

Since no authority exists for the expenditure of money for poor relief by a township for an indigent whose legal settlement is in another township of the county, it would seem that no obligation would exist upon the township of legal settlement to reimburse such expense if so made. This conclusion is strengthened by a consideration of section 3480-1, General Code, which specifically provides for the method to be followed for the recovery of the expenses of medical services rendered by a township or city to an indigent whose legal settlement is in another township or city located in the county. If the legislature had intended that expenses for poor relief be so recovered, it would have so provided.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that the cost of temporary or partial relief furnished by the trustees of a township to an indigent resident of the county may not be recovered from the township or city of legal settlement of such indigent.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

---

4779.

BUDGET COMMISSION—MAY NOT MODIFY AUTHORIZED LEVY  
 OUTSIDE FIFTEEN MILL LIMITATION TO MEET BONDS PAY-  
 ABLE BY LEVIES OUTSIDE SUCH LIMITATION.

SYLLABUS:

*The budget commission of a county has no authority to modify a properly authorized levy outside of the fifteen mill limitation to meet the interest and principal requirements of bonds payable by levies outside the fifteen mill limitation, when the amount of such levy is augmented on account of previous tax delinquencies.*

COLUMBUS, OHIO, December 2, 1932.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This is to acknowledge your request for my opinion upon the question of whether or not the budget commission of your county shall approve an item in the annual tax budget for a tax levy to meet the interest and principal requirements of bonds which were properly authorized at the time of their issuance to be paid by a levy outside of the fifteen mill limitation, notwithstanding the fact that the amount of this item is materially augmented on account of tax delinquencies in the year 1931 and the first half of 1932.

Section 11, Article XII of the Constitution provides as follows:

“No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.”

I assume that at the time the bonded indebtedness in question was incurred provision was properly made for levying and collecting annually by taxation an amount sufficient to meet the principal and interest requirements of the bonds outside of the fifteen mill limitation. Obviously, the status of the levy to meet the principal and interest requirements of the given issue of bonds with respect to the fifteen mill limitation is determined at the time the bonds are authorized and the indebtedness incurred. There is no authority whereby bonds payable by a levy outside of the fifteen mill limitation may be paid by a levy inside the fifteen mill limitation and, of course, the converse is true. Your question, accordingly, resolves itself into a determination of whether or not a given levy for a debt charge may be reduced below the amount sufficient for such charge because of previous tax delinquencies. A statement of the question impels the answer. Section 11, Article XII of the Constitution, supra, in clear, unambiguous language, refers to levying and collecting annually "an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

The Supreme Court has, on numerous occasions, considered the constitutional provision hereinabove cited and recognized that the amount sufficient to pay the interest and principal of an issue of bonds may vary from year to year, but expressly stated that notwithstanding that fact, the duty to levy whatever amount is sufficient, is mandatory. In speaking of the amount that must be levied from year to year, the Supreme Court in *Link vs. Karb, Mayor*, 89 O. S. 326, 339, 340, said:

"That amount may be determined from year to year, and levied annually, for that is the command of the amendment itself; but having declared at the time of the issue of such bonds that a levy shall be made in an amount sufficient, there then remains for the taxing officials the mere matter of calculation as to the amount. The levy must be made at all events in pursuance to the original provisions therefor, and subsequent taxing authorities must make such annual levy, regardless of what exigencies may arise in the future."

A question arises which is perhaps more difficult when the levy to meet the interest and principal requirements of bonds is within the fifteen mill limitation, and because of delinquencies or shrinkage in the tax duplicate, the amount required in a given year may seriously curtail the subdivision in carrying on its normal governmental activities. Even under such circumstances, the Supreme Court has held that an amount sufficient to pay the interest and principal of bonds must nevertheless be levied in full in preference to any other item. *Rabe vs. Board of Education*, 88 O. S. 403, *State, ex rel. vs. Zangerle*, 94 O. S. 447.

In view of the foregoing, it follows that a levy outside the fifteen mill limitation sufficient in amount to meet the interest and principal requirements of bonds which are payable by a levy outside of such limitation, is properly authorized, notwithstanding the fact that it may be augmented in amount on account of previous tax delinquencies. Under these circumstances, the budget commission is without authority to modify such a levy, Section 5625-23, General Code, providing that all levies outside of the fifteen mill limitation which are properly authorized shall be approved by the budget commission without modification.

Specifically answering your question, it is my opinion that the budget

commission of a county has no authority to modify a properly authorized levy outside of the fifteen mill limitation to meet the interest and principal requirements of bonds payable by levies outside the fifteen mill limitation, when the amount of such levy is augmented on account of previous tax delinquencies.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4780.

APPROVAL, BONDS OF NORTON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO— \$1,800.00.

COLUMBUS, OHIO, December 3, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

4781.

COUNTY TREASURER—LIABLE WITH HIS SURETIES FOR FUNDS RECEIVED IN HIS OFFICIAL CAPACITY AND FOR DIVERSION OF TAX FUNDS TO COVER SHORTAGE OF PREVIOUS TREASURER—JUDGMENT MAY BE SECURED AGAINST EACH TREASURER BUT RECOVERY LIMITED TO ACTUAL LOSS.

**SYLLABUS:**

1. *A county treasurer and his sureties are liable for the payment according to law of all funds received by him, in his official capacity, as evidenced by his "cash stubs" other than those representing the payment of taxes by checks which have been dishonored upon presentment unless it is clearly shown that the amount of money stated in such receipt to have been received by him is erroneous.*

2. *When a shortage of funds occurs during the term of a county treasurer whether by reason of defalcation or otherwise and a subsequent county treasurer applies funds coming into his possession in payment of other tax items for the purpose of expunging such shortage such misapplication of the tax funds by the subsequent treasurer is tantamount to a payment of funds coming into his possession otherwise than in the amount required by law, and renders such treasurer and his sureties liable for the entire amount of the shortage in his accounts caused by such diversion of funds.*

3. *When a county treasurer has diverted funds coming into his possession as treasurer and such diversion is paid by a subsequent county treasurer by the application of tax funds received during a subsequent term and a third county treasurer similarly expunges the shortage in the accounts of the second county treasurer each of such county treasurers has failed to pay out the moneys coming into his possession in the manner provided by law. Since the liability of each of such*