

551

1. REVENUES FOR FISCAL YEAR ENDING JUNE 30, 1951—EXCESS NET COLLECTION—DETERMINED AND CERTIFIED BY DIRECTOR OF FINANCE—\$9,402,390.00—30% OF EXCESS NET COLLECTION—CREDITED TO LOCAL GOVERNMENT FUND—CONSIDERED SUPPLEMENTARY TO \$12,000,000.00 APPROPRIATED FOR LOCAL GOVERNMENT FUND FOR YEAR 1951-1952—DISTRIBUTED IN SAME PERIOD OF TIME, IN SAME MANNER AND IN ACCORDANCE WITH SAME FORMULA AS IS THE \$12,000,000.00 SUM.
2. FORMULA TO DISTRIBUTE LOCAL GOVERNMENT FUND FOR FISCAL YEAR 1951-1952—SECTION 5546-19 G. C. ALLOCATION 75%, 25%—RATIO—REAL, PUBLIC UTILITY, TANGIBLE PERSONAL PROPERTY—TAX DUPLICATES, MUNICIPAL CORPORATIONS—DISTRIBUTION TO COUNTY—LAST FEDERAL CENSUS, 1950.

3. TOTAL AMOUNT OF EXCESS TO BE DISTRIBUTED—SECTION 5546-18 G. C.—FISCAL YEAR JULY 1, 1951, JUNE 30, 1952 — ONE-TWELFTH OF \$12,000,000.00 AND ONE-TWELFTH OF NET EXCESS COLLECTION CREDITED TO LOCAL GOVERNMENT FUND, \$9,402,390.00.

SYLLABUS:

1. The excess net collection of revenues for the fiscal year ending June 30, 1951, as determined and certified by the Director of Finance in the amount of \$9,042,390.00, the same being the 30% of the excess net collection, credited to the local government fund, is to be considered as supplementary to the \$12,000,000.00 appropriated for the local government fund for the year 1951-1952 and is to be distributed in the same period of time, in the same manner and in accordance with the same formula as is the \$12,000,000.00 sum.

2. The formula used in distributing the local government fund for the fiscal year 1951-1952 is that provided in Section 5546-19, General Code, namely 75% of said sum should be distributed in the ratio which the total of the real, public utility and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county for the year 1949 bears to the total aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state for the same year, and the remaining 25% should be distributed to all the counties in the state in the ratio that the population of the county at the last federal decennial census (1950) bears to the total population of the state.

3. The total amount of the excess to be distributed should be distributed in accordance with the provisions of the newly enacted and presently effective Section 5546-18, General Code, which requires the crediting in each calendar month during the fiscal year commencing July 1, 1951, and ending June 30, 1952, of an amount equal to one-twelfth of \$12,000,000.00 and one-twelfth of the net excess collection credited to the local government fund, namely, \$9,402,390.00.

Columbus, Ohio, July 18, 1951

Hon. Edward J. Kirwin, Chairman, Board of Tax Appeals
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 12 of A. H. B. 654, enacted by the 98th General Assembly for the purpose of making general appropriations for the biennium beginning July 1, 1949 and ending June 30, 1951, provided that in the event the net collection of revenues accruing to the state during each fiscal year 1949-1950 and 1950-1951 should be in excess of the yearly total of the estimated amount, that such excess should be distributed as follows: 30% to the local government fund created by the provisions of section 5546-18, G. C., and to be distributed to the local subdivisions in accord-

ance with a formula governing distribution of the local government fund in existence at the time provided for distribution.

“Section 2 enacted as a part of A. S. H. B. 605 by the 99th General Assembly to amend sections 5546-18 and 5546-20 of the General Code relating to the distribution of tax receipts to the local government fund re-enacted section 12 of A. H. B. 654.

“On pages 38 and 39 of A. H. B. 671, enacted by the 99th General Assembly, making general appropriations for the biennium for July 1, 1951 and ending June 30, 1953, uses language similar to that used in A. H. B. 654 and A. S. H. B. 605.

“In compliance with the provisions of section 2 of A. S. H. B. 605, effective July 1, 1951, the director of finance, as of July 3, 1951, certified to the board of tax appeals, department of taxation, that the total amount of the excess for the fiscal year 1950-1951 is \$31,341,300.00 and that the total amount of the excess to be distributed to the local government fund is \$9,402,390.00.

“Before the allocation can be made it is necessary to determine the formula to be used in distributing the excess to local subdivisions. Will you please answer the following questions:

“1. Should the excess in the amount of \$9,402,390.00 to be distributed to local government be considered as supplementary to the \$12,000,000.00 appropriated for the same purpose in the year 1951-1952 in section 5546-18, G. C., as amended by A. S. H. B. 605?

“2. Should the formula used in distributing local government fund for the fiscal year 1950-1951 or the one to be used for the fiscal year 1951-1952 be used as a basis for distributing the excess?

“3. Should the total amount of the excess be distributed in one lump sum or should it be distributed by the auditor of state on the first business day of each month as provided in section 5546-19, G. C.?”

The answers to the three questions which you have presented will be based upon the provisions of the following statutes:

1. Amended House Bill No. 654, enacted by the 98th General Assembly, entitled “An Act to make general appropriations for the biennium beginning July 1, 1949 and ending June 30, 1951,” commonly referred to as the general appropriation bill of the 98th General Assembly. (Approved July 15, 1949.)

2. Amended Substitute House Bill No. 605, enacted by the 99th General Assembly, entitled “An Act to amend sections 5546-18 and 5546-

20 of the General Code relative to the distribution of tax receipts to and from the local government fund, and to provide for the allocation to local subdivisions of revenues accruing to the state in excess of the estimated amount for the fiscal year 1950-51," commonly referred to as the "local government bill of the 99th General Assembly" for the biennium beginning July 1, 1951 and ending June 30, 1953. (Approved June 13, 1951.)

3. Amended House Bill No. 671, enacted by the 99th General Assembly, entitled "An Act to make general appropriations for the biennium beginning July 1, 1951 and ending June 30, 1953," hereinafter referred to as the general appropriation bill of the 99th General Assembly. (Approved June 18, 1951.)

4. Section 5546-19 of the General Code (previously enacted, effective October 28, 1949).

In Amended Substitute House Bill No. 605 of the 99th General Assembly, the local government bill, Section 4 reads as follows:

"This act shall become effective on the first day of July, 1951."

In Amended House Bill No. 671 of the 99th General Assembly, the general appropriation bill, the following provisions appear:

"Beginning July 1, 1951, not more than one-fourth of the annual appropriation as shown hereinafter shall be expended in any consecutive three months period excepting items designated as H-7 insurance, without first obtaining the consent of the controlling board created in section 4 of this act. The provisions of this paragraph shall not apply to the senate and house of representatives.

"The sums herein named in the column designated '1951-52' shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1951, nor to pay liabilities incurred subsequent to June 30, 1952, unless herein specifically designated for that purpose; those named in the column designated '1952-53' shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1952, or incurred subsequent to June 30, 1953."

From the foregoing provisions, it is clear that the 99th General Assembly intended these two measures to become operative on the specified dates, irrespective of the particular date of approval by the Governor which is controlling as to the effective date. It is also significant that the date specified in express terms is the first day of the first fiscal year of the current biennium, 1951-1952, 1952-1953.

The history of the provisions with respect to the appropriation of the net collection of revenues accruing to the state in excess of a specified total estimated amount begins with the enactment of Amended House Bill No. 654, 98th General Assembly, supra, which contained the following provision :

“Section 12. The net revenues estimated to accrue to the General Revenue Fund, exclusive of the Public Utility Excise Tax (due previous years) of \$4,140,000. in 1949-50 and the yearly amount of \$4,588,500, under the heading Educational Bequests and Miscellaneous and Student Fees from the six state universities, are \$265,615,500 for the year 1949-50 and \$260,-357,000. for the year 1950-51.

“In the event the net actual collection of revenues accruing to the state during each fiscal year 1949-50 and 1950-51, minus the above enumerated items, are in excess of the yearly total of the estimated amounts, shown above, such excess, at the close of each fiscal year, shall be distributed as follows: 30% to the local government fund created by the provisions of Section 5546-18 G. C., and *to be distributed to the local subdivisions in accordance with the formula governing distribution of the local government fund in existence at the time provided for distribution.* 30% to the city, exempted villages and local school districts to be distributed in equal ratio in proportion to the total received by each district from the school foundation subsidy provided in this act.”

(Emphasis added.)

It is to be noted that this provision appearing in the general appropriation bill of the 98th General Assembly was supplemental to the separate bill appropriating funds to the local government fund previously enacted by the 98th General Assembly (Amended Senate Bill No. 247, approved July 29, 1949).

Obviously, at the time of the enactment of Amended House Bill No. 654, 98th General Assembly, the Legislature did not know and could not determine whether or not there would be a net actual collection of revenues in excess of the specific amount set forth in paragraph 1 of Section 12, Amended House Bill No. 654, supra, for the year 1949-1950 or a net actual collection of revenues in excess of the specific amount set forth in the same paragraph as estimated revenue for the fiscal year 1950-1951.

It might be noted here that there was no excess net actual collection of revenues during the fiscal year 1949-1950 which would have been under the terms of Section 12 of Amended House Bill No. 654 available for the distribution provided therein.

It might also be well to note here that the formula governing the distribution of the local government fund has heretofore been changed from time to time by the General Assembly and it is equally obvious that the General Assembly, at the time of the enactment of Amended House Bill No. 654, *supra*, could not pre-determine what the formula for distribution would be when, as and if there was an excess collection for the fiscal year 1950-1951 as provided in said Section 12 of Amended House Bill No. 654.

What is the reasonable construction to be given the words "to be distributed to the local subdivisions in accordance with the formula governing distribution of the local government fund in existence at the time provided for distribution" appearing in Section 12 of Amended House Bill No. 654? It is that the Legislature intended to provide for the distribution of that portion of the possible excess collection appropriated to the local government fund in accordance with such formula for distribution as the Legislature should prescribe for the period when the excess, if any, could be determined and paid. The amount of excess, if any, at the close of the fiscal year 1950-1951 could not be determined until after the close of the fiscal year 1950-1951 and beyond the end of the biennium for which Amended House Bill No. 654 made appropriations. The inclusion of Section 12 in that general appropriation bill was little more than a present commitment by the 98th General Assembly as to a future course. It, in effect, was but a recommendation to the 99th General Assembly. Such General Assembly's duty would be to make appropriations both for the local government fund and the general appropriations for the state for the ensuing biennium commencing July 1, 1951 and ending June 30, 1953.

In further support of this conclusion, it is significant that there are no words of immediate or present appropriation contained in Section 12 of Amended House Bill No. 654.

The 99th General Assembly has enacted Amended Substitute House Bill No. 605, the local government bill, which became operative by its terms on July 1, 1951. The first section of this act amends and re-enacts Section 5546-18, General Code, and Section 5546-20, General Code, the then existing subsections being repealed in Section 3 of the Act.

The substance of the amendments in Section 5546-18, General Code, is to change the amount theretofore credited to the local government fund for the first year of the ensuing biennium from \$18,000,000.00 to \$12,000,000.00 and to make the resultantly necessary changes in the wording pro-

viding for monthly distribution in equal installments in each of the two years of the biennium. The pertinent portion of Section 5546-18, as now amended, reads as follows:

“To a fund known as the ‘local government fund’ which is hereby created, twelve million dollars for the year beginning July 1, 1951 and eighteen million dollars for the year beginning July 1, 1952. All moneys received in the state treasury and credited to the ‘local government fund,’ under the provisions of this section shall be allocated and distributed to and among the local subdivisions of the state in accordance with the provisions of section 5546-19 of the General Code. The provisions of this paragraph requiring moneys received in the state treasury under the provisions of sections 5546-1 through 5546-24c, both inclusive, of the General Code to be credited to the ‘local government fund’ shall require the crediting in each calendar month during the fiscal year commencing July 1, 1951, and ending June 30, 1952, of an amount equal to one-twelfth of twelve million dollars, and during the fiscal year commencing July 1, 1952, and ending June 30, 1953, of an amount equal to one-twelfth of eighteen million dollars.”

It should be noted also that the then existing Section 5546-18, General Code, by its terms, applied only to the biennium of 1949-1950 and 1950-1951, which dates were changed in Amended Substitute House Bill No. 605, 99th General Assembly, so that they would apply to the biennium 1951-1952 and 1952-1953.

The substance of the amendments in Section 5546-20, General Code, is to adjust for the changes brought about by establishing the fiscal year for the State of Ohio and the biennium for a period beginning on the last day of July and ending on the 30th day of June.

From the standpoint of your request, the most important part of Amended Substitute House Bill No. 605 is contained in Section 2 thereof, which reads as follows:

“The net revenues estimated to accrue to the general revenue fund, exclusive of the amount of \$4,588,500.00 under the heading educational bequests and miscellaneous and student fees from the six state universities, are \$260,357,000.00 for the year 1950-51.

“In the event the net actual collection of revenues accruing to the state during the fiscal year 1950-51, minus the above enumerated item, is in excess of the total of the estimated amount, shown above, such excess, at the close of the fiscal year 1950-51, shall be distributed as follows: 30% to the local government fund

created by the provisions of section 5546-18 of the General Code, and to be distributed to the local subdivisions in accordance with the formula governing distribution of the local government fund in existence at the time provided for distribution. 30% to the city, exempted villages and local school districts to be distributed in equal ratio in proportion to the total received by each district from the school foundation subsidy provided in Amended House Bill No. 654, entitled 'An act to make general appropriations for the biennium beginning July 1, 1949, and ending June 30, 1951,' passed July 14, 1949, approved July 15, 1949, and filed in the office of the secretary of state July 15, 1949.

"In the event the net actual collection of revenues accruing to the state during the fiscal year 1950-51 is in excess of the total of the estimated amount, the director of finance shall determine and certify to the board of tax appeals of the department of taxation: (a) the fact that there exists an excess over the estimated net revenues; (b) the total amount of such excess; and (c) the amount of such excess which has been or will be credited to the local government fund.

"The board of tax appeals, within ten days after receiving such certification from the director of finance, shall cause to be made and shall certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to such county. Each county auditor, within ten days after receiving the certificate of the board of tax appeals, shall convene the budget commission of his county in special session for the purpose of reviewing its work of determining the amount of the local government fund to be apportioned to each subdivision entitled to participate in the distribution of the local government fund. The apportionment and distribution of the excess funds so distributed shall comply with all requirements as otherwise provided for in sections 5546-19 and 5546-20 of the General Code.

"There is hereby appropriated out of any monies in the state treasury to the credit of the general revenue fund and not otherwise appropriated a sum equal in amount to 30% of the above described excess to the credit of the local government fund."

It will be noted that the provisions with respect to the local government fund above quoted are practically identical with the provisions quoted from Section 12 of Amended House Bill No. 654, 98th General Assembly, with this exception: the last paragraph above quoted, in apt language, definitely makes an appropriation of 30% of the excess collections to the credit of the local government fund.

In reading Amended Substitute House Bill No. 605, 99th General Assembly, in its entirety, the conclusion is inescapable that the Legislature

contemplated that some time after June 30, 1951 and within the current biennium which commenced July 1, 1951, the determination as to whether or not there was a net excess collection of revenues and the certification of that fact would be made by the Director of Finance to the Board of Tax Appeals of the Department of Taxation as called for in said Act and in accordance with the provisions thereof. It is further to be noted that the Legislature provided that the Board of Tax Appeals should have ten days after receiving such certification to cause to be made and certified to each county auditor an estimate of the amount of local government fund to be allocated to such county. It is clear that this language can only mean that the Legislature expected the determination and certification with respect to a possible excess to be made after the close of the 1950-1951 fiscal year and early in the 1951-1952 fiscal year and within the present biennium.

This conclusion is further supported by the widely known fact that the determination and certification called for in the Act require a substantial amount of time, could not even be begun until after June 30, 1951 and the work required of the Board of Tax Appeals in this respect likewise requires a substantial period of time.

A further point should be noted here, although it is not controlling on the issue, since it is corroborative of the construction and interpretation placed on Amended Substitute House Bill 605 of the 99th General Assembly. Amended House Bill No. 671, enacted by the 99th General Assembly, was the general appropriation bill for the biennium. The following is quoted from pages 38 and 39 thereof:

“The net revenues estimated to accrue to the general revenue fund, exclusive of the amount of \$4,588,500.00 under the heading educational bequests and miscellaneous and student fees from the six state universities, are \$260,357,000.00 for the year 1950-51.

“In the event the net actual collection of revenues accruing to the state during the fiscal year 1950-51, minus the above enumerated item, is in excess of the total of the estimated amount, shown above, such excess, at the close of the fiscal year 1950-51, shall be distributed as follows: 30% to the local government fund created by the provisions of Section 5546-18 of the General Code, and to be distributed to the local subdivisions in accordance with the formula governing distribution of the local government fund in existence at the time provided for distribution. 30% to the city, exempted villages and local school districts.”

This bill became operative, by its terms, on July 1, 1951.

In substance the recommendation or pledge of the 98th General Assembly and the appropriate enactments contained in Amended Substitute House Bill No. 605, 99th General Assembly, are restated and given further approval with respect to the local government fund.

It has been determined and certified that the portion of the excess net collection of revenues available for the local government fund is \$9,402,390.00. The General Assembly, in re-enacting old Section 5546-18, General Code, amended the former wording so that it would apply to the biennium 1951-52 and 1952-53 and, at the same time, in the same bill, provided the sum of \$12,000,000.00 for local government for the first year of the current biennium. This was a change of policy for, in the previous biennium, the sum had been \$18,000,000.00 for each year. The 99th General Assembly, having reduced the amount for the first year from \$18,000,000.00 to \$12,000,000.00, then provided for the sum of \$18,000,000.00 for local government for the second year of the current biennium. Then followed Section 2 of Amended Substitute House Bill No. 605, above quoted, providing for the further or supplemental appropriation of what has been determined and certified to be the sum of \$9,402,390.00.

It is significant that the originating provision contained in Section 12 of Amended House Bill No. 654, 98th General Assembly, contemplated two possible excess collections: (1) after the end of the first year of that biennium, and (2) after the end of the second year of that biennium. Had there been two excess collections, each one would have been distributed over the span of a fiscal year. Existing Section 5546-18, General Code, enacted by the 99th General Assembly, Amended Substitute House Bill No. 605, also treats the distribution of the local government fund on a year by year basis, its terms prescribing the distribution for each of the two fiscal years of the biennium. These two factors, (1) the reduction of the specific amount credited to the local government fund for the year 1951-1952, and (2) the provisions in Amended Substitute House Bill No. 605, setting up each fiscal year separately, decisively establish the legislative intent to provide for the distribution of the excess determined and certified in the fiscal year 1951-1952 as a supplemental distribution to the said sum of \$12,000,000.00.

I am of the opinion that it was the intention of the Legislature to provide that the sum of \$9,402,390.00 be used to supplement the amount of \$12,000,000.00 provided in Section 1 of Amended Substitute House Bill

No. 605 in accordance with the terms thereof and for the year 1951-1952. I am also of the opinion that the Legislature intended, and by appropriate words provided, that the formula used in distributing the local government fund for the fiscal year 1951-1952 be used as a basis for distributing the \$12,000,000.00 appropriated in Section 1 of Amended Substitute House Bill No. 605, and the excess as determined and certified as \$9,402,390.00 appropriated in Section 2 of the same Act.

The language throughout all of the three acts under consideration clearly indicates that the formula to be used and the manner of distribution shall be in accordance with the formula governing distribution of the local government fund in existence at the time provided for distribution. The Legislature having contemplated and provided that distribution be made in the fiscal year 1951-1952, the formula in effect today controls the distribution of the net excess sum. That formula is contained in part in newly enacted Section 5546-18, General Code; in the newly enacted Section 5546-20, General Code and in Section 5546-19, General Code.

Section 5546-19, General Code, reads as follows:

“The local government fund shall be allocated among the local subdivisions in this state in the following manner and subject to the following conditions:

“On the first business day of each month the auditor of state shall draw a voucher and warrant payable to the county treasurer of each county for an amount equal to the proportionate share of the county of the total amount standing to the credit of the local government fund as determined by the provisions of this section provided, however, that the distribution to each county for the last month of each fiscal year shall be adjusted so that the total amount allocated to any one county during the fiscal year shall not be less than thirty thousand dollars. The local government fund shall be annually allocated to all the counties in the state by the following ratios: seventy-five per centum of said fund shall be distributed in the ratio which the total of the real, public utility and tangible personal property tax duplicate of the municipal corporations or parts thereof in the county for the second year next preceding the year in which distribution is made bears to the total aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state for the same year, and the remaining twenty-five per centum shall be distributed to all the counties in the state in the ratio that the population of the county at the last federal decennial census bears to the total population of the state.

“Moneys received into the treasury of a county from the local government fund in the state treasury shall be credited to the undivided local government fund in the treasury of the county. On or before the tenth day of each month, the county treasurer shall distribute and pay the undivided local government fund in the county treasury to the subdivisions therein in the respective amounts allowed by the budget commission to each.”

In each of the enactments the Legislature has specifically said that the distribution shall be in accordance with the formula governing distribution of the local government fund at the time provided for distribution. I, therefore, conclude that Sections 5546-18, 5546-19 and 5546-20, General Code, as now in force and effect, are controlling with respect to the manner and formula of distribution.

In specific answer to your three questions, it is my opinion, and you are accordingly advised, that:

1. The excess net collection of revenues for the fiscal year ending June 30, 1951, as determined and certified by the Director of Finance in the amount of \$9,402,390.00, the same being 30% of the excess net collection, credited to the local government fund, is to be considered as supplementary to the \$12,000,000.00 appropriated for the local government fund for the year 1951-1952 and is to be distributed in the same period of time, in the same manner and in accordance with the same formula as is the \$12,000,000.00 sum.

2. The formula used in distributing the local government fund for the fiscal year 1951-1952 is that provided in Section 5546-19, General Code, namely 75% of said sum should be distributed in the ratio which the total of the real, public utility and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county for the year 1949 bears to the total aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state for the same year, and the remaining 25% should be distributed to all the counties in the state in the ratio that the population of the county at the last federal decennial census, 1950, bears to the total population of the state.

3. The total amount of the excess to be distributed should be distributed in accordance with the provisions of newly enacted and presently effective Section 5546-18, General Code, which requires the crediting in

each calendar month during the fiscal year commencing July 1, 1951 and ending June 30, 1952 of an amount equal to one-twelfth of \$12,000,000.00 and one-twelfth of the net excess collection credited to the local government fund, namely, \$9,402,390.00.

Respectfully,

C. WILLIAM O'NEILL
Attorney General