

necessary that the monies to which you refer must be appropriated by the legislative authority of the city before they may be expended. It is clear, however, that such funds may not be expended for any other purpose than that mentioned in section 1080-17, *supra*.

In the case of *City of Fostoria et al vs. State*, 125 O. S. 1, the court clearly indicated that the city council has control over the expenditures of a city health district.

In specific answer to the question propounded, it is my opinion that a city board of health may not expend the funds distributed to it under section 1080-17 of the General Code unless said funds are first appropriated by the city council.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4072.

ASSESSMENT FOR HIGHWAY PURPOSES LEVIED AGAINST SCHOOL
LANDS UNDER SECTION 5330, G. C., PAID WHEN.

SYLLABUS:

Assessments for highway purposes duly levied against school lands under section 5330, General Code, and which are not in excess of the benefits conferred by such improvement, should be paid out of the net rentals of such lands so assessed, and if there is no money in fund from such rentals to pay said assessments, notes for the required sum should be executed and sold payable in the number of years that will be required for such rentals to meet said assessments as are not already obligated for the payment of prior assessments.

COLUMBUS, OHIO, March 19, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“An assessment of \$418.05 was made against the N. ½ (320 acres) of Section 16, Marion Twp., Hardin County, Ohio, original surveyed School Lands, by the Commissioners of Hardin County, Ohio, for the construction of what is known as the Stambaugh & Huston Pike, along the North Side of said lands.

The Auditor of said county has presented a bill of \$418.05 to the State Auditor, acting as State supervisor of School & Ministerial Lands, requesting that said assessment be paid.

Please give us your written opinion as to the legality of payment of said assessment.”

I understand that the lands in question are held on leases for terms not renewable forever, and I assume that the assessments were duly levied in accordance with the laws relating thereto.

Section 5330, General Code, reads in part as follows:

"Whenever such school or ministerial lands are held under lease for terms of years renewable forever, whether subject to revaluation or not, such lands shall for all purposes of special assessment for improvements benefiting such land be considered as the property of the lessee. Whenever such lands are held on leases for terms not renewable forever, such lands shall be subject to special assessments benefiting such lands, which shall be paid out of the annual rents accruing to the trust.

Whenever it appears that the net annual rents or earnings accruing from such lands will be insufficient to pay the sum of such assessment as the same becomes payable, the state supervisor of school and ministerial lands, upon the request of the trustees in local charge of such lands shall issue and sell notes for the sum so required, payable in such number of years as will be required for the net rents to meet the whole sum of such assessment, and bearing interest at not more than five per centum per annum as the state supervisor shall determine. But such notes shall not be sold for less than par. Such notes and interest thereon shall be a lien upon the rents or earnings of the proceeds of any sale of such lands so assessed, and the sum of such notes and interest shall be paid out of such rents or earnings or proceeds of such sale by the state supervisor."

This statute was held constitutional in the case of *State, ex rel., vs. Tracy, Auditor*, 125 O. S. 399. The second and third branches of the syllabus of this case read as follows:

"2. The rentals of land in Section 16 are liable for and should be applied to the payment of assessments for drainage purposes, when the proceedings to assess are brought under and by virtue of Section 5330 of the General Code of Ohio.

3. Section 5330 of the General Code of Ohio is not unconstitutional and is not violative of the compact between the United States and the State of Ohio, whereby Section 16 in Marion Township, Hardin County, Ohio, was granted by the United States to the State of Ohio in trust for the use of the schools of Ohio."

The court followed this decision in the case of *State, ex rel., vs. Tracy, Auditor*, 126 O. S. 277, in which it ordered the execution of notes for the payment of drainage assessments against said school lands payable in such number of years as will be required for the net rents to meet the whole sum of such assessments.

I can see no distinction between assessments for sewer or drainage purposes and assessments for highway purposes and, therefore, I am of the view that assessments for highway purposes duly levied against school lands, and which are not in excess of the benefits conferred by such improvement, should be paid out of the net rentals of such lands so assessed.

I understand that in pursuance of the order of the court in the latter case above referred to, notes have been issued in anticipation of the collection of the rentals from the lands in question and consequently such rentals are obligated for such assessments for a period of years in the future. Of course, in the execution of notes for the payment of the assessments referred to in your letter, the notes should be made payable in the number of years that will be required for such net rentals to meet said assessments as are not already obligated for the payment of prior assessments.

Specifically answering your inquiry, I am of the opinion that assessments for highway purposes duly levied against school lands, and which are not in excess of the benefits conferred by such improvement, should be paid out of the net rentals of such lands so assessed, and if there is no money in fund from such rentals, to pay said assessments, notes for the required sum should be executed and sold payable in the number of years that will be required for such rentals to meet said assessments as are not already obligated for the payment of prior assessments.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4073.

VILLAGE—LEGISLATIVE AUTHORITY THEREOF MAY DETERMINE PERCENTAGE OF SURPLUS OF VILLAGE WATERWORKS FUNDS PAYABLE ON WATERWORKS BONDS WHEN.

SYLLABUS:

The legislative authority of a village has discretion to determine how much of the surplus of the fund of a village owned waterworks after the payment of the operating expenses thereof is to be used for the purpose of paying water works bonds, and the board of public affairs has no control over the portion of such surplus which has been appropriated for such purpose.

COLUMBUS, OHIO, March 19, 1935.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“Relative to the disposition of earnings of a publicly owned water works system in cities, section 3959 G. C., reads as follows:

‘After paying the expenses of conducting and managing the waterworks, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest or any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for water works purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever.’

Section 4361 G. C., provides that in villages a board of public affairs shall manage and control publicly owned waterworks and electric light plants and reads in part as follows:

‘ * * * The board of trustees of public affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon, the director of public service as provided in sections 3955, 3959, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333 and 4334 of the General Code, and all powers and duties relating to water works in any of