

OPINION NO. 69-083

Syllabus:

1. A political subdivision may not borrow money pursuant to Section 133.30, Revised Code, in anticipation of an allocation from the local government fund until it is finally determined pursuant to the requirements of Section 5739.22, Revised Code.

2. For the same reasons as above stated, the County Auditor may not make a partial distribution of the county local government fund.

To: Everett Burton, Scioto County Pros. Atty., Portsmouth, Ohio
By: Paul W. Brown, Attorney General, July 8, 1969

Your request for my opinion concerning the borrowing of money by a local subdivision in anticipation of a distribution from the local

government fund presents two specific questions as follows:

"A. Can a political subdivision entitled to participation in the proceeds of the undivided local government fund borrow from a financial institution against the anticipated distribution when the name fund is under appeal?

"B. Can the County Auditor make a partial distribution of the Local Government Fund to subdivisions entitled to participate when such fund allocation is under appeal?"

Section 133.30, Revised Code, reads in pertinent part as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, other than the proceeds of taxes levied by the subdivision upon the duplicate of such subdivision, the taxing authority of any subdivision may, in addition to the authority provided in the first paragraph of this section, 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 such sources during such fiscal year, less any advances thereon. 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 shall be used only for the purposes for which the anticipated revenues are collected and appropriated."
(Emphasis added.)

There are explicit instructions in the above quotation with respect to the amount of money which may be borrowed, i.e., not to exceed one-half the amount estimated to be received, and, further, that which is anticipated shall be deemed appropriated to repay the amount borrowed.

Certainly, one cannot say there is any amount appropriated for the repayment of borrowed money in your situation where no definite amount has yet been determined. Especially is this true in view of the fact that the determination is presently interrupted by City of New Boston vs. Scioto Budget Commission, Case No. 69-299, Supreme Court of Ohio.

The present law of Ohio on this point is forcibly stated by the court in Board of County Commrs. vs. Willoughby Hills, 12 Ohio St. 2d 1, as follows:

"1. The need of a subdivision for revenue, in addition to what it

has, is an essential requirement for any apportionment to that subdivision from the county undivided local government fund. (Paragraph two of the syllabus of Lake County Budget Commission v. Village of Willoughby Hills, 9 Ohio St. 2d 108, approved and followed.)

"2. The Board of Tax Appeals has the same duty as the County Budget Commission to make findings as to the dollar amount of the needs of each subdivision of the county seeking to participate in the fund. (Paragraphs five and six of the syllabus of Lake County Budget Commission v. Village of Willoughby Hills, 9 Ohio St. 2d 108, approved and followed.)

"3. The claim of a subdivision that it needs a certain amount for an expenditure that it is authorized to make for current operating expenses does not require a determination that it needs such amount for such expenditure."

Most parties to litigation anticipate favorable decisions, but the General Assembly did not use the word "anticipation" with such broad connotation as to make it possible for all subdivisions in a county to borrow against the local government fund before the allocation of the estimated local government fund has been determined pursuant to Section 5739.22, Revised Code, which in your situation will hopefully be resolved by the Supreme Court in the New Boston case, supra.

Your first question implies a false premise in that whether or not the City of New Boston is entitled to participation in the fund has not yet been determined (Board of County Commrs. v. Willoughby Hills, supra).

From the foregoing, it is, therefore, my opinion, and you are advised:

1. A political subdivision may not borrow money pursuant to Section 133.30, Revised Code, in anticipation of an allocation from the local government fund until it is finally determined pursuant to the requirements of Section 5739.22, Revised Code.

2. For the same reasons as above stated, the County Auditor may not make a partial distribution of the county local government fund.