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1. DEFENSE, STATE COUNCIL OF — RESOLUTION — MONEYS DISTRIBUTED TO VARIOUS COUNTIES—COUNTY BUDGET COMMISSION MUST ALLOCATE TO SUBDIVISIONS WITHIN COUNTIES — MONEYS MUST BE USED EXCLUSIVELY FOR CIVILIAN DEFENSE PURPOSES—MAY NOT BE ALLOCATED TO LOCAL OR DISTRICT COUNCILS OF DEFENSE.
2. SUCH SUBDIVISIONS MAY TURN SUCH MONEYS DIRECTLY OVER TO LOCAL OR DISTRICT COUNCILS OF DEFENSE TO BE EXPENDED SOLELY FOR CIVILIAN DEFENSE.
3. MONEYS SO TRANSMITTED MAY BE PAID OVER TO A DISTRICT COUNCIL, COMPRISING THE COUNTY, FOR EXPENDITURES OF CIVILIAN DEFENSE.

SYLLABUS:

1. Moneys distributed to the various counties pursuant to the resolution passed by the State Council of Defense on April 18, 1942, must be allocated by the county budget commissions to the subdivisions within the counties and may not lawfully be allocated to local or district councils of defense. Such moneys when distributed by the county budget commissions to the subdivisions must be used exclusively for civilian defense purposes.

2. The subdivisions within the counties after receipt of such moneys may lawfully turn the same, or part thereof, directly over to local or district councils of defense, to be expended by such councils solely for civilian defense.

3. Moneys so turned over to local defense councils by subdivisions within the counties may in turn be paid over to a district council comprising the county, for expenditures of civilian defense.

Columbus, Ohio, May 2, 1942.

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

Gentlemen:

This will acknowledge receipt of your recent communication, which reads as follows:

“We have been requested to seek your opinion and advice concerning the allocation of Defense Relief Funds to be distributed to counties in accordance with resolution of the State

Controlling Board. Said request for opinion was submitted by representatives of the offices of Prosecuting Attorney of Cuyahoga County, and the Department of Law, City of Cleveland.

We are inclosing herewith a letter from one of said representatives, together with a copy of the Governor's proclamation creating the District Council of Defense for Cuyahoga County, and in connection therewith submit the following questions for your consideration:

Question 1. May the Budget Commission allocate money to local defense councils, including the county defense council, or must the allocations be made directly to the political subdivisions?

Question 2. If the Budget Commission is required to allocate funds to the subdivisions, may such subdivisions, including the county, pay the funds so allocated to them, or any part thereof, over directly to the local defense council or the county defense council, as the case may be?

Question 3. Can funds which have been allocated to political subdivisions, and by them placed under control of their local defense councils, be paid over to a district council comprising the county, for expenditure for civilian defense?"

The powers and duties of the state Council of Defense created by proclamation of the Governor under authority of section 5286 of the General Code, are set out in sections 5288 and 5289 of the General Code. The provisions of said sections, in so far as the same are pertinent hereto, read as follows:

Section 5288.

"The council shall have the following powers and duties: * * *

(d) To cooperate with local and district defense councils.

(e) To supervise and direct investigations, and report to the governor with recommendations for legislation or other appropriate action as it may deem necessary, with respect to the following matters in so far as they are or may be related to defense: * * *

(9) Welfare. * * *

(12) Finance. * * *

(14) Civil defense, including police mobilization, coordination for fire protection, and disaster relief.

(15) Any other type of activity directly or indirectly related to defense. * * *

(g) To require the cooperation and assistance of state and local governmental agencies and officials. * * *

(i) To do all acts and things, not inconsistent with law, for the furtherance of defense activities.”

Section 5289.

“In order to avoid duplication of services and facilities, the council is:

(a) Directed to utilize the services and facilities of existing officers, offices, departments, commissions, boards, institutions, bureaus and other agencies of the state and of the political subdivisions thereof, and

(b) All such officers and agencies shall cooperate with and extend their services and facilities to the council as it shall request.”

Under the above powers the state Council of Defense, at a meeting held on April 18, 1942, passed the following resolution:

“RESOLUTION

Whereas, it is the judgment of this Council, upon consideration of various requests of local governments in Ohio for financial assistance in order to enable them better to carry on appropriate activities for civilian defense against enemy attack or sabotage, that a reasonable state subsidy for such purpose would enable our subdivisions more adequately to defray the cost of civilian defense in the present emergency without unduly interfering with the maintenance of their normal functions, and

Whereas, Amended Senate Bill No. 178 of the 94th General Assembly imposes upon this Council the duty of reporting to the Governor its recommendations for such appropriate action as this Council may deem necessary with respect to, among other things, welfare and finance, and

Whereas, this Council is under the law directed to utilize the services and facilities of existing state departments and boards, which departments and boards are required to extend their services and facilities, and to cooperate, as this Council shall request, and

Whereas, there was appropriated in and by House Bill No. 665 of the 94th General Assembly to the Department of Welfare, among other subsidies to be distributed to local govern-

ments, an item designated as "H 8d Poor Relief" in the amount of \$10,000,000 for 1941 and \$8,500,000 for 1942, and

Whereas, after deducting all expenditures and encumbrances from such poor relief appropriation for 1941 there has been carried over an amount available in excess of \$1,500,000, and the Director of Public Welfare estimates that all expenditures and encumbrances from such appropriation during 1942 will not exceed \$8,000,000, leaving an excess of at least \$500,000 additional in this item for 1942.

NOW THEREFORE, it is hereby resolved that this Council recommends to the Governor that the sum of \$2,000,000 forthwith be allocated by the Director of the Department of Public Welfare and distributed by the Auditor of state to and among the counties of this state in one single distribution, upon the same pro rata basis as provided by law for the allocation and distribution of the local government fund; such money to be forthwith allocated to the subdivisions within the counties by the county budget commissions therein in accordance with their needs for civilian defense as determined by the local budget commissions and to be thereupon expended solely for civilian defense;

Be it further resolved, first, the Director of Public Welfare is hereby requested by this Council to request the Controlling Board to authorize the transfer of \$2,000,000 from the aforesaid appropriation to the Department of Public Welfare designated as "Poor Relief" to a new appropriation item designated "Defense Relief," second, the Controlling Board is hereby requested to authorize such transfer, third, the Director of the Department of Public Welfare and the Auditor of state are hereby requested to allocate and distribute to the treasurer of each county the \$2,000,000 so transferred as aforesaid, fourth, each county budget commission is hereby requested forthwith to allocate such funds within their respective counties in accordance herewith, and, fifth, all appropriate state and local officials are hereby requested to take such appropriate action as may be necessary to carry out this resolution in order that the state and her subdivisions be more adequately prepared to meet enemy attack or sabotage."

Pursuant to the request contained in the above resolution, the Director of the Department of Public Welfare requested the Controlling Board to authorize the transfer of \$2,000,000 from the classification "Subsidies" Item H 8d Poor Relief" to a new classification item "Subsidies H 8e Defense Relief." Acting upon said request the Controlling Board at a meeting held April 20, 1942, adopted a motion authorizing such transfer.

Thereafter, in accordance with the request and directions contained

in the above resolution of the state Council of Defense, said sum of \$2,000,000 was distributed in one single distribution, to the counties of this state upon the same pro rata basis as provided by law for the allocation and distribution of the local government fund.

The provisions of law relating to the distribution of the local government fund are contained in section 5546-19 of the General Code, which 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 that proportion of the total amount standing to the credit of the local government fund, after the amounts required by this act to be credited to other funds have been so credited, which is represented by the ratio which the average of the real, public utility, and tangible personal property tax duplicates of the municipal corporations or parts thereof in the county during the previous five years, bears to the average of the aggregate real, public utility and tangible personal property tax duplicates of all the municipal corporations in the state during the previous five years, respectively.

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.”

From the above, it will be noted that the moneys received by a county from the local government fund are required to be distributed to the subdivisions within such county in the respective amounts allowed by the budget commission to each.

In addition to the language of the resolution of the state Council of Defense directing distribution of the money in question upon the same pro rata basis as provided by law for the allocation and distribution of the local government fund, it is recommended in said resolution that “Such money be forthwith allocated to the subdivisions within the counties by the budget commissions therein in accordance with their needs for

civilian defense as determined by the local budget commissions and be thereupon expended solely for civilian defense.”

Obviously, a local council of defense created by proclamation of the Governor under the authority of section 5290 of the General Code is not a subdivision within a county. Therefore, the various county budget commissions which derive their power to act in the premises from the resolution of the state Council of Defense are required to allocate the moneys under their control to the subdivisions within their respective counties, and are without authority to allocate any portion of such moneys to local councils of defense.

I come now to your second question. In two former opinions rendered by me on January 10, 1942 (No. 4713) and March 3, 1942 (No. 4869), it was held respectively:

“The legislative authority of municipalities in Ohio may appropriate and expend funds from the general fund of such municipalities for the payment of the necessary expenses of local defense councils, including necessary traveling expenses and other expenses necessary to enable such local defense councils to function, as provided for in Section 5290 of the General Code.”

“County commissioners may expend moneys in the general revenue fund for the purpose of paying the necessary operating expenses, including office space and supplies, for a local county council of defense, created under and by virtue of the provisions of Section 5290 of the General Code (Sec. 6, Am. S.B. 178; Eff. 8-19-41).”

By the express direction of the resolution of the state Council of Defense, the moneys allocated to the subdivisions within the county must be expended solely for civilian defense. It is therefore apparent that under the provisions of section 5625-10, General Code, such moneys must be paid into a special fund of a subdivision created for such purpose. Certainly, if money in the general fund of a subdivision may lawfully be used to finance the activities of local councils of defense a fortiori moneys definitely earmarked for civilian defense may be so used.

This brings me to a consideration of the question of whether or not the entire amount allocated to a subdivision within the county by the budget commission may be paid over to local or district councils of defense.

The authority for the creation of local and district councils for defense is contained in section 5290 of the General Code, which reads as follows:

“The governor is authorized and empowered to create by proclamation local and district councils of defense and prescribe their powers and duties and whenever he deems it expedient may by proclamation dissolve or suspend such councils or re-establish them after any such dissolution or suspension.”

It should be here pointed out that while the Governor of Ohio has issued proclamations creating more than six hundred local and district councils of defense, such proclamations have in no instance prescribed the powers and duties of such local and district councils. It is therefore apparent that it was the intention of the Governor to permit such councils to exercise without limitation or restraint all powers which are conferred upon them by the Legislature.

Reference to the resolution of the state Council of Defense discloses that the only provision therein with respect to the ultimate expenditure of the moneys allocated to the subdivisions within the counties, is that such moneys be expended “solely for civilian defense.” This is the only restriction placed upon the expenditure thereof after the same has been allocated to the subdivisions within the counties. The manner in which such moneys shall be spent, through what channels expenditures thereof shall be made and by whom such moneys shall be spent is in no way fixed by the resolution. It is merely directed therein that such funds be expended solely for civilian defense.

It would therefore seem to follow that, subject to the sole restriction contained in the resolution, the expenditure of the moneys received by the subdivisions of the county rests solely in the sound discretion of the officials of such subdivisions. While section 5290 of the General Code, which provides for the creation of local and district councils of defense by proclamation of the Governor, does not expressly confer upon such councils authority to expend money in connection with civilian defense activities, it certainly must be assumed that the Legislature intended such councils when created by the Governor to be clothed with powers broad enough to effectuate the purpose of their creation. The very enactment of the statute providing for the creation of local and district councils of defense carries the implication that the General Assembly in-

tended such councils to exercise within their individual domains like powers granted expressly to the state Council of Defense.

In Opinion No. 4869, *supra*, it is stated:

“ * * * It is not to be presumed that the Legislature does a vain and idle thing, and when the creation and organization of local councils of defense were authorized, the power and authority to expend public funds to cover the necessary expenses to enable such councils to function must of necessity be implied. Otherwise, Section 5290, *supra*, is meaningless or at least substantially so.”

In view of the above, I am of the opinion that your second question must be answered in the affirmative.

The third question asked by you also requires a consideration of the powers conferred upon local councils of defense. Having pointed out that the powers conferred upon local and district councils of defense are similar to those granted the state Council of Defense, it would appear that under the authority to cooperate with local and district councils of defense, a local council could, if in its discretion it deemed it expedient to do so, pay over to a district council any moneys in its possession, to be used by the latter for the financing of civilian defense activities. It is entirely conceivable that in many instances the objectives of local councils might be more economically and effectively accomplished by a centralization of authority.

It would therefore appear, and it is consequently my opinion, that if a local council of defense deems it conducive to, or expedient for, the interests of civilian defense, to pay moneys in its possession over to a district council, to be expended by the latter, it may lawfully do so.

Therefore, in specific answer to your questions, it is my opinion that:

1. Moneys distributed to the various counties pursuant to the resolution passed by the state Council of Defense on April 18, 1942, must be allocated by the county budget commissions to the subdivisions within the counties and may not lawfully be allocated to local or district councils of defense. Such moneys when distributed by the county budget commissions to the subdivisions must be used exclusively for civilian defense purposes.

2. The subdivisions within the counties after receipt of such moneys may lawfully turn the same, or part thereof, directly over to local or district councils of defense, to be expended by such councils solely for civilian defense.

3. Moneys so turned over to local defense councils by subdivisions within the counties may in turn be paid over to a district council comprising the county, for expenditures of civilian defense.

Respectfully,

THOMAS J. HERBERT
Attorney General.