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POLICE AND FIREMEN—MUNICIPAL CORPORATION—NOT ELIGIBLE IN ANY YEAR TO RECEIVE AS DISTRIBUTION TO ITS POLICE RELIEF AND PENSION FUND PAYMENT FROM STATE “LOCAL POLICE AND FIREMEN’S RELIEF AND PENSION FUND”—SECTION 4631-4 G. C.—PROVISO, AS TO THAT YEAR THERE HAS BEEN COMPLIANCE WITH SECTION 4621 G. C.—COMPLIANCE INCLUDES LEVY BY CORPORATION OF TAX THEREIN PROVIDED ON ALL REAL AND PERSONAL PROPERTY AS LISTED FOR TAXATION.

SYLLABUS:

A municipal corporation is not eligible in any year to receive, as a distribution to its police relief and pension fund, payment from the state’s “local police and firemen’s relief and pension fund,” under authority of Section 4631-4, General Code, unless, as to that year, it has complied with the provisions of Section 4621, General Code; and compliance with such provisions includes the levy by such municipal corporation of the tax therein provided on all real and personal property as listed for taxation in such municipal corporation.

Columbus, Ohio, May 14, 1951

Hon. C. Watson Hover, Prosecuting Attorney
Hamilton County, Cincinnati, Ohio

Dear Sir:

This will acknowledge your request for my opinion as follows:

“This office has been consulted by the Auditor of Hamilton County, Ohio, relative to the effect and operation of Sections 4621 and 4631-4 of the General Code which has to do with the Police Relief Fund. General Code 4621 provides for each municipal corporation which has a Police Relief and Pension Fund to levy

a tax of .3 mill on each dollar value of the real and personal property listed for taxation in the municipality to provide funds for the Police Relief and Pension Fund.

“General Code 4631-4 directs the State Auditor to pay from the ‘local Police and Firemen’s Relief and Pension Fund’ to each such municipality an amount equal to .1 mill on each dollar value on the real and personal property listed for taxation in the municipality for the benefit of the municipality’s Police Relief and Pension Fund—provided the municipality complies with General Code 4621.

“One of the villages in this county has levied no taxes on real estate for village purposes for many years, but has operated the village with money received from other sources, principally proceeds of taxes on tangible and intangible personal property. This village did not levy a tax of .3 mill on each dollar value of the real and personal property to provide funds for the Police Relief and Pension Fund, but instead appropriated from its general fund an amount equal to .3 mill for its Police Relief and Pension Fund.

“The question now arises as to whether this village will receive the .1 mill amount from the State Auditor in view of the fact that no specific .3 mill levy was made.

“The answer to this question appears to depend upon what is mandatory under General Code 4621—paying the .3 mill amount from proceeds of taxes or levying the .3 mill tax. The Attorney General’s office dealt with this subject in two previous opinions, namely opinion No. 2389 in 1938 Ohio Attorney General’s Opinions, page 921, and informal opinion No. 115 rendered July 17th, 1950, addressed to Mr. G. H. Butt, chairman of the Board of Trustees, Becksley Police Relief and Pension Fund.

“In our opinion, neither of the above opinions fully dispose of this question.

“It is respectfully requested that you render an opinion as to whether the State Auditor is required to pay the .1 mill amount to a municipality which has appropriated .3 mill amount from the proceeds of taxes but has not levied .3 mill tax.”

Section 4631-4, General Code, reads in part as follows:

“There is hereby created in the state treasury a fund which shall be designated as the ‘local police and firemen’s relief and pension fund.’ The treasurer of state shall be the custodian of the fund and the fund shall be distributed in the manner provided for in this section. The fiscal officer of each municipal corporation in which a police or firemen’s relief and pension fund has been established pursuant to the provisions of section 4600 or 4616 of the General Code shall, during the month of March, 1948, and

each March thereafter, certify to the auditor of state the name of such fund or funds and the total value of the real and personal property as listed for taxation in the municipal corporation. * * *

The auditor of state shall, upon receipt of each certification provided for herein, issue a warrant on the treasurer of state, payable out of the 'local police and firemen's relief and pension fund,' in favor of each police and firemen's relief and pension fund in an amount equal to one-tenth of a mill on each dollar value of real and personal property as listed in the certification, provided, however, no distribution shall be made hereunder to any police or firemen's relief and pension fund in any calendar year if the assets of said fund as of December 31st of the next preceding calendar year are in excess of an amount equal to the assets of said fund as of December 31, 1947, plus an amount equal to one thousand dollars multiplied by the number of members of said fund, and provided further, no distribution shall be made hereunder in the year 1948 or any year thereafter to a police or firemen's relief and pension fund if the legislative body of the municipal corporation or township in which the fund has been created fails to comply with the provisions of sections 4605, 4615-6 or 4621 of the General Code."

In view of the final provision in this section, the specific question thus presented is what constitutes an instance, in the case of a municipality, of failure "to comply with the provisions of Sections 4605, 4615-6 or 4621 of the General Code." These sections read as follows:

Section 4605, General Code:

"In each municipal corporation in which a *firemen's* relief and pension fund has been or is hereafter established pursuant to the provisions of section 4600 of the General Code the taxing authority thereof each year, in the manner provided by law for the making of other municipal levies and in addition to all other levies authorized by law, shall levy a tax of three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality for the purpose of providing funds for the payment of benefits and pensions from the firemen's relief and pension fund as provided by law. All revenues derived from such levy shall be credited to the firemen's relief and pension fund of the municipal corporation.

"If at any time the moneys to the credit of the firemen's relief and pension fund are not sufficient to meet current relief and pension payments the legislative authority of the municipal corporation may appropriate, from the general fund of the municipal corporation to the firemen's relief and pension fund, sufficient money to meet such payments." (Emphasis added.)

Section 4615-6, General Code:

“*Township trustees* of townships subject to the provisions of section 4615-2 of the General Code, on the first day of February and August of each year, shall appropriate from the general fund of the township to the fund known as ‘township firemen’s relief and pension fund’ an amount of money equal to fifteen one-hundredths of a mill of each dollar value of all real and personal property as listed for taxation in the township and outside of municipal corporations.

“If at any time the moneys to the credit of the township firemen’s relief and pension fund are not sufficient to meet current relief and pension payments the legislative authority of the township may appropriate, from the general fund of the township to the township firemen’s relief and pension fund, sufficient money to meet such payments.” (Emphasis added.)

Section 4621, General Code:

“In each municipal corporation in which a *police relief* and pension fund has been or is hereafter established pursuant to the provisions of section 4616 of the General Code the taxing authority thereof each year, in the manner provided by law for the making of other municipal levies and in addition to all other levies authorized by law, shall levy a tax of three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality for the purpose of providing funds for the payment of benefits and pensions from the police relief and pension fund as provided by law. All revenues derived from such levy shall be credited to the police relief and pension fund of the municipal corporation.

“Provided, however, that if any municipal corporation shall have established a sanitary police fund, which fund shall have been merged by ordinance with the police relief and pension fund, and the board of trustees of the police relief and pension fund shall have succeeded to the duty of providing for the beneficiaries of said sanitary police pension fund out of the police relief and pension fund, in such event the council of such municipality, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, and in lieu of the levies provided for in section 4637 of the General Code and the first paragraph of this section, shall levy each year a tax of thirty-five one hundredths of a mill upon all the real and personal property as listed for taxation in the municipality for the purpose of providing funds for the payment of benefits and pensions from the police relief and pension fund as provided by law. All revenues derived from such levy shall be credited to the police relief and pension fund of the municipal corporation.

“If at any time the moneys to the credit of the police relief and pension fund are not sufficient to meet current relief and pension payments, the legislative authority of the municipal corporation may appropriate, from the general fund of the municipal corporation to the police relief and pension fund, sufficient money to meet such payments.” (Emphasis added.)

Section 4615-6, General Code, does not, by its terms, purport to apply in any way to a municipality, and it would obviously be impossible for any municipality to comply with the provisions of this section. I must conclude, therefore, that the final provision in section 4631-4, General Code, must be considered to include the implication that a township or a municipality, as the case may be, is required, in order to receive its distributive share from the fund created by this section, to comply only with such of the three designated sections, quoted above, as are *applicable* to the subdivision concerned.

It is clear that the provisions of Section 4605, General Code, are applicable to a municipality if such municipality is required, under the provisions of Section 4600, General Code, to maintain a firemen's relief and pension fund. It is likewise clear that Section 4621, General Code, is applicable to a municipality if such municipality is required, under the provisions of Section 4616, General Code, to maintain a police relief and pension fund.

Since your inquiry relates only to the police relief and pension fund, and makes no mention of the firemen's relief and pension fund, I am assuming, for the purpose of this inquiry, that the municipality concerned is not required, under the provisions of Section 4600, General Code, to maintain the latter fund. Thus, referring again to the final provision of Section 4634-4, General Code, the specific question now becomes what constitutes an instance or failure on the part of a municipality to comply with the provisions of Section 4621, General Code.

It will be observed that this section provides, in what appears to be mandatory language, that the municipality “shall levy a tax of three-tenths of a mill on each dollar upon all real and personal property as listed for taxation in the municipality” for purposes of the police pension and relief fund.

Whether this provision is mandatory or directory it is not necessary here to consider. What is abundantly clear is that there can be no

“compliance” with this statute unless such levy is made. The final paragraph of this section, it is true, provides permissive authority for appropriations from the general fund of the municipality in the event there shall not be a sufficient balance in the police relief and pension fund to meet current payments therefrom. I perceive nothing in this section which suggests that this is anything more than the provision of a source of funds *supplemental* to funds derived from other sources including the three-tenths of a mill levy. Nowhere in this section is there to be found language which suggests that such appropriations may be made as an *alternative* to the three-tenths of a mill levy. I conclude, therefore, that in the absence of such levy there is a failure of compliance with Section 4621, General Code.

It therefore follows that since the payments to the municipality from the state fund, as authorized by Section 4631-4, General Code, can be made only in cases where the municipality has complied with Section 4621, General Code, a municipality which has failed to levy the tax therein provided is not eligible to receive such payments.

In your inquiry you have invited my attention to the conclusions reached in Opinions of the Attorney General for 1938, No. 2389, and in my predecessor’s informal opinion No. 115, dated July, 1950.

I do not consider that the conclusions reached in these opinions are necessarily applicable to the question here involved, for the reason that in neither of them was the right of the municipality to receive payments under the provisions of Section 4631-4, General Code, under consideration.

Accordingly, in specific answer to your inquiry, it is my opinion that a municipal corporation is not eligible in any year to receive, as a distribution to its police relief and pension fund, payment from the state’s “local police and firemen’s relief and pension fund,” under authority of Section 4631-4, General Code, unless, as to that year, it has complied with the provisions of Section 4621, General Code; and compliance with such provisions includes the levy by such municipal corporation of the tax therein provided on all real and personal property as listed for taxation in such municipal corporation.

Respectfully,

C. WILLIAM O’NEILL
Attorney General