement of taxes. They "shall be deemed appropriated for the payment of such notes at maturity." When the moneys are received following the February settlement the amount necessary to pay the notes would already be appropriated for that purpose.

If the school board were permitted to borrow money in anticipation of the December, 1954, collection in December, 1954, and use that money for expenditures for the fiscal year 1954, it would have to use revenues included in its budget for the fiscal year 1955 to repay the amount of the loan. Its 1955 budget would be wrecked.

The manifest purpose of Section 133.30, Revised Code, is to permit a subdivision to borrow money in a fiscal year in anticipation of the receipt of tax revenues in the same fiscal year. Thus, by borrowing it may obtain money to pay its budgeted expenses even though it has not received the tax revenues from the collecting officer. The purpose is not to permit a subdivision to borrow money to pay expenses in one fiscal year in anticipation of the receipt of tax revenues listed in its tax budget as available for the following fiscal year.

The above discussion of the meaning of the first paragraph of Section 133.30, Revised Code, has been based on a situation where the statutory provisions relating to the collection of real property taxes were followed. I note from your letter that, as a matter of fact, there is no December collection of real property taxes in your county. The real property tax books are not opened for the December payment until the following February. The collection of the December payment occurs in the same year that the tax revenues are received by the subdivision. The tax revenues are not received by anyone in December. There is no uncertainty in the application of the first paragraph of Section 133.30, Revised Code, to such facts. Since there is no collection of current revenues in December there is no collection which could be anticipated for borrowing purposes under the provisions of the first paragraph of Section 133.30, Revised Code.

It is my opinion and you are advised that:

1. The phrase, "year of such tax receipts," used in the last sentence of the first paragraph of Section 133.30, Revised Code, refers to the year in which tax revenues are received by a subdivision.

2. Under the provisions of Section 133.30, Revised Code, the taxing authority of a subdivision may not borrow money in anticipation of the receipt of the real property tax revenues payable in December prior to the following first day of January.

Respectfully,

C. WILLIAM O'NEILL

Attorney General