

972.

AGRICULTURAL EXTENSION WORK—LEVY OF TAXES BY COUNTY COMMISSIONERS THEREFOR MAY NOT BE USED FOR ANY OTHER PURPOSE.

SYLLABUS:

1. *When the board of county commissioners has made a special levy of taxes for county agricultural extension work pursuant to the provisions of Section 9921-1c General Code, the proceeds of the tax so levied may be used for such purpose only.*

2. *The board of county commissioners has no legal authority to appropriate tax funds derived from a special levy of taxes for a specific purpose to any other purpose than that for which such special taxes were levied, except as provided in Section 5625-13 paragraph (d.)*

COLUMBUS, OHIO, June 19, 1933.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“On October 18th, 1932, the County Commissioners of Athens County filed their budget for 1933 Expenditures with \$5300.00 for Agricultural purposes, divided as follows:

- \$2,000.00 for Extension;
- \$ 500.00 for 4-H Clubs;
- \$ 800.00 per capita Agriculture Society;
- \$1,500.00 from Section 9874 of General Code;
- \$ 175.00 for State Aid Institutes;
- \$ 125.00 for Local Institutes;
- \$ 200.00 for Insurance on Fair Buildings.

On October 28th, 1932, this budget was returned for public hearing. On November 16th, 1932, it was re-filed by the commissioners with the Budget Commission. On January 21st, 1933, resolution was passed by Commissioners approving the levies. On January 23rd, 1933, this resolution approving the levies was filed with the budget Commission. On March 2nd, 1933, county rate was approved by State Tax Commission.

On March 16th, 1933, the County Commissioners passed the appropriation resolution appropriating only \$500.00 for Agricultural Extension instead of \$2,000.00 as levied on, in spite of the fact that the taxes for the original amount of \$2,000.00 as stated in the budget were at that time in course of collection. The remaining \$1500.00 is apparently being absorbed for other purposes, as the appropriation is only \$7.16 under the original budget.

I am asking for your opinion as to whether Article XII, Section 5 of the Constitution of Ohio applies to this case, as the levy was made distinctly and only for Agricultural Extension and appropriated for other purposes.

I would also like your opinion as to whether the Commissioners are within their rights in appropriating this money for other purposes.”

In your request you state that a specific levy of taxes in the sum of \$2,000 was made for agricultural purposes; That after the levy was made and taxes so assessed were in the process of collection the county commissioners appropriated such funds for other purposes than that for which they were levied.

Article XII, Section 5 of the Constitution of Ohio provides among other things that "every law imposing a tax, shall state distinctly, the object of the same, to which only, it shall be applied."

Section 5625-10, General Code, provides that, "All revenue derived from a special levy shall be credited to a special fund for the purposes for which the levy was made."

The item of \$2,000 referred to in your inquiry, was a special levy for a specific purpose, that is, for the purpose of the county agriculture fund authorized by Section 9921-1c, General Code, which reads:

"The county commissioners of each county of the state are authorized and empowered to levy a tax, within the limitations prescribed by law, and to appropriate money from the proceeds thereof or from the general revenue fund of the county to be paid into the state treasury to the credit of said agricultural extension fund and expended for the purposes prescribed in section 9921-1a of this act for the benefit of said county. Amounts appropriated in excess of \$3,000 for each agent employed must have the unanimous consent of the board of county commissioners of the various counties. Any money paid into the state treasury under this section which remains unexpended for two years from the time of payment shall be returned to the county from which it came."

Such section authorizes the county commissioners to either levy a tax for the purpose of such fund or to appropriate money from the general fund of the county for such purpose. From your statement of facts, it appears that the board of county commissioners levied a tax for such purpose.

If such tax is one levied for a special purpose, the provisions of Section 5625-10, General Code, would require it to be placed in a special fund for that purpose. Assuming that such tax revenues were placed in a special fund, the question arises as to whether such funds may be transferred to some other fund and expended for other purposes. Section 5625-13, paragraph (d), provides the method by which funds may be transferred from a special fund. Such paragraph reads:

"Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with Section 5625-9, paragraph (d), (f), or (g) or Section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund."

From the facts stated in your request, I am unable to deduce that the agricultural extension work in the county has terminated, and must assume that it yet is being carried on. I find no other provision of statutes authorizing such

transfer. I am therefore of the opinion that the action of the board of county commissioners in purporting to appropriate such fund for other purposes was not legally authorized.

Specifically answering your inquiry, it is my opinion that:

1. When the board of county commissioners has made a special levy of taxes for county agricultural extension work pursuant to the provisions of Section 9921-1c, General Code, the proceeds of the tax so levied may be used for such purpose only.

2. The board of county commissioners has no legal authority to appropriate tax funds derived from a special levy of taxes for a specific purpose, to any other purpose than that for which such special taxes were levied except as provided in Section 5625-13 paragraph (d).

Respectfully,

JOHN W. BRICKER,

Attorney General.

973.

APPROVAL, NOTES OF BROWHELM TOWNSHIP RURAL SCHOOL DISTRICT, LORAIN COUNTY, OHIO—\$3,800.00.

COLUMBUS, OHIO, June 19, 1933.

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

974.

FISCAL OFFICER—CERTIFICATE TO COUNTY AUDITOR SHOWING OVERDRAFTS AND REASONS THEREFOR—NO EXPENDITURES AUTHORIZED UNLESS ANNUAL APPROPRIATION MEASURE PASSED—PRIORITY OF CLAIMS AGAINST POLITICAL SUBDIVISION—LIABILITY FOR FILING FALSE CERTIFICATE.

SYLLABUS:

1. *A fiscal officer's certificate to the county auditor made in pursuance of Section 5625-27, General Code, should show the overdrafts of each fund for the current year, if any such overdrafts exist, whether the overdrafts are occasioned by reason of a partial failure of anticipated revenues as shown by the certificate of estimated resources of the budget commission made in the previous year or by reason of unauthorized appropriations made during the current year, or by reason of false and unauthorized certificates of the fiscal officer made in pursuance of Section 5625-33, General Code.*

2. *Where an emergency appropriation measure is passed by the taxing authority of a subdivision or taxing unit, in pursuance of Section 5625-29, General Code, and the passage of the annual appropriation measure is postponed until after April 1st of the current year, no expenditures of any kind can be made and no lawful*