

3785.

CONSERVANCY DISTRICT—PRELIMINARY EXPENSE OF ORGANIZATION THEREOF MAY BE PAID FROM GENERAL FUNDS OF COUNTIES INVOLVED—DUTY OF COUNTY COMMISSIONERS TO APPROPRIATE FUNDS THEREFOR WHEN.

*SYLLABUS:*

1. *The preliminary expense involved in the organization of a conservancy district may lawfully be paid from the general funds of the counties involved, upon the order of the court as provided by Section 6828-43, General Code, after a proper appropriation has been made therefor.*

2. *It is the duty of boards of county commissioners to appropriate sufficient moneys to meet the orders of a court with respect to the payment of the preliminary expenses incurred in the organization or proposed organization of a conservancy district, which orders are made in pursuance of Section 6828-43, General Code.*

COLUMBUS, OHIO, January 11, 1935.

HON. DAVID C. WARNER, *Executive Secretary, State Water Conservation Board, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter, requesting my official opinion concerning a matter submitted to you by Mr. A. N. Jordan, Secretary of the Scioto-Sandusky Conservancy District. Mr. Jordan's letter, which is addressed to the State Water Conservation Board, is as follows:

"The State Water Conservation Board,  
State House Annex,  
Columbus, Ohio.  
Attention: Mr. David C. Warner,  
Executive Secretary.

Re: *SCIOTO-SANDUSKY CONSERVANCY DISTRICT.*

Gentlemen:

Scioto-Sandusky Conservancy District was organized 12/3/34 by an entry filed in the Court of Common Pleas of Franklin County, Ohio, being cause No. 144,489, on the docket of said court. Thereafter, on December 10, 1934, in pursuance to the second paragraph of Section 6828-43 of the General Code of Ohio, the court made an order apportioning the expenses incurred by the District prior to receipt of money by the District from taxes, assessments, bond sales or otherwise.

The amount apportioned to each county was as follows:

Crawford	\$ 818.10
Delaware	461.04
Fayette	451.10
Franklin	7,036.55
Highland	216.50
Madison	386.56
Marion	943.25
Pickway	712.70

Pike	\$185.92
Ross	765.25
Vinton	20.38
Sandusky	370.82
Morrow	209.07
Scioto	941.14
Seneca	678.48
Union	342.91
Wyandot	460.23

Total	\$15,000.00
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The pertinent part of General Code 6828-43, is as follows:

'Expenses incurred thereafter prior to the receipt of money by the district from taxes or assessments, bond sales, or otherwise, shall be paid from the general funds of the counties upon the order of the court and upon certification of the clerk of the court of such order specifying the amount and purpose of the levy, to the auditor of each county, who shall thereupon at once issue his warrant to the treasurer of the county, said payments to be made in proportion of the order outlined by the court aforesaid.'

A certified copy of the order so made was sent to the Auditor of each County, with the request that he issue his warrant to the Treasurer of his County, payable to the District. The Auditors of Delaware and Sandusky Counties have complied with the order.

Attention has been directed to Sections 5625-19 et seq. General Code, providing for the creation of a County Budget Commission, the duties of that Commission, and the methods for appropriation of money. The question before the district is this: Do the provisions of Section 5629-19 et seq. supersede that part of Section 6828-43, quoted above?

Your assistance in obtaining the opinion of the Attorney General of the State of Ohio on this question would be appreciated. It is essential that if such an opinion is obtained, it be done in the immediate future.

Very truly yours

SCIOTO-SANDUSKY CONSERVANCY  
DISTRICT.

By *Allan N. Jordon*,  
Secretary."

What is known as the "Conservancy Act of Ohio" was enacted in 1914 (104 O. L., 13). Its purpose, as expressed in its title, is:

"To prevent floods, to protect cities, villages, farms and highways from inundation, and to authorize the organization of drainage and conservation districts."

It provides for the organization of conservancy districts by the filing with a Court of Common Pleas of a petition therefor, upon the hearing of which the court may approve the organization of such district and appoint a board of directors therefor. After such organization and the appointment

of a board of directors, said directors are vested with authority to proceed to levy a tax upon the property within the district for the purpose of paying the expenses of organization and of the preparation of plans and surveys and for other incidental expenses which may be necessary prior to the time money is received by the conservancy district from the sale of bonds or otherwise. See Section 6828-43, General Code. Provision is also made by said section for the payment of the preliminary expenses of the organization or proposed organization of a conservancy district from the general fund of the county or counties involved, until such time as receipts from the tax levied for the purpose are available. The pertinent part of said Section 6828-43, General Code, reads as follows:

"After the filing of a petition under this act (G. C. Secs. 6828-1 to 6828-79), and before the district shall be organized, the costs of publication and other official costs of the proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor on the order of the court. In case the district is organized, such cost shall be repaid to the county out of the first funds received by the district through levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the cost shall be collected from the petitioners or their bondsmen. Upon the organization of the district, the court shall make an order indicating a preliminary division of the preliminary expenses between the counties included in the district in approximately the proportions of interest on the various counties as may be estimated by said court. And the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer of his county to reimburse the county having paid the total cost.

Expenses incurred thereafter prior to the receipt of money by the district from taxes or assessments, bond sales, or otherwise, shall be paid from the general funds of the counties upon the order of the court and upon certification of the clerk of the court of such order specifying the amount and purpose of the levy, to the auditor of each county, who shall thereupon at once issue his warrant to the treasurer of his county, said payments to be made in proportion of the order outlined by the court aforesaid. Upon receipt of funds by the district from the sale of bonds or by taxation or assessment the funds so advanced by the counties shall be repaid."

The Uniform Tax Levy Law, popularly referred to as the "Budget Law", Sections 5625-1 to 5625-39, inclusive, was enacted in 1927 (112 O. L., 391). Its purpose was to provide for the levying of taxes by local subdivisions and their method of budget procedure. Section 5625-19, General Code, provides for the creation of a county budget commission. Speaking broadly, the duties of a county budget commission consist of adjusting tax rates within each taxing subdivision of the county to the end that revenues may be made available for the purposes of the subdivisions. As a basis for the fixing of tax levies by the budget commission, the taxing authority of each subdivision is directed by Section 5625-20, General Code, to submit to the budget commission an estimate of contemplated revenues and expenditures by the

said subdivision for the ensuing fiscal year. At best, this is a mere estimate, and even though a particular expenditure could not be included within the estimate, the making of the expenditure is not precluded if, in fact, it becomes necessary and is authorized or directed by law.

By the terms of Section 6828-43, *supra*, certain preliminary expenditures incurred in the organization of a conservancy district are to be paid from the general fund of the county or counties within the proposed conservancy district or the district as authorized. The language of the statute is clear, and there are no provisions of the so-called budget law which in any wise conflict with those of Section 6828-43, General Code, which directs the expenditure to be made.

The legislature in enacting the budget law, is presumed to have legislated with full knowledge and in the light of all statutory provisions touching the subject matter of the act. See 25 Ruling Case Law, 1063.

At the time of the enactment of the budget law, Section 6828-43, General Code, was in effect as was also Section 2460, General Code. Said Section 2460, General Code, provides:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. \* \* \*"

It will be noted that the exception in the above statute includes both those cases where the amount is fixed by law and where it is authorized to be fixed by law.

An illustration of those classes of cases where the amount is fixed by law, is found in the case of *Jenkins, Auditor, vs. State ex rel.*, 40 O. App., 312. In that case the court held that the county commissioners must appropriate \$1,500 to a county agricultural society under the terms of Section 9894, General Code. In the course of the court's opinion, after referring to the so-called budget law, it is said:

"This language is direct and unequivocal and entitled the agricultural society to not less than the sum of \$1,500, and deprived the commissioners and all other county officers of any discretion in the premises except that the commissioners might determine the amount within the limits mentioned which an agricultural society is to receive. \* \* \*"

It is now claimed that this act impliedly limits the operation of Section 9894, and in effect repeals the unqualified nature of the claim arising under Section 9894, in favor of the agricultural society. With this view we cannot agree. Rights created by the positive provisions of one statute are not to be destroyed by an implication arising from a subsequently passed statute, if such implication can be avoided. At the time the new budget law was passed there were many sections, of which 9894 was but one, creating fixed and inescapable liabilities of the county, such as salaries of county officers, and it is unthinkable

that it was the purpose of the legislature to make any claims of this character subject to the action or nonaction of the county commissioners. Such a construction would impose legislative functions on the commissioners and render the act of doubtful constitutionality."

In the case of *State, ex rel. Justice vs. Thomas*, 35 O. App., 250, a question was presented as to whether of not the salary of a court bailiff which the law directs shall be fixed by the court, must be paid as so fixed. The court held, as stated in the syllabus of this case, as follows:

"The Budget Act, Sections 5625-1 to 5625-39, General Code (112 Ohio Laws, 391, 113 Ohio Laws, 670), does not authorize the county commissioners to fix the amount of the salary of the criminal court bailiff and court constable of the common pleas court. That power is granted to the judge of said court under Sections 1541, 1692 and 1693, General Code."

Inasmuch as a county auditor acts in a ministerial capacity in so far as the drawing of warrants for the payment of money is concerned, it is my opinion that he is bound by the provisions of Section 5625-33, General Code, which is a part of the budget act, to the extent that he may not draw warrants for the payment of money from the county treasury unless there exists an appropriation against which such warrants may be drawn. It is therefore necessary that an appropriation be made to meet withdrawals of moneys from a county treasury made necessary by reason of the orders of a court made in pursuance of Section 6828-43, General Code. It is the duty of a board of county commissioners to make a proper appropriation so that the court's order may be complied with and if the commissioners should refuse to make the appropriation they might be compelled to do so by an action in mandamus. *State ex rel. Justice vs. Thomas, Auditor*, 35 O. App., 250; Opinions of the Attorney General for 1932, page 413.

I am therefore of the opinion in specific answer to your question that:

1. The preliminary expenses involved in the organization of a conservancy district may lawfully be paid from the general funds of the counties involved, upon the order of the court, as provided by Section 6828-43, General Code, after a proper appropriation has been made therefor.

2. It is the duty of boards of county commissioners to appropriate sufficient moneys to meet the orders of a court with respect to the payment of the preliminary expenses incurred in the organization or proposed organization of a conservancy district, which orders are made in pursuance of Section 6828-43, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*