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AID TO NEEDY CHILDREN, FUND—COUNTY COMMISSIONERS MAY TRANSFER MONEYS FROM SPECIAL FUND FOR AID TO NEEDY CHILDREN, TO COUNTY POOR RELIEF FUND—PROCEDURE—CONSENT BOARD OF TAX APPEALS—ORDER AND DETERMINATION, COURT OF COMMON PLEAS, SHOWING GOOD REASONS AND NECESSITY FOR SUCH TRANSFER AND THERE WILL BE NO RESULTANT INJURY—SECTIONS 5625-13a TO 5625-13g, 1359-36 G. C.

SYLLABUS:

Under authority of Sections 5625-13a to 5625-13g, both inclusive, of the General Code, and in the manner therein authorized, the county commissioners of a county may transfer moneys from the special fund for aid to needy children, created under authority of Section 1359-36 of the General Code, to the county poor relief fund, upon obtaining the consent of the board of tax appeals and upon an order and determination of the court of common pleas that there are good reasons and a necessity for such transfer and that no injury will result from such transfer.

Columbus, Ohio, February 11, 1943.

Hon. Howard E. Faught, Prosecuting Attorney,
Cambridge, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

“The County Commissioners of Guernsey County propose to transfer \$7,500 from an \$18,000 surplus in the Aid to Dependent Children Fund to the Poor Relief Fund of Guernsey County, pursuant to the authority given them in Sections 5625-13a, G. C. to Section 5625-13g, G. C. inclusive.

The Commissioners desire to know if this transfer can be legally made. The question arises by reason of the source of the Aid to Dependent Children Fund which is a fund set up under the Social Security Act.

The Federal Government contributes to the State of Ohio a certain amount of money which is added to by the State of Ohio in a like amount and then distributed to the various counties under the Ohio Aid to Dependent Children statutes. These statutes require that the county government appropriate to this fund a certain amount of money.

The \$18,000 now in this fund has come from the three above mentioned sources. The Aid to Dependent Children Fund is administered by the Probate Court. This Court contends that the County Commissioners have no control of this fund and therefore, no right to transfer moneys out of it.

Please advise whether or not such a transfer would be legal.”

The provisions of statute governing “aid to dependent children” are contained in Sections 1359-31 to 1359-45, both inclusive, General Code. The provisions thereof most pertinent to your inquiry are Sections 1359-36, 1359-37 and 1359-38, General Code, which make provision for the creation of the “special fund for aid to needy children and for defraying the expense of administering” the act providing for such relief. I am advised, however, that the funds which are sought to be transferred are a claimed surplus therein which has accumulated during the period from 1936 to date. For such reason, let us first refer to the sections of statute which existed during the period in which such “excess” was accumulating. (Such sections were radically amended in 1941, 119 O. L., 666.) Until September 4, 1941, Section 1359-36, General Code, required the county to levy a tax on all the property therein, for the purpose of aid to needy dependent children, in such amount as would enable it to transfer from the general fund to the special fund, as above mentioned, an amount of money equivalent to that which would be produced by a levy of not less than fifteen-hundredths of a mill on all of the taxable property therein. Such section then read:

“The county commissioners of each county shall include in the annual tax budget and at the opening of each fiscal year transfer from the general fund to a special fund for aid to needy children and for defraying the expense of administering this act within the county an amount not less than the computed yield of a levy of fifteen one-hundredths of one mill on each dollar of the general tax list of the county, and shall appropriate such amount for the purposes of said special fund. All amounts paid into the treasury of any county from the state treasury pursuant to this act shall be credited to the special fund therein, created pursuant to this section, and shall thereupon be deemed to be appropriated for the purposes thereof, excepting that not more than ten per cent of such amounts, as may be determined by the state department of public welfare, shall be deemed to be appropriated for defraying the expense of administering this act within the county. If the county commissioners of any county fail to comply with this section, the state department of public welfare shall request the attorney general to institute proceedings in mandamus or otherwise for the enforcement thereof, and it shall thereupon be his duty so to do.”

Also placed in such fund were those moneys allocated to the county by the state, from appropriations made by the legislature for purposes of aid to needy dependent children, under authority of former Section 1359-38 of the General Code, which provided as follows:

“* * * Prior to the beginning of each fiscal year or as soon thereafter as such appropriation shall be available, the state department of public welfare shall apportion such appropriation among the several counties in the state in the proportion that the number of children under sixteen years of age in each county as estimated by the department of public welfare, bears to the total number of such children in the state as so estimated. The action of the department under this section shall be certified to the director of finance, the auditor of state and, with respect to any county, the county commissioners, the county auditor and the county administration of such county.”

Also placed therein were moneys distributed by the state to the counties from funds entrusted to it by the federal government under authority of Sections 601 to 606 of Title 42 U. S. C. “for the purpose of enabling each State to furnish financial assistance to needy dependent children.” Such moneys were distributed to the counties under authority of former Section 1359-37 of the General Code, which provided:

“All amounts received by the state from the federal government under the provisions of the social security act, or any act of the congress of the United States amendatory thereof or in substitution therefor, for aid to dependent children, shall be paid into the state treasury to the credit of a special trust fund therein to be designated by such name or title as the auditor of state may prescribe. From such special trust fund there shall be apportioned to each county in this state an amount for each fiscal year equal to one-third of the total of the sums expended in the county in such year under the state plan provided for in this act and approved by the social security board, not counting so much of such expenditure with reference to any child for any month as exceeds eighteen dollars, or if there is more than one child in the same home, as exceeds eighteen dollars for any month with respect to one such child and twelve dollars for each month with respect to each of the other children; and not counting any of such expenditure on account of any child sixteen years or more of age.

Before the beginning of each quarter of each fiscal year, the state department of public welfare shall estimate the amount to be apportioned to each county for such quarter under this section on the basis of existing or anticipated state appropriations pursuant to this act and the amount to be contributed by the county pursuant to this act, with respect to which the county auditor of each county shall on request of the department furnish the neces-

sary information, and shall thereupon certify to the director of finance, the auditor of state and, with respect to any county, the county commissioners, the county auditor and the county administration of such county, each amount so estimated, reduced or increased, as the case may be, by any sum which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the county for such quarter, except to the extent that such sum has been applied to make an amount certified for any prior quarter greater or less than the amount estimated by the department for such county for such prior quarter."

From an examination of the appropriation acts during the last several years, it would seem that the legislature has appropriated annually the sum of \$1,600,000 which has been distributed among the counties under authority of former Section 1359-38 of the General Code and for the purposes therein mentioned. I am further informed that, under authority of former Section 1359-37 of the General Code, the state has made allocations of federal funds to the extent and as therein provided, which have been commingled in the county "special fund for aid to needy children," etc.

The federal government in 1935 appropriated the sum of \$24,750,000 to be distributed among the states during the year ending June 30, 1936, "for the purpose of enabling each State to furnish financial assistance, . . . to needy dependent children" (see Section 601, Title 42 U. S. C.), and I am informed that each year thereafter has made similar appropriations for such purpose. Section 603 of such title, which provides the method of distribution of the moneys so appropriated among the several states, reads as follows:

"(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to dependent children, for each quarter, beginning with the quarter commencing July 1, 1935, an amount, which shall be used exclusively for carrying out the State plan, equal to one-third of the total of the sums expended during such quarter under such plan, not counting so much of such expenditure with respect to any dependent child for any month as exceeds \$18, or if there is more than one dependent child in the same home, as exceeds \$18 for any month with respect to one such dependent child and \$12 for such month with respect to each of the other dependent children.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Board shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter

under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than two-thirds of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Board may find necessary.

(2) The Board shall then certify to the Secretary of the Treasury the amount so estimated by the Board, reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, except to the extent that such sum has been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Board for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Board, the amount so certified."

I am further informed that during the year 1936 and each year thereafter the State of Ohio has had in effect a plan approved by the federal government for the granting of relief to needy dependent children and has received from the federal government allotments, during each of such years, of money from the federal government, which have been apportioned among the counties under authority of former and present Section 1359-37 of the General Code, for the purpose of aid to needy dependent children.

Section 1359-37 of the General Code was amended in 118 O. L., 741 (effective June 22, 1940), to read as follows:

"All amounts received by the state from the federal government under the provisions of the social security act, or any act of the congress of the United States amendatory thereof or in substitution therefor, for aid to dependent children, shall be paid into the state treasury to the credit of a special trust fund therein to be designated by such name or title as the auditor of state may prescribe. From such special trust fund, from and after the first day of January, 1940, there shall be apportioned to each county in this state an amount for each fiscal year equal to one-half of the total of the sums expended in the county in such year under the state plan provided for in this act and approved by the social security board, not counting so much of such expenditure as

exceeds the aggregate of the amounts with respect to which the state of Ohio is entitled to be reimbursed in whole or in part under any law of the United States now or hereafter in force.

Before the beginning of each quarter of each fiscal year, the state department of public welfare shall estimate the amount to be apportioned to each county for such quarter under this section on the basis of existing or anticipated state appropriations pursuant to this act and the amount to be contributed by the county pursuant to this act, with respect to which the county auditor of each county shall on request of the department furnish the necessary information, and shall thereupon certify to the director of finance, the auditor of state, and with respect to any county, the county commissioners, the county auditor and the county administration of such county, each amount so estimated, reduced or increased, as the case may be, by any sum which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the county for such quarter, except to the extent that such sum has been applied to make an amount certified for any prior quarter greater or less than the amount estimated by the department for such county for such prior quarter; and except, further, that any accumulated excess for any quarter of the calendar year 1940 shall not be applied to increase the amount hereafter estimated for any one quarter, but may be divided among and spread over not more than six consecutive subsequent quarters as the state department of public welfare may determine."

Sections 1359-36 and 1359-38 of the General Code were amended in 119 O. L., 666, 667 (effective September 4, 1941), to read as follows:

Section 1359-36.

"The county commissioners of each county shall include in the annual tax budget and transfer from the general fund to a special fund for aid to needy children and for defraying the expenses of administering this act within the county an amount not less than the computed yield of a levy of fifteen one-hundredths of one mill on each dollar of the general tax list of the county. All amounts paid into the treasury of any county from county, state and federal funds pursuant to this act shall be credited to the special fund therein, created pursuant to this section, and shall thereupon be deemed to be appropriated for the purpose of carrying out the provisions of this act including the necessary cost of administration as approved by the state department of public welfare.

The county auditor shall issue warrants upon the county treasurer for the payment of the amounts which have been certified by the county administration to be due and payable under this act.

If the county commissioners of any county fail to comply with this section, the state department of public welfare shall request the attorney general to institute proceedings in mandamus or otherwise for the enforcement thereof, and it shall thereupon be his duty so to do."

Section 1359-38.

"Any amount appropriated by the general assembly for any fiscal year for aid to needy children under this act from sources other than the special trust fund mentioned in section 1359-37 of this act shall, unless otherwise provided in the act making such appropriation, be apportioned to each county in this state as follows:

Prior to the beginning of each fiscal year or as soon thereafter as such appropriation shall be available, the state department of public welfare shall apportion such appropriation among the several counties in the state in the proportion that the number of children under sixteen years of age in each county as estimated by the department of public welfare bears to the total number of such children in the state as so estimated; provided that if the department, on the basis of information furnished to or obtained by it pursuant to this act, shall have determined that said basis of apportionment does not afford means for the payment of aid in respect of each dependent child in this state with substantial equality under similar conditions, the department may, prior to making such apportionment for any year, by rule alter said basis so as to conduce to greater equality, and make such apportionment according to such rule; but in any such apportionment, each county shall be entitled to receive from the state under this section not less than twenty-five per cent of the amount of its aggregate expenditures under this act with respect to which the state of Ohio is entitled to be reimbursed in whole or in part under any law of the United States now or hereafter in force. In any such rule, it may be provided that each of the several counties shall provide by local taxation an amount specified therein, which amount shall, in that event, be appropriated for that purpose, in lieu of the amount computed under section 1359-36 of the General Code.

The action of the department under this section shall be certified to the director of finance, the auditor of state and, with respect to any county, the county commissioners, the county auditor and the county administration of such county."

Such statutes contain the provisions for the placing of moneys in the special fund for relief to needy dependent children. Their provisions in such respect provide in general as follows:

1. During the period prior to September 4, 1941, the county was required to and presumably did levy taxes sufficient in

amount to produce sufficient revenue in the general fund so that the county could and did transfer therefrom to the special fund for aid to dependent children an amount of at least that which would be produced by a levy of not less than fifteen-hundredths of a mill levy on all the taxable property in the county (former Section 1359-36, General Code).

2. Prior to January, 1941, the state must have allocated and paid to the county for purposes of such fund from moneys allocated to the state for purposes of needy dependent children one-third of the sums expended by the county during the fiscal year pursuant to the plan adopted, and approved by the state and federal governments (former Section 1359-37, General Code).
3. From 1936 until September, 1941, the state must have allocated to and paid from the moneys appropriated for the purpose an amount determined by the ratio that the estimated number of children in such county under the age of sixteen years bears to the number of such children in the state (former Section 1359-38, General Code).
4. Subsequent to January, 1940, the state was required to allocate to the counties from the federal funds in its possession one-half of the funds annually expended by the county under its approved plan for aid to dependent children (Section 1359-37, General Code).
5. After September 4, 1941, the state was and is required to allocate to the county for aid to dependent children, from moneys appropriated by the general assembly for such purpose, not less than twenty-five per cent of the moneys expended by it during the year for such purpose (Section 1359-38, General Code).
6. The county since September 4, 1941, is still required to include in its annual levy a sufficient sum to enable it to pay into the special fund for the purpose an amount equal to that which would be produced by a levy of fifteen-hundredths of a mill on all the taxable property in the county, unless the director of public welfare by rule shall provide another rate or method to produce funds for such purpose, as specified in Section 1359-38, General Code (Section 1359-37, General Code).

I am informed that the provisions of law above referred to have been complied with and that such allocation produced a surplus in the fund for aid to dependent children, and that the fund sought to be transferred is made up of moneys derived in part from federal and state contributions and from county taxation and that it is now impossible to determine what portion of the fund was derived from each source.

Under date of October 25, 1939, I rendered an opinion to the Prosecuting Attorney of Williams County (Opinions of the Attorney General for 1939, Vol. III, page 1995), as to whether the money transferred to the "aid to dependent children fund" in excess of the fifteen-hundredths of a mill minimum, required by Section 1359-36 of the General Code to be levied for such purpose, might be retransferred to the general fund when not needed for purposes of such aid. In such opinion I ruled that Section 5625-13 of the General Code contained no authority for such transfer, but that such transfer could be made as provided in Sections 5625-13a to 5625-13g, both inclusive, of the General Code. In such opinion I did not consider the question as to whether the proceeds contributed by either the state or the federal government were subject to transfer, either with or without consent of the common pleas court, to the general fund of the county. No such opinion had then been requested of me.

Upon reexamination of the statutes with reference to the transfer of funds from one fund of a subdivision to another, I am not inclined to depart from the conclusion stated in such former opinion that no authority of law exists for the transfer of such funds unless it be contained in Sections 5625-13a to 5625-13g, both inclusive, of the General Code. In other words, Section 5625-13 of the General Code does not authorize the transfer of the funds mentioned in your inquiry. However, Section 5625-13a of the General Code provides as follows:

"In addition to the transfers authorized in section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes."

In the second syllabus of *City of Lakewood v. Rees*, 132 O. S., 399, the Supreme Court held, with reference to Sections 5625-13a to 5625-13g, both inclusive, of the General Code, that such provisions relate solely to the transfer of funds derived from taxation and not to the transfer of funds accumulated by the subdivision from other sources. If such were a correct statement of the effect of such sections, it would appear that I must come to the conclusion that no authority could be contained in such sections for the transfer of that part of the moneys in question which was derived from the state or the federal government's contribution.

However, in *City of Niles v. Union Ice Corporation*, 133 O. S., 169, the same court took the opposite view of the effect of Section 5625-13a of the General Code and held in the first paragraph of the syllabus that:

“The provisions of Section 5625-13a, General Code, relate to the transfer of funds of a political subdivision, whether tax-derived or not, and include, in their authorization to transfer, funds derived from the maintenance and operation of an electric light and power system, but do not apply to waterworks funds by reason of the provisions of Section 3959, General Code. (Paragraph 2 of the syllabus in the case of *City of Lakewood v. Rees*, 132 Ohio St., 399, modified in part.)”

While, as pointed out in the *City of Niles* case, above cited, if the funds in question were trust funds of which the city had but the legal title, there would be no doubt but that the city would have no right under authority of either Section 5625-13a or any other section of the General Code to transfer such trust funds to another fund and use the same for other than the purposes of the trust, for the reason that such transfer and use would be in violation of the contract and property rights of the beneficiaries or cestui que trustent; nevertheless, an examination of the provisions of the statutes above quoted scarcely sustains the view that the moneys in question are trust funds.

From the former and present statutes above quoted, it is apparent that the federal funds transferred to the county by the state were as reimbursements for moneys expended during the year for purposes of aid to needy children in conformity with the plan theretofore approved by both the state and the federal governments. (See former Section 1359-37 and present Section 1359-37 of the General Code.) The statute specifically states that such allocation is made to the subdivision and not for the use of any other person or persons. Section 603 of Title 42 U. S. C. provides that the quarterly federal contribution is in reimbursement for aid to dependent children during the preceding quarter year. Similarly, the allocation by the state of moneys appropriated by the legislature under authority of former Section 1359-38 of the General Code could scarcely be said to vest the bare legal title thereto in the subdivision. Such language is that such moneys shall be “apportioned” among the several counties according to the formula set forth in such section. There is no conveyance of the equitable title to one person or to persons and the legal title to another such as is necessary to create a trust. It is elemental that a trust cannot exist unless there are beneficiaries who are different in person than the trustee. In other words, a trust cannot exist where the trustee and the beneficiaries are identical. A trust exists only when the equitable title to the trust res is in one or more persons while the equitable title is in another.

Similarly, when a distribution is made by the state to a subdivision under authority of present Section 1359-37 of the General Code, above quoted, no trust could be created with reference to the moneys so paid. Such section merely makes reimbursement to the counties for moneys already expended.

I express no opinion herein as to whether under existing facts, concerning which I am not informed, the court is required to authorize the transfer concerning which you inquire. Section 5625-13f of the General Code reads as follows:

"If, upon the hearing the court finds that the notice has been given as herein required, that the petition states sufficient facts, that there are good reasons, or that a necessity exists for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer."

Such section places certain judicial duties upon the Court; that is, the court must first determine whether the petition alleges sufficient facts and then from the evidence determine whether (1) there are good reasons for the transfer, (2) no injury will result from the transfer, and (3) a necessity exists for the transfer. The determination of such questions is a function of the common pleas court. It would be presumptuous for me herein to express any view concerning the same. I therefore have given no consideration to such matters.

Specifically answering your inquiry, it is my opinion that under authority of Sections 5625-13a to 5625-13g, both inclusive, of the General Code, and in the manner therein authorized, the county commissioners of a county may transfer moneys from the special fund for aid to needy children, created under authority of Section 1359-36 of the General Code, to the county poor relief fund, upon obtaining the consent of the Board of Tax Appeals and upon an order and determination of the court of common pleas that there are good reasons and a necessity for such transfer and that no injury will result from such transfer.

Respectfully,

THOMAS J. HERBERT,
Attorney General.