

to the same persons passing by will or intestacy from the donor, for the purpose of determining the tax under that law. This conclusion is not advanced with any degree of confidence, as intimated, but this department, not being able to advise the commission categorically that this position is incorrect, recommends that the position be taken by the commission, and in case of contest presented to a court for final determination.

This advice makes it unnecessary for the second group of questions submitted by the commission to be considered.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2375.

HEALTH FUNDS—MAY BE TRANSFERRED FROM ONE ITEM TO ANOTHER WITHIN TOTAL AGGREGATE AMOUNTS APPROVED BY BUDGET COMMISSIONER.

Health funds are not divided according to the itemized statement submitted by the district board of health, as provided in section 1261-40, but such funds are regarded as a general health fund and may be expended in whole or in part for any of the purposes mentioned in said itemized statement.

COLUMBUS, OHIO, August 26, 1921.

State Department of Health, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date received, in which you request the opinion of this department as follows:

“Section 1261-40 G. C. requires that the board of health of a general health district ‘estimate in itemized form the amounts needed for the current expenses of such district for the fiscal year beginning on the first day of January next ensuing’. This estimate must be certified by the board of health to the county auditor and by him submitted to the budget commissioners. The budget commissioners ‘may reduce any item or items in such estimate, but may not increase any item or the aggregate of all items.’

The section further provides the procedure for raising funds for the ‘district health fund’.

The question on which I wish an opinion is this:

Can funds be transferred from one item to another within the total aggregate amounts of the budget as approved by the budget commissioners and, if so, what procedure should be followed by the general district health board to effect such transfer?”

Section 1261-40 General Code provides in part as follows:

“The board of health of a general health district shall annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such district for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submit-

ted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valuations in such townships and municipalities. * * * The county auditor, when making his semi-annual apportionment of funds, shall retain at each such semi-annual apportionment one-half the amount so apportioned to each township and municipality. Such monies shall be placed in a separate fund to be known as the 'district health fund'."

The tax herein is estimated in itemized form by the board of health for the information of the budget commissioners, to whom the county auditor certifies the statement as received by him from the district board of health. The budget commissioners may reduce the amount asked by the district health board for any particular item or items, but cannot increase the same or the aggregate amount of all items. The amount as fixed by the budget commissioners shall be apportioned among the townships and municipalities composing the health district by the county auditor on the basis of taxable valuations in such townships and municipalities. The apportionment is based on the aggregate amount as allowed by the budget commissioners, and not the itemized amounts as submitted to them by the district health board. The tax is not levied for specific purposes in the protection of health, but for the purpose of protecting health generally, and when the semi-annual apportionment of funds is made the county auditor retains one-half the amount apportioned to each township or municipality, which amount so retained is placed in a separate fund known as "district health fund". The present health laws do not change the method of making the levy. The acts of the health board, budget commission and county auditor, in the matter of submitting the estimate and auditor's apportionment of the estimates, do not constitute a levy, but the statutes still leave the levy to the municipal and township authorities. See Attorney-General's Opinion, 1919, Vol. II, p. 1080.

It is conceivable that in practice some confusion has been caused in this matter by the attempted application of sections 5649-3a and 5649-3d. It will not be necessary to quote these sections in their entirety, and it is sufficient to say that the first one requires that "on or before the first Monday in June, each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education, and all other boards or officers authorized by law to levy taxes, within the county, except taxes for state purposes," shall submit an itemized estimate of the amount of money needed for their wants for the incoming year, with a detailed specification of the amount for the various purposes and other detailed information for the budget commission.

Supplementing this provision in 5649-3a with reference to the levy, where the same authority that made the levy is authorized and required to disburse the amount raised on the levy, it was the purpose of the legislature in the following section 5649-3d to require "at the beginning of each fiscal half year the various boards mentioned in section 5649-3a of this act" to make appropriations each six months, and in this latter section there is also a provision that no appropriation shall be made for any purpose not set forth in the annual budget.

The non-application of these sections is at once apparent when it is remembered, as above indicated, that the action of the health board, budget

commission, and county auditor in the work of apportioning and segregating the amount that may be retained each half year by the county auditor in settling with these tax subdivisions does not constitute a levy, and that the disbursement of the "district health fund" is taken out of the hands of the township and municipal officers and placed in the hands of the district health board; so that the district health board is not included in section 5649-3a, because, it is not a board "authorized by law to levy taxes," as provided in that section.

That the township and municipal authorities are not obliged to and cannot appropriate the health funds under 5649-3d follows from the fact that these officers have nothing to do with the disbursement of that fund.

It could be argued not without some plausibility that by analogy these sections may be so interpreted as to provide a rule which the district health board must follow in disbursing the health funds, but it is believed that it would require legislation rather than interpretation to reach that result.

In considering the question at hand notice has been taken of section 5 of Article XII of the constitution, which provides:

"* * * every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

Bear in mind the health tax is one levied for health purposes generally. It can be used only for health purposes, but that is the only limitation except that no more may be issued than the aggregate amount levied. Section 5649-3d General Code, above quoted, designates the time for apportionments.

Therefore, in answer to your question, it is the opinion of this department that there is only one fund provided. Therefore there is no reason for any transfer of funds.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2376.

ROADS AND HIGHWAYS—WHERE COUNTY COMMISSIONERS MAKE APPLICATION FOR STATE AID—ADDITIONAL RIGHT OF WAY REQUIRED—COST BORNE BY COUNTY ALONE.

Where county commissioners make application to the state for aid in improving a highway, and additional right of way is required for the carrying out of the improvement project, the cost of such additional right of way must be borne by the county alone, and is not to be treated as an item of cost and expense either for the purpose of calculating distribution of cost as between state and county or for the purpose of calculating distribution of cost as between county, township and property owners.

COLUMBUS, OHIO, August 26, 1921.

HON. N. E. KIDD, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—You have recently submitted for the opinion of this department the following:

"In construing section 1213-1; does the expression 'cost and expense of the improvement' take into consideration the cost paid by