

6609

FIRE ALARM TELEGRAPH—MONEYS IN GENERAL FUND OF TOWNSHIP—MAY BE EXPENDED TO MEET PORTION OF CONTRACT COST TO CONSTRUCT LINES—STATUS, SPECIAL LEVY OUTSIDE TEN MILL LIMITATION APPROVED BY TOWNSHIP ELECTORS TO RAISE FUNDS FOR FIRE ALARM TELEGRAPH.

## SYLLABUS:

Moneys in the general fund of a township may lawfully be expended in meeting a portion of the contract cost of constructing lines of fire alarm telegraph even though a special levy outside the ten mill limitation has been approved by the township electors to raise funds for such purpose.

Columbus, Ohio, May 16, 1956

Hon. Mary F. Abel, Prosecuting Attorney  
Logan County, Bellefontaine, Ohio

Dear Miss Abel:

Your request for my opinion reads as follows:

“At the November 1955 election in Zane Township, Logan County, Ohio, a tax levy was submitted to the voters for estab-

lishment and maintenance of fire alarm lines as provided in O. R. C. 505.40. The levy carried and is for a period of two (2) years. It is desired to have this fire alarm circuit established at once, one-half of the cost to be paid in 1956 and one-half to be paid in 1957. In order to have the work started the Telephone Company requires that one-half of the total cost shall be evidenced by a certified check or other evidence of indebtedness made payable to the company and to be delivered upon completion of the work. There will not be sufficient money derived from the tax collection until the settlement late this summer or early fall. Since O. R. C. 133.30 limits the amount the taxing authority may borrow in anticipation of the collection of revenues to an amount not in excess of one-half of the amount estimated to be received during such fiscal year, this section does not afford the desired relief.

“May sufficient funds be transferred from the General Fund to meet the requirements of the contracting company, that is, for one-half of the contract price for the erection of this fire alarm circuit. If so, can the transfer be made without complying with the provision of Section 5705.16 O. R. C.?”

In a subsequent communication you advise that the levy in question was one outside the ten mill limitation. Such a special voted levy is expressly authorized by division (I) of Section 5709.19, Revised Code.

In Section 505.37, Revised Code, we find this provision :

“The board of township trustees may establish all necessary regulations to guard against the occurrence of fires, protect the property and lives of the citizens against damage and accidents and may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators *or other equipment*, appliances, materials, fire hydrants, and water supply for fire-fighting purposes as seems advisable to the board. \* \* \*” (Emphasis added.)

In Section 505.39, Revised Code, it is provided :

“The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent part-time, or volunteer fire-fighting companies to operate such equipment.”

Since no mention is made in Section 505.39, *supra*, of a vote by the electors such as is required in the case of a levy outside the ten mill

limitation, we must conclude that the levy there mentioned is one within such limitation. Accordingly, this provision merely emphasizes the authority of the township trustees to expend general funds of the township for the purposes stated, for such authority would appear to be granted in the general language in Section 505.37, first above quoted.

In any event, it seems entirely clear that moneys in the general fund of the township may lawfully be expended to defray one-half of the cost of the installation in question, and that there would be no necessity of effecting a *transfer* from that fund to the special fund in which the proceeds of the special voted levy will be credited. In short, such expenditure could lawfully be made directly from the general fund.

Latent in your inquiry is the question of the possibility of a "reimbursement" of the general fund for the moneys so "advanced." It would seem that the special fund here in question constitutes an "improvement fund" as this term is used in Section 5705.09, Revised Code, for I assume that fire alarm lines to be constructed will have an "estimated life or usefulness of five years or more." See Section 5705.01, Revised Code. As to such improvement funds, Section 5705.14, Revised Code, provides:

"No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows: \* \* \*

"(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 permanent improvements, or, *with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.* \* \* \*

"(D) The unexpended balance in any special fund, *other than an improvement fund*, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised 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." \* \* \*

(Emphasis added.)

It is thus to be noted that if any "reimbursement" of the general fund is under contemplation, the possibilities of doing so are sharply limited by the statute.

Accordingly for these reasons it is my opinion that moneys in the general fund of a township may lawfully be expended in meeting a portion of the contract cost of constructing lines of fire alarm telegraph even though a special levy outside the ten mill limitation has been approved by the township electors to raise funds for such purpose.

Respectfully,

C. WILLIAM O'NEILL

Attorney General