

770

SALVAGE COMMITTEE FORMED BY VOLUNTARY ACTION OF GROUP OF CITIZENS—MONEY REALIZED FROM SALE OF SCRAP, PAPER, RUBBER, TIN CANS, ETC., DONATED TO HELP NATIONAL WAR EFFORT AND CONTRIBUTE TO PUBLIC DEFENSE, NOT PUBLIC MONEY.

SYLLABUS:

Money in the hands of a salvage committee formed by voluntary action of a group of citizens, which money was realized from the sale of scrap, paper, rubber, tin cans, etc., donated by citizens to help the national war effort and to contribute to the public defense, is not public money.

Columbus, Ohio, March 2, 1946

Hon. Mathias H. Heck, Prosecuting Attorney
Dayton, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Montgomery County has this situation: The Dayton-Montgomery County Salvage Committee during its activity, accumulated some \$88,934.49. The final report of the disbursement of this fund prepared by a reputable firm of Accountants shows the disbursement to have been for expenses, and to various organizations active in the national defense effort.

There still remains a balance of \$10,875.32. The entire defense fund handled by the above committee came from the sale of scrap, paper, rubber, tin cans, etc., donated by the citizens of the county to help the national war effort. None of this money came from the public funds of any taxing unit.

The question upon which I would like to have your opinion is whether or not the above balance is public money, and if so, what disposition should be made thereof."

Your letter does not explain the origin or nature of the Dayton-Montgomery County Salvage Committee, but from the other information furnished me I am led to believe, and therefore assume that that committee was a voluntary organization of citizens who were engaged in the collection of waste material which was converted into money and used for such purposes and in such manner as in the judgment of the committee contributed to the national defense effort. I note from the memorandum attached to your letter that the chairman of this committee was appointed by the mayor of the city of Dayton, but it does not appear that such appointment was made pursuant to any action by the Dayton Commission.

The fact that the moneys realized from the sale of scrap, etc., were disbursed to various organizations active in the national defense effort suggests a possible relation to the state, county and local councils of defense which were organized under the provisions of Sections 5285 et seq. of the General Code. The state council of defense, consisting in part of certain state officers and supplemented by the appointment by the Governor of six other persons, was by Section 5288 General Code, given certain powers with respect to civilian defense activities, particularly against the possibility of enemy air raids. It was authorized to create committees or agencies either within or without the council, to assist in the discharge of one or more of its powers and duties and, generally, to do all acts and things not inconsistent with law for the furtherance of defense activities.

Provision was also made for the organization and appointment by the Governor of county councils and district councils covering two or more contiguous counties and local councils comprising one or more municipalities or contiguous townships but less than the entire county. I do not find any provision in the law for the appointment of a joint city-county council.

These several councils were authorized by Section 5292 General Code, to be financed by appropriations made by the governing bodies of the several subdivisions. Moneys so appropriated would undoubtedly be regarded as public moneys. "Public moneys" as the words are used in Section 286 General Code, relating to the unlawful expenditure of public moneys and their recovery on findings by the Bureau of Inspection and Supervision of Public Offices, are defined by that section as follows:

"The term 'public money' as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials, shall be liable therefor. * * *"

See also, *State, ex rel. v. Maharry*, 97 O. S. 272; *State, ex rel. v. Baker*, 88 O. S. 165.

By the provisions of House Bill 69 passed by the 96th General Assembly June 25, 1945 the state council and all county, district and local councils of defense were terminated, and it was provided as follows:

"Section 2. At the time this act takes effect all funds to the credit of the state council of defense and the various district councils of defense shall be credited to the general revenue fund of the state.

Section 3. Likewise all funds to the credit of any county defense council shall be placed to the credit of the county's general fund.

Section 4. All funds to the credit of a local council of defense shall be placed to the credit of the general fund of the municipality or township in which located, whichever the case may be. In case a local defense council comprises two or more municipalities or two or more townships, the funds deposited to the credit of the local defense council, shall be divided equally among the several municipalities and townships."

If any of these councils of defense had received moneys arising from salvage sales organized and conducted by them or under their direction, we might have a question whether such funds on hand at the time these councils were abolished, would fall within the provisions of the law above quoted as to their disposition. In this connection I note a letter addressed under date of September 10, 1945, by the director of the state council of defense, to all local and county defense councils, in which it is stated:

“Any funds raised or earned by the council from donations, salvage, etc., may be distributed by the council of defense as it deems best, unless disposition of such funds is directed by local ordinance.”

In view, however, of the information which I have and of the assumption which I have hereinabove stated, that the fund in question was raised by a purely voluntary organization of citizens, I do not see that the fund has any of the attributes of public money or that it belongs to or stands to the credit of either the county defense council or the local defense council of the city of Dayton.