

1781.

FIREMEN'S RELIEF AND PENSION FUND, BOARD OF TRUSTEES OF—DUTY UNDER SECTION 4602 G. C. TO FILE WITH MUNICIPALITY ANNUALLY BEFORE JUNE 1st, ESTIMATE OF REVENUE AND EXPENSES—PRESCRIBED FORM—DUTIES OF COUNCIL AND BUDGET COMMISSION—SECTIONS 5625-1, 5625-23, 5625-31 G. C.—POWER TO ALTER OR CHANGE—SECTIONS 4605, 5625-23 G. C.—TAX LEVY—GENERAL PROPERTY TAX — ENTIRE SUM COLLECTED MUST BE CREDITED—DISTRIBUTION OF ANY BALANCE—SECTION 4611 G. G.—NO AUTHORITY FOR TRUSTEES TO PROVIDE TWO PER CENT OF PORTION OF FIREMAN'S SALARY IN EXCESS OF \$3600.00 SHALL NOT BE PAID INTO SUCH PENSION FUND.

SYLLABUS:

1. *By the terms of Section 4605, General Code, the board of trustees of the firemen's relief and pension fund are placed in the category of and on a parity with the heads of departments, boards and commissions of municipalities, and it is the duty of such boards of trustees to prepare and file with the executive authority of the municipality, before June 1st, in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the council or other legislative authority of the municipality, or by the Bureau of Inspection and Supervision of Public Offices. It is the duty of the council or the other legislative authority of the municipality which, by the terms of Section 5625-1, General Code, is the taxing authority of the municipality, to prepare and submit to the Budget Commission, on or before July 15th in each year, a tax budget for the next succeeding fiscal year, containing the information prescribed by Section 5625-31, General Code, and it is the duty of the Budget Commission so to adjust the budgets submitted to it by the municipality and other various taxing subdivisions, as to bring the tax levies required therefor within the limitations prescribed by law, subject, however, to the limitations contained in Section 5625-23, General Code. Either the council or Budget Commission may, therefore, subject to the limitations prescribed by Sections 4605 and 5625-23, General Code, as pointed out in paragraphs 1 and 2 of this syllabus, alter or change the estimates submitted by the board*

of trustees of the firemen's relief and pension fund to the legislative authority of a municipality.

2. *While the council or other legislative authority of a municipality is not governed or controlled by the estimate required to be submitted to it by the board of trustees of a firemen's relief and pension fund, in accordance with the provisions of Sections 4605 and 5625-20, General Code, in submitting its annual budget to the Budget Commission as required by the section last named, by the express terms of Section 4605, General Code, it is the duty of such council or other legislative authority of such municipality to levy a sufficient tax not exceeding three-tenths of a mill on every dollar, to provide funds for the payment of all relief and pensions granted or that may be granted during the ensuing fiscal year to firemen or to widows and children of deceased firemen, under existing laws or rules adopted pursuant thereto.*

3. *After a budget shall have been submitted to the Budget Commission by the council or other legislative authority of a municipality, it is the duty of the Budget Commission, subject to the provisions and limitations of Section 5625-24, General Code, so to adjust the estimated amounts required from the general property tax for the municipality and the various other taxing subdivisions, as shown by the budgets submitted by such subdivisions, as to bring the tax levies required therefor within the limitations prescribed by law.*

4. *By the express terms of Section 4605, General Code, the entire sum collected under a tax levy for the firemen's relief and pension fund is required to be credited to the firemen's relief and pension fund at the earliest practicable time, and a municipal council may not appropriate only a part of such moneys and retain the balance for future appropriations.*

5. *Where after a tax levy has been made for the firemen's relief and pension fund for the ensuing fiscal year and at the end of such fiscal year there is a balance in such fund, such moneys remain in, or revert to such fund after all appropriations therefor have been paid, and such balance may be invested in bonds of the kind prescribed by and in accordance with the provisions of Section 4611, General Code. Such balance should be taken into consideration by the board of trustees of the firemen's relief and pension fund when preparing and submitting its estimate as to its needs for the ensuing fiscal year, it being within the sound discretion of such board of trustees as to what extent such balance should receive consideration.*

6. *An accumulation of unexpended balances derived from the special levy for a firemen's relief and pension fund should receive consideration by the board of trustees of such fund when preparing its annual estimate, as should moneys derived by virtue of Section 4607, General Code, which provides for the payment of certain fines, penalties, and fees into such fund, and moneys derived under the provisions of Section 4609, General Code, which require the payment by such full time regular member of the fire department of two per cent. of his annual salary into such fund. The consideration to be given to unexpended balances accruing from the special tax levy provided for by Section 4605, General Code, and the funds derived under the provisions of Sections 4607 and 4609, General Code, rests within the sound discretion of the board of trustees to the end that such firemen's relief and pension fund should at all times be in a sound financial condition, without the infliction of an undue burden upon the tax payers of the municipality.*

7. *The board of trustees of the firemen's relief and pension fund is without authority to provide that two per cent of that portion of a firemen's salary in excess of thirty-six hundred dollars shall not be paid into the firemen's relief and pension fund.*

Columbus, Ohio, January 29, 1940.

Bureau of Inspection and Supervision of Public Offices,  
Columbus, Ohio.

Gentlemen:

I have your two requests for my opinion, in which you ask several questions having to do with firemen's relief and pension funds. Your first request reads:

"1. When a Board of Trustees of a Firemen's Relief and Pension Fund prepares and submits its annual budget request, setting forth the amount of money necessary for the Relief and Pension Fund for the following year, itemizing such request so as to show:

- (a) Pensions already granted;
- (b) Anticipated pensions that may be granted during the fiscal year, including pensions for men eligible at the time the budget is prepared and for men who will become eligible during the fiscal year, as well as for widows and orphans;

- (c) Anticipated disability pensions, based upon past experience;
- (d) Incidentals, that is, the estimated expenses of the operating fund;

and requests the City Council to levy a tax, not exceeding three-tenths of a mill, to provide sufficient funds to pay all the various amounts set forth in the budget request:

Does the City Council have the power to alter the budget as submitted by the Board of Trustees, so as to reduce or increase the amount requested; and is the County Budget Commission empowered to alter or change the levy as requested by the City Council?

II. When a tax levy has been made for the Firemen's Relief and Pension Fund, in accordance with the provisions of Section 4605, General Code, and the proceeds of such levy are turned over to the city:

Is it the duty of the City Council, at the earliest practicable time, to appropriate to the Firemen's Relief and Pension Fund the entire amount of money collected for the purpose of such fund, or may the City Council appropriate only a part of such moneys, and retain the balance for future appropriations?

III. Where a tax levy has been made for the Firemen's Relief and Pension Fund and the proceeds of such levy have been appropriated to such fund to pay the obligations thereof for a fiscal year and at the end of such fiscal year there is a balance in such fund:

(a) May the Board of Trustees retain this balance as a reserve fund?

(b) May this balance be invested in bonds in accordance with the provisions of Section 4611, General Code?

(c) Should the Board of Trustees give consideration to this balance, when preparing and submitting their budget request for the following year, and if so to what extent?

IV. If the board of trustees of a Firemen's Relief and Pension Fund has accumulated, or in the future does accumulate, a reserve fund from the proceeds of a tax levy made for such fund:

(a) To what extent should the reserve fund be given consideration by the Board of Trustees when preparing the annual budget request?

(b) To what extent should consideration be given by the Board of Trustees to the moneys collected and credited to the Relief and Pension Fund under the provisions of Sections 4607 and 4609, General Code, when preparing the annual budget request?"

In your second letter you ask the following question, which I number "V":

V. "Does the Board of Trustees of the Firemen's Pension Fund have authority to place a limit of \$3600 on the salary to which the two percent (2%) deduction is applicable?"

Your questions will be answered in the order in which they are asked:

1. The answer to your first question requires a consideration of Section 4605, General Code, as amended by the 93rd General Assembly in Amended Substitute Senate Bill No. 52, effective August 10, 1939, as well as certain sections of the Uniform Tax Levy Law and sections relating to the powers and duties of the Budget Commission.

Section 4605, *supra*, reads as follows:

"In each municipality the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, *shall levy a tax of not to exceed three-tenths of a mill on each dollar upon all real and personal property as listed for taxation in such municipality, but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all relief and pensions granted or that may be granted during the ensuing year to firemen or to widows or children of deceased firemen*, under existing laws or rules adopted pursuant to existing laws. In the matter of such levy, the board of trustees of the firemen's relief and pension fund shall be subject to the provisions of law controlling the heads of departments in the municipality, and shall discharge all the duties required of such heads of departments. *The entire sum collected under such levy shall be credited to the firemen's relief and pension fund at the earliest practicable time.* If the levy herein provided for does not raise sufficient funds in any municipality or municipalities with which to pay firemen's relief or pensions, such municipality or municipalities may by action of council appropriate sufficient funds with which to make such payments."

(Emphasis mine)

The pertinent sections having to do with the Budget Commission and its powers and duties are Sections 5625-20, 5625-21, 5625-23, 5625-24 and 5625-25 of the General Code.

Section 5625-20 provides in part as follows:

"On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality with its chief execu-

tive officer, before the first day of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. \* \* \* \* ”

Section 5625-21 provides what information the budget shall contain, “which shall be presented in such detail as may be prescribed by the bureau” (of inspection and supervision of public offices).

By the terms of Section 5625-23, it is *inter alia* provided:

“ \* \* \* \* ”

The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification:

(a) All levies outside of the ten mill limitation.

(b) All levies for debt charges not provided for by levies outside of the ten mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levies prescribed by section 4605 and 4621 of the General Code.

(d) A minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate. Provided, however, that if the levies required in paragraphs (b) and (c) for said subdivision or taxing unit equal or exceed the entire minimum levy of said subdivision as hereinbefore fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the budget commission to provide for said levies and in addition thereto an operating levy for said subdivision. Such additional levy thus required shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.

If any debt charge is omitted from the budget, the budget commission shall include it therein.”

Sections 5625-24 and 5625-25 respectively provide in part as follows:

Sec. 5625-24:

“The budget commission shall so adjust the estimated amounts

required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom. \* \* \* \* ”

Sec. 5625-25:

“When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by such taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the ten mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. \* \* \* \* ”

In connection with the sections above quoted in part, it will be noted that by the express terms of Section 5625-1 of the General Code (the first section of the Uniform Tax Levy Law), the term “taxing authority” means “in the case of a municipal corporation, the *council* or *other legislative* authority of such municipal corporation.”

From the above sections which, in so far as the question here under consideration is concerned, require no construction or interpretation or application of any of the well settled rules of statutory construction other than the mere observation that such sections are in *pari materia* and must, therefore, be construed together, the following logical and consistent method of providing sufficient funds for the firemen's relief and pension funds has been sanctioned by the legislature:

First, the board of trustees of a firemen's relief and pension fund is required to be “subject to the provisions of law controlling the heads of departments” in a municipality, and to “discharge all duties required of such heads of departments” (Sec. 4605, G. C.). Second to assist the “taxing authority”, in the present instance the city council (Sec. 5625-1 G. C.), the board of trustees of such fund is placed in the category of and on a parity with “the head of each department, board or commission” of a subdivision, which, under Section 5625-1, *supra*, includes a municipality, and such board of trustees is required by the terms of Sec-

tion 5625-20, supra, to file with the chief executive officer of such municipality, before June 1st of each year, "an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision" or by the Bureau of Inspection and Supervision of Public Offices (Sec. 5625-20, G. C.). Third, the taxing authority, i. e., in the instant case the city council, on or before the fifteenth day of July of each year, is required "to adopt a tax budget for the next succeeding fiscal year" (Sec. 5625-20, G. C.), to be submitted to the Budget Commission, containing information required by Section 5625-21, supra, in such detail as the Bureau may prescribe. Fourth, the Budget Commission is required so to adjust the estimated amounts required from the general property tax for each fund, as shown by the various budgets submitted to it (Sec. 5625-24, G. C.), with due regard to the directions and limitations contained in Section 5625-23, supra, so as to bring the tax levies required within the limitations prescribed by law. And, Fifth, when the Budget Commission shall have completed its work, it is required forthwith to certify its action to the various taxing authorities, with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority, which shall authorize the necessary levies and certify them to the county auditor (Sec. 5625-23, G. C.).

From the above resume of the pertinent sections of the General Code, it is manifest that the board of trustees of the firemen's relief and pension fund acts only in an assisting or advisory capacity when preparing and submitting its estimate of its needs for the ensuing fiscal year to the city council, which is the authority empowered in the first instance to prepare the budget of the municipality covering *all* its needs, including the necessary moneys for the firemen's relief and pension fund. The city council being so authorized, it is obvious that it is not subject to the control of the board of trustees of the pension fund here involved any more than it is under the direction of the head of any department of the municipality. It is also manifest, that *subject to the limitations of Section 5625-23, supra, particularly sub-paragraphs (c) and (d)*, the Budget Commission is required to make such adjustments of the amounts estimated to be required by the various subdivisions as in its discretion it deems proper.

As stated in 38 O. Jur. 940:

"The General Code provides for the creation of a county budget commission \*\*\* whose duty it is *to adopt a tax budget, ad-*



*just the rates of taxes, and so fix the amount thereof that the total tax levy shall be kept within the limitations provided by law. \*\*\* "*  
(Emphasis mine)

See also in this connection the case of State, ex rel., v. Patterson, Prosecuting Attorney, et al., 93 O. S. 25, where in construing a prior analogous section to Section 5625-25, supra, the court held, as stated in the syllabus:

"Under the provisions of Section 5649-3a, General Code, the budget commissioners, in the adjustment of the various amounts of taxes to be raised in a taxing district and in reducing the estimates contained in the budgets, are called upon to exercise their official judgment and discretion. In the absence of fraud, bad faith or abuse of discretion it is not within the power of the court to interfere, and an action in mandamus will not lie to control such discretion or correct an error of judgment."

While it is clear from the above discussion that your first question must be answered in the affirmative, I deem it proper in passing to point out the mandatory character of Section 4605, General Code, which in plain and unambiguous language requires the council of each municipality to levy a tax for firemen's relief and pension fund purposes "not to exceed three-tenths of a mill on each dollar upon all real and personal property as listed for taxation in such municipality, but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all relief and pensions granted or that may be granted during the ensuing year to firemen, or to widows or children of deceased firemen, under existing laws or rules adopted pursuant to existing laws."

II. Coming now to your second question, your attention is invited to the plain and unequivocal language of Section 4605 of the General Code, above quoted, to the effect that the "entire sum collected under such levy shall be credited to the firemen's relief and pension fund at the earliest practicable time." This language needs no interpretation, and it is obvious that it is the duty of the city council, at the earliest practicable time, to appropriate all the proceeds derived from the levy under consideration and that the city council is not authorized to appropriate only a part of such moneys and retain the balance for future appropriations.

III. This brings us to your third question.

Section 4611, General Code, referred to therein, reads as follows:

“The trustees of the fund may invest moneys received by them in interest bearing bonds of the United States or of this state, or of any county, township, school district or municipal corporation in the state.”

Section 5626-4, 5625-6, 5625-9, 5625-10 and 5625-13 of the General Code, are also pertinent to your third question, as is Section 280 of the General Code. These sections respectively provide in part:

Sec. 5625-4:

“The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

\* \* \* \*

3. Special levies authorized by the provisions of this act within the ten mill limitation.

\* \* \* \* ”

Sec. 5625-6:

“The following special levies are hereby authorized without vote of the people;

\* \* \* \*

g. The levies prescribed by sections 4605 and 4621 of the General Code.

Each such special levy shall be within the ten mill limitation and shall be subject to the control of the county budget commission as provided by this act.

\* \* \* \* ”

Sec. 5625-9:

“Each subdivision shall establish the following funds:

\* \* \* \*

(d) A special fund for each special levy.

\* \* \* \* ”

Sec. 5625-10:

“ \* \* \* \*

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

\* \* \* \* ”

## Sec. 5625-13:

"No transfer shall be made from one fund of a subdivision to any other fund,, by order of the court or otherwise, except as hereinafter provided.

\* \* \* \*

d. Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with section 5625-9, paragraphs (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.

\* \* \* \*"

## Sec. 280:

" \* \* \* \* When an appropriation account is closed, an unexpended balance shall revert to the fund from which the appropriation was made."

As has been seen, a levy for the firemen's relief and pension fund is a special levy and by the terms of Section 5625-9, supra, the proceeds of such levy are to be placed in a special fund and there they must remain unless and until the activity in question is terminated and such funds are transferred as provided by subparagraph d of Section 5625-13, supra, after the payment of all obligations incurred and payable from such special fund. This conclusion is consistent with the provisions of Section 280, supra, requiring all unexpended balances to revert to the fund from which an appropriation is made when an appropriation account is closed.

Moreover, by the terms of Section 4611, supra, the trustees are expressly authorized to invest the moneys in the fund in question in interest-bearing bonds of the kind described in said section, thus clearly evidencing an intention on the part of the legislature that any unexpended balance in the firemen's relief and pension fund should be invested and not placed in a general fund. Obviously, any such investment becomes a reserve fund and must be given proper consideration by a board of trustees when preparing and submitting its estimate for the information and advice of council.

As has been seen, the legislature has provided for the levying of an annual tax for the fund under consideration, and in addition has provided

by Section 4609, General Code, as amended in Amended Substitute Senate Bill No. 52, *supra*, that each full time regular member of the fire department shall, unless objection is made thereto, as provided in such section, contribute two percent of his annual salary to the relief and pension fund. Manifestly, notwithstanding the fact that the legislature has made provision for what may be termed a reserve, it seems to have been the intent of the General Assembly that the fund be operated on a pay-as-you-go basis. This being true, due consideration must be given to whatever may accrue in the way of unexpended balances, not only by the board of trustees of the firemen's relief and pension fund, but by the city council as well.

IV. Your fourth question cannot be answered categorically. Any unexpended balances in the firemen's relief and pension fund must be taken into consideration in estimating the needs for the ensuing fiscal year, as above pointed out, as must also any funds collected under Section 4607 of the General Code, relating to fines imposed upon members of the fire department and certain penalties and fees payable into such fund, and the funds derived from the two percent contribution required to be paid by the full time regular members of the fire department, under Section 4609 of the General Code. The extent of this consideration is a matter within the sound discretion of the board of trustees under all the circumstances in the particular case. Should that discretion in the opinion of municipal council be not properly exercised, it is, of course, subject to correction by the municipal council, whether too much or too little emphasis be laid upon the unexpended balances and the funds derived under Sections 4607 and 4609.

As stated in Opinion No. 1493, rendered to your Bureau under date of December 2, 1939:

“ \*\*\* I think it fairly evident that it was the intention of the Legislature to place the firemen's relief and pension funds under consideration on a sound financial basis and that to this end the legislature made mandatory the two per cent contributions to the fund by full time regular members except where the firemen chose not to pay, and to waive all benefits as expressly provided in Section 4609, *supra*.”

While for the reasons above set forth it is clear that the amount of the unexpended balances and the other funds mentioned by you should be considered by the board of trustees, that consideration should be directed

toward keeping the firemen's relief and pension fund on a sound financial basis, as well as toward refraining from unduly burdening the tax paying public.

V. It remains to consider your fifth question, which requires an examination of the language of Section 4625, General Code, as contrasted with the language of Section 4609 of the General Code. These sections read in part as follows:

Sec. 4625:

"In each municipality maintaining a police relief fund, or in which a police relief fund is hereafter established and maintained, the treasurer of the municipality shall deduct from the salary of each policeman or member of the police department, who by its rules is designated a member thereof, for each and every payroll period an amount equal to two per centum of his salary, provided that no deduction shall be made from that portion of his salary which exceeds thirty-six hundred dollars per annum, and shall deposit the moneys so deducted to the credit of the police relief fund. \*\*\* "

Sec. 4609:

"Each full time regular member of the fire department in each municipal corporation unless objection is made as hereinafter provided, shall contribute two per cent of the annual salary he receives to the firemen's relief and pension fund. Such two per cent shall be deducted by the treasurer of the municipalities from the member's monthly pay, and the amount so received shall be credited to the relief and pension fund. \*\*\* "

Every member of the fire department in each municipal corporation shall be deemed to consent and agree to the deductions made and provided for herein, unless he shall notify the treasurer of such municipality, in writing, to the contrary, in which event he shall be held to have expressly waived any benefits to which he and his dependents would therein be entitled from such fund, but shall be entitled to be paid the amount of any deductions theretofore made from his salary. Persons becoming firemen after the effective date of this act must contribute two per cent of their salary as provided for in this act and shall not have the right to object to such deduction."

It seems to me that if the legislature intended that the two per cent deduction required from full time regular members of the fire department by section 4609 should not be required from that portion of any salary exceeding thirty-six hundred dollars per annum, as in the case of members of the police relief fund (Sec. 4625, G. C.), it would have so provided.

While the board of trustees of the firemen's relief and pension fund is authorized to make rules and regulations relating to certain matters within their jurisdiction, *vide*, Section 4612-3, General Code, certainly they are not empowered to add to or take from the provisions of law as enacted by the legislature. Your last question must, therefore, be answered in the negative.

In view of the foregoing, and in specific answer to your questions, it is my opinion that:

1. By the terms of Section 4605, General Code, the board of trustees of the firemen's relief and pension fund are placed in the category of and on a parity with the heads of departments, boards and commissions of municipalities, and it is the duty of such boards of trustees to prepare and file with the executive authority of the municipality, before June 1st, in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the council or other legislative authority of the municipality, or by the Bureau of Inspection and Supervision of Public Offices. It is the duty of the council or the other legislative authority of the municipality which, by the terms of Section 5625-1, General Code, is the taxing authority of the municipality, to prepare and submit to the Budget Commission, on or before July 15th in each year, a tax budget for the next succeeding fiscal year, containing the information prescribed by Section 5625-31, General Code, and it is the duty of the Budget Commission so to adjust the budgets submitted to it by the municipality and other various taxing subdivisions, as to bring the tax levies required therefor within the limitations prescribed by law, subject, however, to the limitations contained in Section 5625-23, General Code. Either the council or Budget Commission may, therefore, subject to the limitations prescribed by Sections 4605 and 5625-23, General Code, as pointed out in paragraphs 1 and 2 of this syllabus, alter or change the estimates submitted by the board of trustees of the firemen's relief and pension fund to the legislative authority of a municipality.

2. While the council or other legislature authority of a municipality is not governed or controlled by the estimate required to be submitted to it by the board of trustees of a firemen's relief and pension fund, in accordance with the provisions of Sections 4605 and 5625-20, General Code, in submitting its annual budget to the Budget Commission as required by the

section last named, by the express terms of Section 4605, General Code, it is the duty of such council or other legislative authority of such municipality to levy a sufficient tax not exceeding three-tenths of a mill on every dollar, to provide funds for the payment of all relief and pensions granted or that may be granted during the ensuing fiscal year to firemen or to widows and children of deceased firemen, under existing laws or rules adopted pursuant thereto.

3. After a budget shall have been submitted to the Budget Commission by the council or other legislative authority of a municipality, it is the duty of the Budget Commission, subject to the provisions and limitations of Section 5625-23, General Code, so to adjust the estimated amounts required from the general property tax for the municipality and the various other taxing subdivisions, as shown by the budgets submitted by such subdivisions, as to bring the tax levies required therefor within the limitations prescribed by law.

4. By the express terms of Section 4605, General Code, the entire sum collected under a tax levy for the firemen's relief and pension fund is required to be credited to the firemen's relief and pension fund at the earliest practicable time, and a municipal council may not appropriate only a part of such moneys and retain the balance for future appropriations.

5. Where after a tax levy has been made for the firemen's relief and pension fund for the ensuing fiscal year and at the end of such fiscal year there is a balance in such fund, such moneys remain in, or revert to such fund after all appropriations therefrom have been paid, and such balance may be invested in bonds of the kind prescribed by and in accordance with the provisions of Section 4611, General Code. Such balance should be taken into consideration by the board of trustees of the firemen's relief and pension fund when preparing and submitting its estimate as to its needs for the ensuing fiscal year, it being within the sound discretion of such board of trustees as to what extent such balance should receive consideration.

6. An accumulation of unexpended balances derived from the special levy for a firemen's relief and pension fund should receive consideration by the board of trustees of such fund when preparing its annual estimate, as should moneys derived under the provisions of Section 4607, General Code, which provides for the payment of certain fines, penalties, and fees into such fund, and funds derived under the provisions of Section 4609,

General Code, which requires the payment by each full time regular member of the fire department of two per cent of his annual salary into such firemen's relief and pension fund. The consideration to be given to unexpended balances derived from the special tax levy provided by Section 4605, General Code, the fines, penalties and fees provided for in Section 4607, General Code, and the two per cent contributions from full time regular members of the fire department made mandatory by Section 4609, General Code, rests within the sound discretion of the board of trustees to the end that such firemen's relief and pension fund should at all times be in a sound financial condition, without the infliction of an undue burden upon the tax payers of the municipality.

7. The board of trustees of the firemen's relief and pension fund is without authority to provide that two per cent of that portion of a fireman's salary in excess of thirty-six hundred dollars shall not be paid into the firemen's relief and pension fund.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.