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TRANSFER — UNEXPENDED BALANCE FROM SPECIAL COUNTY FUND FOR AID TO NEEDY CHILDREN—SECTION 1359-36 G. C. — FILE PETITION, COURT COMMON PLEAS—DUPLICATE COPY TO DEPARTMENT OF TAXATION OF OHIO—SECTIONS 5625-13a TO 5625-13g G. C.

SYLLABUS:

A transfer of moneys from the special county fund for aid to needy children, established under the provisions of section 1359-36, General Code, may only be made by filing a petition addressed to the Court of Common Pleas of the county in which such fund is held, and a duplicate thereof, to the Department of Taxation of Ohio, in accordance with the provisions of sections 5625-13a to 5625-13g, inclusive, General Code.

COLUMBUS, OHIO, October 25, 1939.

HON. FREDERICK R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

"I have just received from the auditor of this county the following request for opinion:

'I would like to have you get an attorney general's opinion on the following:

Under the provisions of section 1359-36, General Code, the County Commissioners at the beginning of each fiscal year must appropriate and set aside in a special fund 15/100 of a mill for A. D. C. In the event the Commissioners appropriate more than the 15/100 of a mill which is mandatory under section 1359-36, has the county board through the county auditor the right to transfer back into the general fund any unexpended balance of that excess? In other words, the 15/100 of a mill runs approximately \$5500.00, the county commissioners January 1st, 1939 appropriated out of the general fund \$8992.91 for A. D. C. for 1939, taking the \$5500.00 from the \$8992.91 leaves an excess of \$3492.91 that the Board approved for A. D. C. work under provisions of the 15/100.

I would like to know whether or not if there is any unexpended balance at the end of the year of their fund above the 15/100 of a mill, can it be transferred back to the general fund and reappropriated as provided under the appropriation law, Sections 5625-30 and 5625-32, General Code'."

Section 1359-36, General Code, which provides for the creation of a special fund in each county, for aid to needy children, reads in part as follows:

“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.”

Provisions for the transfer of funds of a subdivision are contained in section 5625-13, General Code, which read as follows:

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

a. The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

b. The unexpended balance in any specific permanent improvement fund other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of a permanent improvement or improvements or, with the approval of the court of common pleas of the county wherein such subdivision is located, to the general fund of the subdivision.

c. The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.

d. Unless otherwise provided by law, the unexpended

balance in any special fund, other than any improvement fund, existing in accordance with section 5625-9, paragraph (d), (f), or (g) or section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

e. Moneys may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

f. Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by sections 5625-11 to 5625-12 of the General Code or to the proper fund of a district authority.

Except in the case of transfers in accordance with paragraphs (e) and (f) of this section, transfers herein authorized shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members thereof."

The funds of a subdivision established under the provisions of paragraphs (d), (f) and (g) of section 5625-9, General Code, referred to in the above sections, are:

(d) A special fund for each special levy.

* * * * *

(f) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose.

(g) A special fund for each public utility operated by a subdivision.

In the instant case, the special fund was established by a transfer of moneys from the general fund of the county and would, therefore, not fall within the provisions of paragraphs (d), (f) and (g) of section 5625-9, supra. A reading of the entire section above quoted, likewise discloses that the fund from which transfers may be made under authority thereof do not include a special fund such as the one in question.

In addition to the transfers authorized under section 5625-13, supra, provision is also made for the transfer of funds by sections 5625-13a to 5625-13g, inclusive, General Code. Under the provisions of said sections, funds may be transferred by the taxing authority of a subdivision by application to the Court of Common Pleas and to the Department of Taxation.

Section 5625-13a, which enumerates the funds from which transfers may be made in such manner, reads 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.”

It will be noted the above section provides that the taxing authority may, with certain exceptions named therein, transfer from one fund to another any public funds under its supervision. A reading of the language setting forth the exceptions discloses at once that the fund in question would not fall therein and it would consequently appear that a transfer of moneys from such fund could be effected by application to the Court of Common Pleas and the Department of Taxation, in accordance with the provisions of sections 5625-13a to 5625-13g, General Code.

Therefore, in specific answer to your question, it is my opinion that a transfer of moneys from the special county fund for aid to needy children, established under the provisions of section 1359-36, General Code, may only be made by filing a petition addressed to the Court of Common Pleas of the county in which such fund is held, and a duplicate thereof, to the Department of Taxation of Ohio, in accordance with the provisions of sections 5625-13a to 5625-13g, inclusive, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.