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1—MONEY APPROPRIATED FROM ROAD OR BRIDGE FUND MAY NOT BE USED TO PAY CLERICAL ASSISTANTS—HOWEVER—2—COUNTY ENGINEER AUTHORIZED TO APPOINT AND DISCHARGE EMPLOYEES—COUNTY COMMISSIONER WITHOUT AUTHORITY TO DELETE FROM PAYROLL— §§315.12, R.C. 325.17, R.C.

SYLLABUS:

1. Money appropriated from a road or bridge fund may not be used to pay clerical assistants in the office of the county engineer devoting time to road and bridge improvement or maintenance, provided, however, that money appropriated from a road or bridge fund which derives its revenue from the sources specified in Section 315.12, Revised Code, may be used to pay such clerical assistants to the extent authorized by Section 315.12, Revised Code.

2. Section 325.17, Revised Code, authorizes the county engineer to appoint and discharge employees and the board of county commissioners is without authority to delete from a payroll submitted by the engineer the name of an employee appointed by such engineer.

Columbus, Ohio, April 19, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The law provides for a County Road and Bridge Fund. Revenues arise from the general property tax, gasoline tax, township road tax, special assessments, the Motor Vehicle License Fund and certain fines.

“The law restricts the use of gasoline and motor vehicle license moneys and the township road tax and special assessment taxes are likewise restricted.

“The County Commissioners of Noble County have made an appropriation to the County Engineer’s office for clerical help from the General Fund of the county. The County Engineer has one deputy. The funds so appropriated have been exhausted and the County Engineer, by his own order, has placed his deputy, for the first half of November and no doubt for the rest of the year, on the Road and Bridge Fund payroll of that county.

“It has been reported to me that the work of the deputy is of such a nature that it could be interpreted to fall within the category of service performed in connection with road and bridge improvement. The County Commissioners of Noble County propose to eliminate the salary of the deputy, which the engineer proposes to charge to the Road and Bridge Fund, on the basis that the Engineer’s Fund for clerk hire has been exhausted and that the commissioners have not appropriated funds for clerk hire to the Road and Bridge Fund.

“An opinion is respectfully requested :

(1) Whether or not money appropriated to the Road and Bridge Fund may be used to pay clerical assistants in the office of the County Engineer devoting time to road and bridge improvement or maintenance?

(2) Whether or not the County Commissioners have authority to delete from a payroll submitted by the Engineer, a name of an employee appointed by such Engineer, in accordance with the provisions of Section 325.17 of the Revised Code.”

After a thorough examination of the Revised Code, I found that Sections 5541.02, 5543.06 and 5555.95, Revised Code, refer, in the singular, to “a road fund”; that Sections 5549.01, 5555.93 and 5575.10, Revised Code, refer, in the plural, to “road funds”; that Section 5555.43, Revised Code, refers to “any road improvement fund”; that Sections 5591.22, 5591.34 and 5591.36, Revised Code, refer, in the singular, to a “bridge fund.” Only Section 5545.07, Revised Code, refers to both road and bridge funds, and the language used is “any road *or* bridge funds.” (Emphasis added) I did not find any reference in the Revised Code to “a County Road and Bridge Fund.” Furthermore, I did not find any authority to appropriate money *to* such a fund. While money may, under certain circumstances, be transferred to a fund (See Section 5705.14, Revised Code), appropriations are made *from* a fund (See Section 5705.39, Revised Code). I shall, therefore, proceed to answer your request on the assumption that your first question should read “money appropriated from a Road and Bridge Fund” instead of reading “money appropriated to the Road and Bridge Fund.”

Section 325.17, Revised Code, provides in part as follows :

“The officers mentioned in section 325.27 of the Revised Code may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall

file certificates of such action with the county auditor. Such compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office. When so fixed, the compensation of each such deputy, assistant bookkeeper, clerk, and other employee shall be paid semimonthly from the county treasury, upon the warrant of the auditor.* * *

Section 2981, General Code (which is now Section 325.17, Revised Code), was the subject of a comment by a predecessor of mine in Opinion No. 4150, Opinions of the Attorney General for 1935, at page 425, as follows:

“Section 2981, General Code, states unqualifiedly that the salary of clerks shall be paid from the ‘county treasury’. Undoubtedly by the words ‘county treasury’ the legislature means ‘the general fund’ when no other fund is mentioned.”

Subsequent to this opinion the General Assembly enacted Section 315.12, Revised Code, which reads as follows:

“(A) Two thirds of the cost of operation of the office of county engineer, including the salaries of all of the employees and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county’s share of the fund derived from the receipts from motor vehicle licenses, as distributed under section 4501.04 of the Revised Code, and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed under section 5735.27 of the Revised Code.

“(B) Where employees of the county engineer are temporarily assigned to perform engineering and plan preparation work on a bond-financed project, their salaries and expenses for such work may be paid from the proceeds from the sale of such bonds, instead of from the fund as provided in division (A) of this section, from whence their salaries and expenses are ordinarily paid.”

Reading Opinion No. 4150, *supra*, together with Section 315.12, Revised Code, it follows that the salary of a deputy or assistant in the office of a county engineer must be paid from the general fund of the county except insofar as the provisions of Section 315.12, Revised Code, provide otherwise. Note that Section 315.12, Revised Code, does not specifically mention the funds from which the two thirds of the cost of operation of the engineer’s office is to be paid, although it does specify the sources of revenue to be used. Because the revenue specified in paragraph (A) of Section 315.12, Revised Code, is derived from a source other than the general property tax, which the law (Sections 4501.04 and 5735.27, Revised Code)

requires to be used for a particular purpose, i.e. road and/or bridge work, such revenue should be held in a "special fund," which is provided for in Section 5705.09 (F), Revised Code. Likewise, because the revenue specified in paragraph (B) of Section 315.12, Revised Code, is derived from the sale of bonds, such revenue should be held in a "special fund," which is provided for in Section 5705.09 (E), Revised Code. Section 5705.09, Revised Code, provides as follows:

"Each subdivision shall establish the following funds:

"(A) General fund;

"(B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;

"(C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;

"(D) A special fund for each special levy;

"(E) A special bond fund for each bond issue;

"(F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;

"(G) A special fund for each public utility operated by a subdivision;

"(H) A trust fund for any amount received by a subdivision in trust."

The special funds mentioned in Section 5705.09, Revised Code, are not designated by any special name or names. In order to distinguish between the several different special funds it is only natural that each subdivision would label them, e.g. "library fund" etc. In the case of roads, however, confusion exists because there is more than one road fund. A special fund provided for in Section 5705.09 (F), Revised Code, might be called "a road fund," but so also might a special fund provided for in Section 5705.09 (D), Revised Code, resulting from a special levy for road purposes authorized by Section 5705.06 (D), Revised Code.

It is apparent from the foregoing discussion that the answer to the first question in your request will require more than simple affirmative or negative response. Whether or not money appropriated from a road or bridge fund may be used to pay the clerical assistants in the office of the county engineer will depend on the source of the revenue in the particular road or bridge fund. A road or bridge fund which derives its source of

revenue from the county's share of the receipts from motor vehicle licenses, as distributed under Section 4501.04, Revised Code, or from the county's share of the motor vehicle fuel tax, as distributed under Section 5735.27, not only may, but must, be used to pay the clerical assistants in the office of the county engineer to the extent authorized by Section 315.12, Revised Code. A road or bridge fund which derives its source of revenue in other ways, such as from a special levy, may not be used to pay the clerical assistants in the office of the county engineer even though such assistants may be devoting time to road and bridge improvement. Opinion No. 4150, *supra*.

In regard to the second question in your request, Section 143.03, Revised Code, provides as follows:

“No person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted, or reduced as an officer or employee in the civil service, in any manner or by any means other than those prescribed in sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules of the director of state personnel or the municipal civil service commission within their respective jurisdictions.”

Section 143.01, Revised Code, provides in part as follows:

“As used in sections 143.01 to 143.48, inclusive of the Revised Code;

“(A) ‘Civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts and city school districts thereof.

“(B) ‘State service’ includes all such offices and positions in the service of the state, or the counties thereof, except the cities, city health districts and city school districts.

“* * *

“(D) ‘Appointing authority’ signifies the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution.

“* * *.”

It is clear after reading the provisions of Section 325.17, Revised Code, which were quoted earlier in this opinion, that the “appointing authority” in the case of the county engineer’s office is the county engineer and not the board of county commissioners.

Accordingly, it is my opinion, and you are so advised that :

1. Money appropriated from a road or bridge fund may not be used to pay clerical assistants in the office of the county engineer devoting time to road and bridge improvement or maintenance, provided, however, that money appropriated from a road or bridge fund which derives its revenue from the sources specified in Section 315.12, Revised Code, may be used to pay such clerical assistants to the extent authorized by Section 315.12, Revised Code.

2. Section 325.17, Revised Code, authorizes the county engineer to appoint and discharge employees and the board of county commissioners is without authority to delete from a payroll submitted by the engineer the name of an employee appointed by such engineer.

Respectfully,

MARK McELROY

Attorney General