

the duties of secretary and treasurer, is also a member of the board of trustees, he could not receive any compensation for his services, inasmuch as Section 7636, supra, provides that the members of the library board must serve without compensation, and Section 7638, supra, provides that:

“No member of the library board shall be interested directly or indirectly in any contract made by the board.”

It is a well recognized rule of law, that statutory boards, such as a board of trustees for a school district public library, are limited in their powers to such as are expressly granted to them by the statutes, or necessarily included within such grants, to consummate the powers expressly granted. There is no authority either express or implied, for library boards such as these, to employ and pay anyone except librarians and assistants.

It is also a well recognized rule of law, that compensation for public service is entirely dependent on the law fixing such compensation, and if the law does not fix any compensation or authorize the fixing of it, it will be presumed that the services are to be rendered gratuitously.

In R. C. L. Vol. 22, page 532, in speaking of the compensation of incumbents of public positions, it is said:

“The absence of any provision for compensation carries with it the implication that the services of the incumbent are to be rendered gratuitously.”

Throop on Public Officers, Section 446, wherein the rule in the United States with reference to compensation of public officers is discussed, says:

“Here the general rule is, that the rendition of the services of a public officer is deemed to be gratuitous unless a compensation therefor is fixed by statute.”

This department in 1925, in an opinion reported in the published opinions for that year at page 409, passed on the precise question before us, and it was there said:

“The board of trustees of a library organized under the provisions of Sections 7635 et seq., General Code, is without authority to provide compensation for the services of its treasurer elected under the provisions of Section 7638, General Code.”

I agree with the opinion above referred to, and I am of the opinion that boards of trustees for school district public libraries have no authority to pay for services rendered by persons elected to act as secretary or treasurer of the board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1961.

NOTES—RETIREMENT OF COUNTY NOTES—USE OF GENERAL FUND
—MAY INCLUDE OBLIGATION IN BUDGET.

SYLLABUS:

1. *County notes issued in anticipation of the issuance of bonds, and not retired*

by reason of the inability of the county to sell the bonds so anticipated, may not be retired by the use of moneys in the sinking fund, except that such moneys in such fund as have resulted from assessments for the improvement in question or from a tax levy made for the retirement of such bonds may be utilized for that purpose.

2. Where county notes, issued under the provisions of former Section 5654-1 of the General Code, are outstanding and there is available no money from the sale of bonds or assessments or a tax levy for their retirement, such notes constitute fixed and definite obligations of the county for the payment of which the full faith and credit and revenues of the county are pledged, and they may be paid by the use of any moneys in the county general fund not otherwise appropriated or encumbered.

3. In the event that funds are not available for the payment of county notes either from the proceeds of the sale of bonds in anticipation of which the notes are issued, or otherwise, and there are no other funds which may be used for the retirement of such notes, the county is authorized to include in its budget a sufficient amount and thereafter levy a tax to retire such notes without compelling the holders thereof to resort to the courts to secure a judgment thereon.

COLUMBUS, OHIO, April 11, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“During the month of June, 1927, the county commissioners of one of the counties of the state issued, sold and delivered short time notes under Section 5654, G. C., due in October, 1927, for the purpose of constructing a road improvement under the provisions of Section 6973 et seq., General Code. The county has been unable to sell the bonds for the improvement because of pending litigation attacking the constitutionality of Section 6973 et seq., G. C., and in which an injunction is being sought to enjoin the sale of the bonds. This suit was started after the notes had been sold and delivered, the short time notes being past due.

Question 1: May these notes be paid from any moneys in the sinking fund or bond retirement fund, or,

Question 2: May they be paid from any other fund, or,

Question 3: May the county levy a tax to pay these notes?”

As your letter suggests, notes might, under authority of former Section 5654-1, be issued in anticipation of a bond issue for a road improvement. The particular road proceeding in this instance was one authorized by Sections 6973, et seq., General Code, and it should perhaps be noted that these sections have reference not to county roads, but to roads, streets, alleys, etc., in platted territory outside of municipalities. This kind of an improvement is paid for by assessment and Section 6984 authorizes the issuance of bonds in anticipation of the collection of the assessment. Apparently the notes in this instance were issued in anticipation of the issuance of these bonds.

From your question I assume that the proceeds of the note issue have been expended in the completion of the improvement, for otherwise these proceeds might be devoted to the payment of the notes. The notes are now due and there is, because of the inability of the county to dispose of these bonds, no money available for their payment.

Your first question is whether these notes may be paid from any moneys in the sinking fund or bond retirement fund of the county. The answer to this question is, I believe, fairly clear. Prior to the enactment of the Uniform Bond Act by the last Legislature, there existed no authority whatsoever for the investment of county funds in the hands of the sinking fund trustees in notes of any character. The specific direction of Section 2976-21 of the General Code as to investment was as follows:

“The trustees of the sinking fund shall invest all moneys subject to their control in bonds of the United States, the State of Ohio, or of a municipal corporation, school district, township, or county of the state, and hold in reserve in cash only such sums as may be needed for effecting the purposes of this act.”

You will observe that while the trustees were authorized to invest in any county *bonds*, the statute is silent as to any right to invest in notes. Section 2293-27 of the General Code, which was part of the Uniform Bond Act, is as follows:

“Before selling any notes or bonds of the subdivision, the taxing authority shall offer the same at par and accrued interest to the trustees or commissioners or other officers who have charge of the sinking fund of the subdivision and such officers shall have the option of purchasing said notes or bonds or rejecting the same.”

This section was not in effect at the time these notes were sold and moreover I doubt whether the authority contained in Section 2293-27 extends beyond the right to purchase at the time of the original offering. That is to say, while notes may now be purchased on offer by the taxing authority, at the time of their original issue, there is no specific statutory authority to purchase notes in the open market after they have once been sold. In the absence of such specific authority, I believe that the right does not exist and this is especially true in the present instance where the notes have already matured and are unpaid.

While your statement of fact does not so state, it is apparent from the fact that these proceedings are had under Section 6973 et seq., of the General Code, that the proposed bond issue was to be in anticipation of the collection of assessments. If in fact in this case any assessments have been placed upon the duplicate and installments thereof collected, they would, of course, be payable to the sinking fund and, in so far as the collections were made and moneys paid over, this money would be available for the payment of the bonds. Since the bonds have not been issued and the notes are due, I have no difficulty in reaching the conclusion that any such amounts now in the sinking fund should be applied to the retirement of the notes in question.

It is also to be noted that Section 5654-1 of the Code, authorizing the issuance of notes, contains the following language:

“Prior to the issuance of such notes the resolution authorizing the issuance of the bonds anticipated by such notes, shall be certified to the county auditor and a tax for such bonds included in the annual budget as required by law.”

Presumably this statute was followed in the present instance, but, as a matter of practice where bonds are issued in anticipation of collection of assessments, no actual levy is made.

Other than the moneys coming from assessments and the levy, if any, just referred to, there are no funds available in the sinking fund from which the retirement of the notes in question may be accomplished.

While you have not inquired with respect thereto, it should perhaps be suggested that the sinking fund trustees may, if funds are available therefor, purchase the bonds in question and so accomplish the retirement of the notes, unless the issuance of the bonds is specifically restrained or enjoined. While Section 2976-27 of the Code formerly required the offer of the county bonds to the trustees of the sinking fund at par and accrued interest before public sale, and this requirement is continued by the provisions of Section 2293-27 of the Code, the right of the trustees of the county sinking fund to invest in bonds is not limited to the offer thereof prior to their disposition at public sale. This is obvious from the language of Section 2976-21 of the Code, *supra*. Authority therein granted to invest in county bonds, of course, includes bonds of the county in question and these may be acquired in the market in the same manner as other proper investments. In this instance the bonds cannot be sold at public sale because of the tendency of the injunction proceedings, and I see no reason why the trustees of the sinking fund cannot now purchase these bonds at private sale at not less than par and accrued interest, provided they have sufficient funds for investment after making proper reserve for current interest and retirement charges.

Your second question is whether the notes may be paid from any other county fund. The notes were, as I have before stated, issued under authority of Section 5654-1 of the Code, which contains the following requirement:

“Such notes shall be the full general obligations of the political subdivision authorizing the same and for the payment of the same, the full faith, credit and revenues of such political subdivision shall be pledged.”

If this language means anything at all, it must follow that the notes in question constitute fixed and definite obligations which the county is bound to meet. The specific pledge of the revenue certainly is indicative of the right to use the funds of the county for the retirement of the notes. In order to answer your question, however, it is necessary to examine the provisions of House Bill No. 80 of the 87th General Assembly, providing for the levy of taxes by local subdivisions and prescribing a method of budget procedure. The funds which are now authorized by a county are set forth in Section 5625-9 of the General Code, as follows:

“Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenue 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.
- (h) Special funds to be created by transfer in accordance with the provisions of this act.

(i) A trust fund for any amount received by a subdivision in trust for any lawful purpose.”

The succeeding section provides in part:

“All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund.

* * * * *

Money paid into any fund shall be used only for the purposes for which such fund is established.”

From these and other sections of the budget law, the conclusion may be deduced that the general fund is available for all current expenses of the subdivision except those incident to debt charged for bonds and those current expenses for which special levy has been made or a special source of revenue is provided other than a general property tax. Other minor exceptions might be stated, but they need not be discussed. In this instance, while the notes are in the nature of debt charges of the subdivision, they are not in exactly the same category with bonds of the subdivision. The retirement of outstanding bonds is, of course, in the hands of the sinking fund but the notes in this instance are now matured and the duties of the sinking fund trustees do not extend to include payment of notes. Section 2976-19 of the Code makes it the duty of the trustees to pay all bonds issued by the county and the interest maturing thereon, but makes no reference whatsoever to notes.

Since the notes in question are general obligations of the county, the conclusion is inescapable that the holders thereof for value could secure judgment against the county. These judgments would, of course, be collectible if the faith and credit of the county is to mean anything at all. Accordingly a source of revenue for their payment must be made available and if necessary the holders after judgment might pursue their remedy in mandamus against the county commissioners to require the levy of a tax to pay the amount of the judgment. The duty and obligation to pay a judgment is clearly recognized by the budget law by Section 5625-21, which is in part as follows:

“Such budget shall present the following information which shall be presented in such detail as may be prescribed by the bureau:

1. (a) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expense, and the fund or funds from which such expenditures are to be made. This estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expense.

(b) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, (exclusive of any expense to be paid from bond issues), classified as to the improvements contemplated by the subdivision and the fund from which such expenditures are to be made.

(c) Amounts required for the payment of final judgments.

(d) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized and the fund from which such expenditures are to be made.

(e) Comparative statements so far as possible, in parallel columns of corresponding items of expenditure for the current year and the two preceding years.

2. (a) Estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current year, and the funds to which such estimated receipts are credited.

(b) Estimated amount required from the general property tax in each fund, which shall be the difference between the contemplated expenditures therefrom and the estimated receipts, as herein provided. The section of the General Code under which the tax is authorized shall be set forth.

(c) Comparative statement so far as possible, in parallel columns, of taxes and other revenues for the current year and the two preceding years.

3. (a) Amount required for debt charges.

(b) Estimated receipts from other sources than the tax levy for payment of such debt charges.

(c) Net amount for which a tax levy shall be made. This shall be classified as to bonds authorized and issued prior to January 1st, 1922, and authorized and issued subsequent to such date, and as to what portion of the levy will be within and without the fifteen mill limitation.

4. Estimate of amounts from taxes authorized to be levied outside of the fifteen mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the provisions of the General Code under which such tax is exempted from all limitations on the tax rate."

You will observe that the budget is required to set forth specifically the amount required for the payment of the final judgments.

The general fund of the county is, of course, normally available only for the payment of current operating expenses as that term is defined in Section 5625-1 of the General Code, as follows:

"(f) 'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision."

The definition of "debt charges," also contained in that section is as follows:

"'Debt charges' shall mean the interest, sinking fund and retirement charges on bonds, notes or certificates of indebtedness."

These definitions indicate that there would ordinarily be a clear distinction between ordinary operating expenses and the retirement charges of notes of the county and normally the one would be kept separate and distinct from the other. In this case, however, I do not believe that this definition would preclude the use of any unappropriated and unencumbered moneys in the general fund for the purpose of the retirement of the notes. From what has been heretofore said, it is apparent that a judgment on the notes against the county would have to be taken care of

from a levy for that purpose if necessary. If funds are already in the general fund and available for that purpose, I see no reason to prevent the payment of these direct obligations of the county at once, thereby making a saving to the county in both interest and court costs. If it were to be held that the holders of the notes must first obtain a judgment and then either await a levy for the payment of the judgment and mandamus the county commissioners to make the levy in case of unwillingness on their part, then necessarily a considerable period of time would elapse before final payment. The notes in the meantime would draw interest and the expense to the county would be not inconsiderable. My conclusion is, therefore, that any moneys in the county general fund, not otherwise appropriated or encumbered, may be appropriated for the purpose of retiring the notes in question. This would not, of course, authorize the county to use the proceeds of special levies or of moneys derived from sources other than a general property tax devoted to a specific purpose for the retirement of these notes.

Your third question is whether the county may levy a tax to pay these notes. My discussion heretofore has specifically answered this inquiry. If the county is authorized to use moneys now in the general fund unappropriated and unincumbered for the purpose of retiring these notes, then, *a fortiori*, a tax may be levied for such purpose in the event that no funds are available. The subdivision is required by Section 5625-21, *supra*, to include in its budget not only a statement of operating expenses for the ensuing fiscal year, but also an amount for the payment of final judgments. The notes are now a fixed obligation of the county and a judgment might be obtained thereon, in which event the amount thereof would be required to be stated in the budget. The obligation being fixed, I see no reason why an amount sufficient to retire the notes could not be included in the budget and the resulting levy without compelling recourse to the courts for the purpose of obtaining judgment.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1962.

APPROVAL, BONDS OF WILLOUGHBY RURAL SCHOOL DISTRICT,
LAKE COUNTY, OHIO—\$250,000.00.

COLUMBUS, OHIO, April 11, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1963.

APPROVAL, BONDS OF THE VILLAGE OF WILLOUGHBY, LAKE
COUNTY—\$162,950.55.

COLUMBUS, OHIO, April 12, 1928.

Industrial Commission of Ohio, Columbus, Ohio.