

I am therefore of the opinion that a county recorder may not require the prosecuting attorney or his assistant to pay the fee set forth in Section 2778, General Code, at the time of application for certified copies of deeds and mortgages recorded in the recorder's office, when such copies are to be used as evidence by the State in the trial of a criminal case in such county.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5137.

SALES TAX—DISTRIBUTION OF COUNTY'S SHARE OF
"LOCAL GOVERNMENT FUND" ALLOCATED TO COUNTY
FROM SALES TAX REVENUE.

SYLLABUS:

Under the provisions of section 5546-20, General Code, as this section is amended in House Bill 572, 116 O. L., Part II, first special session, ten percent of that part of the "local government fund" allocated out of the proceeds of the sales tax to a county having a population of less than one hundred thousand, is to be set aside for distribution to the townships in the county in the aggregate, and this amount of money is to be distributed to the several townships in proportion to their several needs as determined by the Budget Commission.

Inasmuch as the statute expressly states the percentage of the amount of the local government fund allocated to the county that is to be distributed to the townships therein, the amount of money fixed by this percentage is at once the maximum and minimum amount that may be distributed to such townships or to any of them.

COLUMBUS, OHIO, February 4, 1936.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication in which you refer to section 5546-20, General Code, as the same was amended in House Bill 572 recently enacted by the 91st General Assembly, and in which communication you request my opinion upon certain questions therein stated which arise with respect to the construction to be placed upon certain provisions of this section which, among other things, provides for the distribution of the county's share of the "local government fund" allocated to such county from the proceeds of the

sales tax in the manner provided by section 5546-19, General Code. These questions are stated in your communication as follows:

“Our County Auditor desires to know whether the 10 per cent distribution to townships shall be made according to need, in ratio as the number of townships relates to the total amount to be distributed in proportion to their valuation or by some other method.

He further desires to learn whether if the 10 per cent distribution is insufficient to the township within the 10 per cent, the township’s needs can be supplied out of the balance of the local government fund after the 10 per cent has been deducted.”

By section 5546-18, General Code, it is provided that the moneys received into the state treasury as the proceeds of the sales tax shall be credited to the several funds therein provided for, one of which is said “local government fund” as to which it is provided that the revenues accruing to which shall, when appropriated, 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 the local revenues from taxes on property according to value and from other taxes and income available for essential local governmental purposes. Section 5546-19, General Code, relating to the allocation of this local government fund among the local subdivisions in the State, provides that 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 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. This section further provides that 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 and that 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 determined by the budget commission to each of such subdivisions.

Section 5546-20, General Code, which is more immediately concerned with the distribution of the moneys in the local government fund thus allocated and paid into the county treasury, provides that within ten days

after this act became effective the tax commission should cause to be made and should certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to the county in the year 1936 and that immediately upon the receipt of the tax commission's certificate the county auditor shall convene the budget commission of the county in special session for the purpose of reviewing its work of determining tax rates previously done and for the purpose of determining the amounts to be distributed in the year 1936 from the local government fund in the county treasury to the subdivisions entitled thereto. To this end, this section further provides that the budget commission, after affording to each subdivision an opportunity to be heard, and considering all the facts and information laid before it by the county auditor, shall determine the amount needed by each subdivision for current operating expenses for the year 1936, in addition to revenues available from all other sources, in order to enable each to maintain its respective essential local governmental purposes for said year.

The provisions of said section which are more immediately pertinent to the questions presented in your communication read as follows:

“The budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions in which need for additional revenues has been found in proportion to the amount of the needs of each as so determined provided that in counties having a population of less than one hundred thousand, ten percent shall be distributed to the townships therein.”

It is further provided that on the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government fund and certify such percentage shares to the county treasurer, who shall be governed thereby in making distribution of the moneys in the undivided local government fund in the year 1936, pursuant to said act; and that all moneys received into the treasury of a subdivision from the undivided local government fund in the county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision, and shall not be appropriated or expended, by transfer or otherwise, for any other purpose.

Upon consideration of the terms of section 5546-20, General Code, above quoted, it appears that general provision is made for the distribution of that part of the local government fund allocated to the county to and among the several subdivisions in the county in proportion to the needs of each of such subdivisions as determined by the budget commission. This general provision is subject to the proviso that in counties

having a population of less than one hundred thousand, ten percent of the amount of such fund allocated to the county shall be distributed to the townships therein. And with respect to the first question presented in your communication, it is to be noted that although under this proviso, which was enacted as an amendment of this section and of the provisions thereof immediately preceding the proviso, ten percent of the amount of this fund allocated to the county is required to be distributed to the townships therein, no provision is made for the distribution of this ten percent or of any other part of the fund allocated to the county otherwise than on the basis of the needs of the subdivision as determined by the budget commission. It follows, therefore, by way of specific answer to your first question, that an amount of money equal to ten percent of the total amount of the fund allocated to the county is to be set aside for distribution to the townships in the county in the aggregate, and that this amount of money is to be distributed to the several townships in proportion to their several needs as determined by the budget commission.

Your second question suggests the inquiry whether the ten percent of the amount of the fund allocated to the county, which is required to be distributed to the townships, is the maximum amount which can be distributed to such townships as well as the minimum. It will be readily agreed, I think, that under this proviso at least ten percent of the total amount of the fund allocated to the county is required to be distributed to the townships, as their respective needs may be determined. The question here presented is, therefore, whether any part of said fund over and above the ten percent thereof set aside for the townships in the county can be distributed to one or more of such townships on a finding of a need therefor made by the budget commission. As to this, it is to be observed that the express provision of the language found in this proviso is that *ten percent* of the amount of the fund allocated to the county shall be distributed to the townships therein. And there is nothing in the language of this proviso or elsewhere in the provisions of the section or of the Sales Tax Act which suggests that any more than this ten percent is to be distributed to the townships. It may, perhaps, upon considerations appearing outside of the language of this proviso and section, be thought that the legislature in the enactment of this proviso intended thereby to provide only for the minimum amount of money which is to be distributed to the townships. However, this law is clear and explicit in its provision that the amount to be distributed to the townships is ten percent of the amount of the fund allocated to the county, and there is nothing in the language of this proviso to indicate that the amount of money to be distributed to the townships or any of them is to be in excess of this amount. With respect to the rule of statutory construction to be applied in a case of this kind, it was held in the case of Wood-

bury v. Berry, 18 O. S., that "Where the words of a statute are plain, explicit, and unequivocal, a court is not warranted in departing from their obvious meaning, although from considerations arising outside of the language of the statute, it may be convinced that the legislature intended to enact something different from what it did in fact enact." Touching this question, the Supreme Court of this State in the case of State, ex rel., v. Bushnell, 95 O. S., 203, 204, held that "When the meaning of the language employed in a statute is clear, the fact that its application works an inconvenience or accomplishes a result not anticipated or desired should be taken cognizance of by the legislative body, for such consequence can be avoided only by a change of the law itself, which must be made by a legislative enactment and not by judicial construction." Applying these rules of construction in a consideration of the provisions of this section of the General Code as amended by this proviso, I am of the opinion that the second question presented in your communication is to be answered in the negative.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5138.

APPROVAL—BONDS OF NEW MIAMI VILLAGE SCHOOL DISTRICT, BUTLER COUNTY, OHIO, \$113,500.00.

COLUMBUS, OHIO, February 4, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5139.

APPROVAL—BONDS OF PARMA CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, February 4, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.