

2507.

LOCAL GOVERNMENT FUND—AMENDMENT TO SECTION 5546-18 G. C. EFFECTED NO CHANGE IN METHOD OF ALLOCATING SAME AMONG SEVERAL COUNTIES OF STATE—DEPOSITORY—SEE SECTION 5546-19 G. C.

SYLLABUS:

The amendment of Section 5546-18, General Code, by the 92nd General Assembly, effective January 7, 1938, effected no change in the method of allocating the local government fund among the several counties of the state, as provided by Section 5546-19, General Code, effective December 20, 1935.

COLUMBUS, OHIO, May 25, 1938.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"The 92nd General Assembly, Second Special Session, enacted amended substitute House Bill No. 744 which amended Section 5546-18 of the General Code.

This act became effective January 7, 1938.

Our county auditor has been informed by the Auditor of State that since the enactment of House Bill No. 744 and by the authority claimed to arise from this act, there has been a change in method used by Auditor of State in distributing the local government fund. House Bill No. 744 is entitled 'To amend Section 5546-18 of the General Code, relative to appropriations from the receipts of sales tax and poor relief purposes during the year 1938 and to declare an emergency.' By the terms of this act, the fourth paragraph of Section 5546-18 which formerly read:

'All the residue of said funds existing after the foregoing deductions shall constitute a fund, hereby created, which shall be known as the "Local government fund," the revenues accruing to which during the years 1937-1938 are hereby appropriated to be allocated and distributed to and among the treasuries of subdivisions of this state in the manner provided by law, for the purpose of supplementing, etc.'

was changed to read as follows:

'All the residue of said funds existing after the foregoing deductions shall constitute a fund, hereby created, which shall be known as the "local government fund," the revenue accruing to which during the years 1937 and 1938 are hereby appropriated to be allocated and distributed to and among the treasuries of *the counties* of this state in the manner provided *herein* for the purpose of supplementing, etc.'

You will note from the foregoing that only two changes were made in this paragraph, the one substituting the county treasury for that of the local subdivision and the other substituting the word 'herein' for the words 'by law.'

We are informed by our county auditor that the distribution provided for in Section 5546-19 has been discarded and this section is being treated as though repealed. We therefore desire your opinion whether Section 5546-19 or Section 5546-18 governs the distribution of the local government fund arising under the State Retail Sales Act, and determines the percentage due each county."

I shall first dispose of the change in Section 5546-18, General Code, whereby the General Assembly amended this section so as to provide the disposition of the local government fund which shall be made "to and among the treasuries of the counties of this state", instead of "to any among the treasuries of the subdivisions of this state", as heretofore provided. This change was obviously for the sake of clarity and to remove any possible ambiguity in the law and for no other purposes as such amendment makes no change in the method of distribution heretofore provided as to the authorities to which the Auditor of State pays local government funds. Section 5546-19, General Code, provides the details as to allocation of the local government fund and this section has not been amended by the present General Assembly. It is therein clearly provided that such moneys shall first be distributed to the treasuries of the counties from which they are distributed among the subdivisions within the counties pursuant to allocation by the budget commissions.

Coming to the second change in the paragraph of Section 5546-18, General Code, quoted in your letter, the former provision that the local government fund shall be distributed "in the manner provided by law" was changed to read that such fund shall be distributed "in the manner provided herein". The "manner provided by law" was clearly that manner provided by the succeeding section, 5546-19, General Code, wherein the details as to such distribution are set forth in the following language:

“The local government fund shall be allocated among the local subdivisions in this state in the following manner and subject to the following conditions:

On the first business day of each month the auditor of state shall draw a voucher and warrant payable to the county treasurer of each county for an amount equal to that proportion of the total amount standing to the credit of the local government fund, after the amounts required by this act to be credited to other funds have been so credited, which is represented by the ratio which the average of the real, public utility and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county during the previous five years, bears to the average of the aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state during the previous five years, respectively.

Moneys received into the treasury of a county from the local government fund in the state treasury shall be credited to the undivided local government fund in the treasury of the county. On or before the tenth day of each month, the county treasurer shall distribute and pay the undivided local government fund in the county treasury to the subdivisions therein in the respective amounts allowed by the budget commission to each.”

Since the present amendment of Section 5546-18, General Code, it appears that the office of the Auditor of State has not allocated the local government fund among the various counties of the state as provided in Section 5546-19, *supra*, but, construing the word “herein” as inserted by amendment as having reference to the act in which the word is used, has allocated such local government fund in accordance with the provisions of the third paragraph of such Section 5546-18, as amended. This paragraph consists of entirely new matter added by the amendment. It provides:

“On the voucher and warrant of the auditor of state, the treasurer of state is hereby authorized and directed to allocate and distribute the six million five hundred thousand dollars herein appropriated for poor relief for the year 1938, and all balances left from the six million dollars appropriated for the year 1937, to each county in the ratio which the average of the 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 dupli-

cates of all the counties in the state during the previous five years, respectively.”

The question then is one of statutory construction as to whether or not the reference by the word “herein”, where it is provided that the local government fund shall be distributed to the counties “in the manner provided herein”, in such Section 5546-18, is to the act which contains it or to the chapter of the General Code of which it is a part, comprising the related sections of the so-called Retail Sales Tax Law.

The general principle of statutory construction herein applicable is stated in the case of *In re Pearson's Estate*, 33 Pac. 451, 453, 98 Cal. 603, wherein the court said:

“ ‘Herein,’ as used in legal phraseology, is a locative verb, and its meaning is to be determined by the context. It may refer to the section, the chapter, or the entire enactment in which it is used; and this rule is applicable to the construction of a document as well as of the statute.”

To the same effect is *May vs. Simmons*, 4 Fed. 499, 501, wherein it is held that the phrase “herein provided for” generally, if not always, refers to the chapter or title rather than to the section of the act in which it is found.

A consideration of the context of Section 5546-18, General Code, would alone indicate that the reference intended by the General Assembly in the use of the word “herein” was not to the act in which it was contained (Amended Substitute House Bill No. 744) but to Section 5546-19, *supra*, as the section of the Sales Tax Law containing specific provision for allocation of the local government fund. This is true, first, for the reason that the third paragraph of such Section 5546-18, as amended, refers expressly to the moneys appropriated for poor relief, and not to the local government fund, and, second, for the reason that a construction of the word “herein” other than that which I have indicated would constitute a repeal by implication of such distributive provisions of Section 5546-19, *supra*,—such constructions are, of course, not favored by the courts. *In re Hesse*, 93 O. S. 230; *State, ex rel. vs. Office Bldg. Com.*, 123 O. S. 70.

It is not necessary, however, to finally determine this question upon the foregoing reasoning. Section 5546-18, General Code, as recently amended, was not codified by the Attorney General but is an amendment of a section of the General Code which is one of the sections of the Retail Sales Tax Law. The early case of *McKibben vs. Lester*, 9 O. S. 628, is therefore directly in point and dispositive of the question here under

consideration. The first two paragraphs of the per curiam opinion of the Supreme Court are as follows :

“Where one or more sections of a statute are amended by a new act, and the amendatory act contains the entire section or sections amended, and repeals the section or sections so amended, the section or sections as amended must be construed as though introduced into the place of the repealed section or sections in the original act, and, therefore, in view of the provisions of the original act, as it stands after the amendatory sections are so introduced.

Where, in the first section of the act of May 1, 1854, amending the fourth section of the act of March 14, 1853, in regard to the jurisdiction of justices of the peace in civil cases (Swan’s R. S. 532a), it is provided that ‘under the restrictions and limitations herein provided, justices of the peace shall have . . . concurrent jurisdiction with the court of common pleas, in any sum over one hundred dollars and not exceeding three hundred dollars,’ the words ‘under the restrictions and limitations *herein* provided,’ must be taken to refer to the restrictions and limitations provided in the original act, as it stands after all the amendments made thereto are introduced into their proper places therein.”

The foregoing case was cited and followed in the later decision of *State, ex rel. vs. Cincinnati*, 52 O. S. 419. The pertinent portion of the first branch of the syllabus is as follows :

“An amended section of a statute takes the place of the original section, and must be construed with reference to the other sections, and they with reference to it; the whole statute, after the amendment, has the same effect as if reenacted with the amendment. * * * .”

Adhering to this principle of statutory construction, the conclusion is inescapable that the amended provision of Section 5546-18, General Code, being one of the sections of the Sales Tax Statute here under consideration, must be construed as though it had been a part of the original act, and accordingly the reference of the word “herein” inserted by amendment must be held to be to Section 5546-19, General Code.

It is my opinion that the amendment of Section 5546-18, General Code, by the 92nd General Assembly, effective January 7, 1938, effected no change in the method of allocating the local government fund among

the several counties of the state, as provided by Section 5546-19, General Code, effective December 20, 1935.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2508.

APPROVAL—BONDS, VILLAGE OF SOUTH CHARLESTON,
CLARK COUNTY, OHIO, \$10,000.00, PART OF ISSUE
DATED FEBRUARY 1, 1938.

COLUMBUS, OHIO, May 26, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Village of South Charleston,
Clark County, Ohio, \$10,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of sewerage bonds in the aggregate amount of \$32,000.00, dated February 1, 1938, bearing interest at the rate of $2\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

HERBERT S. DUFFY,

Attorney General.