

Note from the Attorney General's Office:

1930 Op. Att'y Gen. No. 30-2407 was overruled in part by 1975 Op. Att'y Gen. No. 75-087.

2407.

STATE APPROPRIATIONS—EXISTENCE OF DEFICIT IN THE MAINTENANCE AND REPAIR FUND OF STATE HIGHWAY DEPARTMENT
—STATE AUDITOR MAY MAKE TEMPORARY TRANSFER WHEN.

SYLLABUS:

Whenever a deficit exists in the maintenance and repair fund of the State Highway Department, by reason of which the general operating expenses of the state cannot be paid from appropriations made from such fund, the Auditor of State may, with the approval of the emergency board, make a temporary transfer to such fund of any surplus moneys in the fund in the state treasury created by taxation, for the purpose of paying maturity and interest obligations of the World War Adjusted Compensation bonds, issued by authority of Section 2a of Article VIII of the Constitution of Ohio.

COLUMBUS, OHIO, October 2, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your communication reading as follows:

“I respectfully request your written opinion upon the following question:

At a meeting of the Emergency Board held September 25, 1930, a temporary transfer of \$1,300,000 from the World War Compensation Fund to the Maintenance and Repair Fund of the Highway Department was approved under the provisions of Section 249-1, G. C.

The balance in the World War Compensation Fund at the close of business September 24, 1930, was \$3,096,377.24, with maturities (bonds and interest) accruing October 1, 1930, of \$1,398,437.50. No further obligations accrue against the resources of said fund until April 1, 1931, prior to which date there will be accruals from taxes already levied and in process of collection of not less than \$2,100,000.00. Of the balance now in said fund, if this transfer is allowed by this office, there will remain \$1,697,939.74. We might further advise that the accruals to the M. & R. Fund will be sufficient from gasoline tax receipts and auto tag receipts to reimburse said World War Compensation Fund in full.

I have always assumed that it is the duty of this office to see that such temporary transfers were cancelled without approval from any other board or officer, and it has always been done.

Question: May this proposed transfer legally be made by the Auditor of State under the provisions of Section 249-1 of the General Code?”

Section 249-1, General Code, reads as follows:

“Whenever a deficit exists in the general revenue fund or any other fund of the state, by reason of which the general operating expenses of the state can not be paid from appropriations made from such fund, an emergency shall be deemed to exist, and in such case the Auditor of State may, with the approval of the emergency board, make temporary transfers to such fund of any surplus moneys in any other fund or funds available for state purposes. Any fund from which moneys are so transferred shall be reimbursed from the first moneys accruing and available for such purpose. The Auditor of State is hereby authorized to make the necessary transfers to reimburse funds

from which moneys have been transferred, and he shall certify such action to the treasurer of state."

Inasmuch as the above statute is of comparatively recent enactment, it has never received a judicial construction or been considered by the courts, nor has this office had occasion to pass upon the construction of the statute except in one opinion which is published in Opinions of the Attorney General for 1928, at page 2401. On page 2408, after quoting the statute, it is said :

"This section authorizes the Auditor of State, in cases of emergency, with the approval of the Emergency Board, to make temporary transfers to any fund, in which there is a deficit, from any surplus moneys in any other funds available for such purposes. Clearly, under the express provision of this section, with the proper approval, the Auditor of State is authorized to transfer from said highway construction fund. * * * As the courts have frequently stated, there is no necessity to construe a statute which is unambiguous. All that this department can properly say is that the statute, being duly enacted, means what it says."

Clearly, the word "surplus", as used in the statute, does not mean an excess of moneys requisite to meet the entire liabilities, both present and future, of a fund, but merely more than sufficient moneys for present needs. In other words, it means a temporary surplus, hence the requirement to reimburse the fund.

It is clear from your statement that there is a temporary surplus in the World War Compensation Fund. This fund is a fund raised by taxation by authority of the Constitution of Ohio for the purpose of meeting retirement and interest obligations on the World War compensation bonds.

In 1921, there was adopted an amendment to the Constitution of Ohio designated as Section 2a of Article VIII of the Constitution. By the terms thereof there was created "The Commissioners of the Sinking Fund," who were authorized forthwith, upon the adoption of the amendment, to issue and sell, from time to time, under such regulations as they might promulgate, bonds in a total sum not to exceed \$25,000,000.00, bearing interest at not to exceed five and one-half per cent per annum, payable semi-annually, and maturing in twenty equal semi-annual installments, commencing not later than the first day of April, 1923. The purpose of said issue was to provide funds for the payment of adjusted compensation to veterans of the World War. It is provided therein: "The full faith and credit of the State of Ohio is hereby pledged for the payment of said bonds."

For the purpose of creating a fund for the payment of said bonds when due, and interest obligations thereon, it is provided :

"The said 'The Commissioners of the Sinking Fund' shall by their certificate filed with the Auditor of State add to the state levy for taxation, in the year 1922 and thereafter, during the life of such bonds, in addition to all other taxes now or hereafter provided by law, such amounts annually as shall be necessary as a tax levy for the retirement of said bonds and the payment of the interest thereon; and said levy may also provide for the payment of the expenses of administration hereof."

The fund raised by said tax levy, referred to in your communication as "The World War Compensation Fund," clearly is a fund "available for state purposes," as the expression is used in Section 249-1, General Code. The payment of the world war adjusted compensation is clearly a state purpose, made so specifically by the

terms of the constitutional amendment referred to. Likewise is the payment of the bonds, and interest obligations thereon, issued and sold for the purpose of providing funds to pay that adjusted compensation. It seems clear, therefore, that, inasmuch as the world war compensation fund is a fund available for state purposes and there is a temporary surplus therein, in accordance with the statute, the Auditor of State is authorized to make a temporary transfer from that fund to the maintenance and repair fund of the highway department.

I am of the opinion, therefore, that the proposed transfer may lawfully be made by the Auditor of State under authority of Section 249-1, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2408.

RENTED OFFICE SPACE—REPAIR OF BUILDING OCCUPIED BY PROSECUTING ATTORNEY—COUNTY COMMISSIONERS AUTHORIZED TO EXPEND MONEY FOR SUCH WORK WHEN THERE ARE NO SUITABLE ROOMS IN COURT HOUSE.

SYLLABUS:

County commissioners are authorized under Section 2419, General Code, to expend money in repairing rented office buildings for the prosecuting attorney where there are no suitable rooms in the courthouse for said office, so long as the repair work is necessary and the cost is reasonable.

COLUMBUS, OHIO, October 3, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Will you kindly give me your opinion on the following proposition?

Would the county commissioners be authorized under Section 2419, General Code, to expend money in repairing rented office buildings for the prosecuting attorney where there are no suitable rooms in the court house for said office?”

It is a well settled rule of law that county commissioners have no powers except such as are expressly given by statute or necessarily implied from the powers so expressly given. *State ex rel. vs. Commissioners*, 8 N. P. (N. S.) 281; 20 O. D. (N. P.) 679; affirmed *Ireton vs. State ex rel.*, 12 C. C. (N. S.) 202; 21 O. C. D. 412; affirmed without opinion *Ireton vs. State*, 81 O. S. 562; *Elder vs. Smith, Auditor, et al.*, 103 O. S. 369, 370; *State ex rel. vs. Kraft*, 19 O. A. R. 454, 456. Having in mind this principle, Section 2419, General Code, which is referred to in your communication, should be examined. Said section provides as follows:

“A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. They