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1. SOLDIERS RELIEF COMMISSION—CERTIFICATE AS PROVIDED BY SECTION 5625-33 (d) G. C. REQUIRED TO BE ATTACHED TO CONTRACT FOR EXPENDITURES MADE BY COMMISSION.
2. COMMISSION IN EXERCISE OF DISCRETION COULD IN PROPER CASE ALLOW MORE THAN ONE GRANT—SECTION 2941 G. C.
3. EMERGENCY RELIEF—WHEN FUNDS APPLICABLE TO PAYMENT, SECTION 3391-1 ET SEQ., G. C. ARISE FROM TAX ON PUBLIC UTILITIES, PROVISIONS OF SECTION 5625-33 (d) G. C. ARE NOT APPLICABLE—NO CERTIFICATE OF COUNTY AUDITOR IS ESSENTIAL TO VALIDITY OF PAYMENT OF EMERGENCY RELIEF.

SYLLABUS:

1. The certificate as provided for in Section 5625-33(d), General Code, is required to be attached to a contract for expenditures made by the soldiers relief commission.
2. The soldiers' relief commission, in the exercise of its discretion, could in a proper case allow more than one grant pursuant to Section 2941, General Code.
3. When the funds applicable to the payment of emergency relief, pursuant to Section 3391-1 et seq., General Code, arise from a tax on public utilities, the provisions of Section 5625-33(d) of the General Code are not applicable, and no certificate of the auditor is essential to the validity of payment of such emergency relief.

Columbus, Ohio, May 24, 1950

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir :

This will acknowledge receipt of your letter requesting my opinion, as follows :

“There appears to be some doubt concerning the requirement of furnishing the certificate specified in Section 5625-33 of the Ohio General Code in expenditures made under the provisions of Section 2939 and Section 2941 of the Ohio General Code. This same doubt extends to payments made under the provisions governing the county welfare department who on occasions are required to make payments direct to grocers and hospitals. Specifically, we would like to have your opinion on the following :

“1. Is it necessary that the certificate provided in Section 5625-33(d) be attached for expenditures under the provisions of Section 2941 when such expenditures are made to one other than the relief applicant?

“2. Do the provisions of Section 2941 contemplate something more than one grant under the definitions of ‘sickness, accident or great destitution’?

“3. Are the provisions of Section 5625-33(d) applicable in case of emergency relief granted to applicants under the provisions of the county welfare department when such expenditures are made to others than the relief applicant, for example, grocery orders, hospital bills, etc.

“We believe that the answers to these questions will result in a uniform policy in the various counties of the state.”

Section 5625-33 of the General Code provides in part as follows :

“No subdivision or taxing unit shall :

“* * * (d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate

shall be void and no warrant shall be issued in payment of any amount due thereon. In case no certificate is furnished as hereinbefore required, upon receipt by the taxing authority of the subdivision or taxing unit, of a certificate of the fiscal officer that there was at the time of the making of such contract or order, and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the issuance of a warrant in payment of amounts due upon such contract; but such resolution or ordinance shall be passed within thirty days from the receipt of such certificate; provided, however, that if the amount involved is less than fifty dollars, the fiscal officer may authorize it to be paid without the affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid. * * *

The above cited section is a part of the uniform tax levy law (Sections 5625-1 to 5625-39, inclusive, of the General Code) and it should be noted has reference only to a subdivision or taxing unit. Section 5625-1, General Code, defines the terms used in the uniform tax levy law and reads in part as follows:

“The following definitions shall be applied to the terms used in this act:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation, township, township fire district or township waste disposal district in the state.

* * * (i) ‘Taxing unit’ shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including conservancy districts, metropolitan park districts, sanitary districts, road districts and other districts. * * *

In the case of *State ex rel. The Columbus Blank Book Mfg. Co. v. Ayres, Auditor*, 142 O. S. 217, the fourth branch of the syllabus reads:

“The provision of Section 5625-33(d), General Code, requiring a certificate of a fiscal officer, has application only to a contract made by a subdivision or taxing unit. A board of elections does not come within the definition of a subdivision or a taxing unit under Section 5625-1, General Code.”

Does the soldiers relief commission come within the meaning of a

subdivision or a taxing unit? Sections 2930 to 2941 of the General Code provide for the establishment, organization and operation of a soldiers relief commission in each of the counties of the state. Since your question relates to expenditures of money by said commission, only those statutes pertinent to same will be discussed. Section 2936 of the General Code provides that :

“On such last Monday in May the commission shall meet and determine from such lists the probable amount necessary for the aid and relief of such indigent persons for the ensuing year, together with an amount sufficient in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief shall be established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the county commissioners, who, at their June session shall make the levy necessary to raise the required relief, not to exceed five tenths of a mill per dollar on the assessed value of the property of the county hereinafter authorized.”

It is apparent from the above statute that the commission is charged with the duty of ascertaining the amount required for regular monthly allowance, together with an amount sufficient to take care of any emergency that may prevail during the ensuing year; that after the amount is determined, a certification of said amount should be presented to the county commissioners for appropriation of same and that five-tenths of a mill per dollar on the assessed value of county property shall be levied by the county commissioners for such relief. As stated in Opinion 4134, Opinions of Attorney General for 1935, the second branch of the syllabus :

“Subject to the statutory limitation of five-tenths of a mill set forth in Section 2936, General Code, the board of county commissioners has discretionary power to appropriate to the soldiers relief commission an amount in excess of that certified as necessary for the needs of that commission as provided by Section 2936, General Code.”

Section 2938, General Code, reads :

“Upon the conclusion of such examination and the determination of the monthly allowance, the relief commission shall make a complete list of those to whom relief has been so awarded, showing the monthly amount awarded to each person, and the place of residence of each, and certify it to the auditor of the county. Within ten days thereafter the county auditor shall transmit to each township clerk a list of the names of the persons in his township, and the amount payable monthly to each.”

Section 2939, General Code, provides:

“To each person certified by the relief commission to the auditor, the auditor shall issue his warrant upon the county treasurer for the monthly allowance awarded such person. Upon proper cause shown, such commission may appoint a suitable person to draw, receipt for and properly expend the allowance made to any person under these provisions, after such voucher or certificate is endorsed by the person for whom such allowance is intended, for the benefit of such person, and the indigent members of his family. And no part of such allowance shall be paid to any person without such endorsement. The commission at any meeting, may increase, decrease or discontinue any allowance theretofore awarded, which action shall be certified to the county auditor, who shall amend his list in accordance therewith.”

It is noted that Sections 2938 and 2939, *supra*, refer only to the regular monthly allowance and that the required endorsement of vouchers thereon by recipients is likewise applicable to the regular monthly allowance and not to emergency relief as provided for in Section 2941, General Code; however, before any expenditures are made by the commission, sufficient moneys must be appropriated by the county commissioners. It is true that the soldiers relief commission is neither a subdivision nor a taxing unit, however, said commission is a county board deriving its funds for operation from the taxable property in the county and that any expenditures from such fund are made pursuant to a warrant issued by the county auditor upon the county treasurer, and by virtue of those facts I must conclude that any contract made by the soldiers relief commission is included within the provisions of Section 5625-33(d) of the General Code.

In the case of *Hines v. City of Bellefontaine*, 28 O. O. 538, 539, the sixth branch of the syllabus reads:

“When the funds applicable to the payments required to be made by a contract do not arise from a levy on the general tax list, the provisions of Section 5625-33(d), General Code, are not applicable thereto, and no certificate of the auditor is essential to the validity of the contract.”

Section 2941 of the General Code provides that:

“In case of sickness, accident or great destitution, upon the recommendation of a township or ward committee, the relief commission may, at any time, grant immediate relief to any person entitled thereto under these provisions, under such rules as it may

designate. If any money so awarded as relief shall not be called for by the applicant before the first Monday in December, each year, such amounts shall be paid into the county treasury to the credit of the relief fund.”

The wording of Section 2941, *supra*, clearly indicates that the question of emergency relief should be determined by the relief commission under such rules as it may designate. Whether or not one grant at any particular time would allay the existing emergency is solely within the discretion of the commission, and in the absence of any abuse thereof the commission may allow such emergency relief as it deems necessary.

I am assuming that when you refer to “provisions of the county welfare department” you mean Section 3391-1, *et seq.*, General Code, which relates to the administration of poor relief.

Keeping in mind the case of *Hine v. City of Bellefontaine*, *supra*, your attention is directed to Amended Substitute Senate Bill No. 63, and Amended Substitute Senate Bill No. 51, enacted by the 98th General Assembly. Amended Substitute Senate Bill No. 63 reads as follows:

“Notwithstanding the provisions of any other law to the contrary, during the period from the effective date of this act until December 31, 1950, the taxing authority of any subdivision, other than the board of education of a school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in Section 5625-15 of the General Code, or to supplement general fund appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary or special election to be held at a time therein specified. Such resolution shall conform to the requirements of Section 5625-15 of the General Code, excepting that such levy may not be for a longer period than two years, and such resolution shall specify the date of holding such election, which shall not be earlier than twenty-five days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of

elections of the proper county or counties in the manner provided by Section 5625-17 of the General Code, and the provisions of said section shall govern the arrangements for the submission of such question and other matters and things with respect to such election, to which said Section 5625-17 of the General Code refers, excepting that such election shall be held on the date specified in the resolution, provided, however, only one special election for the submission of such question may be held in any one calendar year and may not be held during the thirty days immediately preceding or following a primary or general election. Provided, further, however, that a special election may be held upon the same day a primary election is held. Publication of notice of such election shall be required to be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks.

“If sixty percent or more of the electors voting on the question at a primary or special election vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. If fifty-five per cent of the electors voting on the question submitted at a general election vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.

After the approval of such levy by vote and prior to the time when the first tax collection from such levy can be made, the taxing authority of the subdivision may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not more than fifty percent of the total estimated proceeds of the levy throughout its life.

“Such notes shall be sold as provided in the uniform bond act. In case such anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year of the life of the levy; and if such notes have been issued, the amount necessary to pay the interest and principal shall be deemed appropriated for such purposes from such levy and appropriations from such levy by the taxing authority shall be limited each year to the balance available in excess of such amount. Such notes may be issued subject to call and redemption prior to maturity at not more than par and accrued interest.

“The terms ‘taxing authority’ and ‘subdivision’ shall have the meanings assigned to them respectively by section 5625-1 of the General Code.”

Amended Substitute Senate Bill No. 51 reads as follows:

“For the purpose of providing funds for poor relief and other welfare purposes and the administration thereof, including payment of premiums to the industrial commission of Ohio for the public work relief employes’ compensation fund and of carrying out the other purposes and provisions of this act, a tax in the nature of an excise tax for the privilege of carrying on its intrastate business in the amount of sixty-five one-hundredths of one per centum of the gross receipts of each electric light, intrastate toll bridge, gas, natural gas, waterworks, telephone, union depot, heating, cooling, water transportation, and express company, on its intrastate gross receipts received during the period covered by the annual reports required by sections 5473-1 and 5470 of the General Code to be filed by all such companies as are hereinbefore mentioned in the years 1949, 1950 and 1951, is hereby levied and imposed upon each such company in each of said years; provided, however, that in the case of each electric light, gas, natural gas and telephone company, a deduction of twenty-five thousand dollars shall be taken from the gross receipts before computing the excise tax herein imposed, as provided in section 5483 of the General Code. Such tax shall not be collected on that portion of such gross receipts as are received from the sale of merchandise and electrical appliances. A tax in the nature of an excise tax in the amount of fifteen-hundredths of one per centum of the value of the portion of the capital stock representing the capital and property owned and used in this state of each sleeping car, freight line and equipment company, as covered by its annual reports required by section 5462 of the General Code, to be filed in the years 1949, 1950 and 1951, is hereby levied and imposed upon each such company in each of said years. The tax so levied shall be in addition to the taxes provided for in sections 5468, 5483, 5485 and 5488 of the General Code, and shall be collected on the dates and in the manner provided in said sections.

“The funds collected under the provisions of section 1 of this act, shall be allocated to each county in the ratio which the average of the aggregate real, public utility and tangible personal property tax duplicate of the county during the previous five years, bears to the average of the aggregate real, public utility and tangible personal property tax duplicate of all the counties in the state during the previous five years.

“In each county where poor relief is furnished by county commissioners on a county wide basis, the budget commission shall determine the amount of money needed for poor relief in the county. In each county where poor relief is furnished by the respective cities and townships, rather than the county commissioners on a county-wide basis, the county budget commission shall

determine the amount of money needed for poor relief in the county, townships and municipalities.

“Any surplus remaining as determined by the county budget commission over and above the needs for poor relief, under the provisions of this act, may be used by the county for other welfare purposes.

“As soon as the taxes hereby levied are collected by the state treasurer, the auditor of state shall draw a voucher and warrant payable to the county treasurer of each county for an amount equal to the county’s share, as hereinbefore determined.”

In view of the foregoing, it is my opinion that :

1. The certificate as provided for in Section 5625-33(d), General Code, is required to be attached to a contract for expenditures made by the soldiers relief commission.
2. The soldiers relief commission, in the exercise of its discretion, could in a proper case allow more than one grant pursuant to Section 2941, General Code.
3. When the funds applicable to the payment of emergency relief, pursuant to Section 3391-1 et seq., General Code, arises from a tax on public utilities, the provisions of Section 5625-33(d) of the General Code are not applicable, and no certificate of the auditor is essential to the validity of payment of such emergency relief.

Respectfully,

HERBERT S. DUFFY,
Attorney General.