

to this issue was approved by this office in an opinion rendered to the Teachers Retirement System under date of August 21, 1935, being Opinion No. 4565.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,

*Attorney General*

2389.

FIREMEN'S PENSION FUND—LEVY REQUIRED BY SECTION 4605 G. C. MANDATORY—TRUST FUND—BENEFICIARIES HAVE VESTED RIGHT—IMMUNE FROM SEIZURE UNDER PROCESS LEGAL OR EQUITABLE—PENSION FUND --TAX LEVY UNDER SECTION 4605, G. C.

*SYLLABUS:*

1. *The levy required under Section 4605, G. C., in municipalities of Ohio, for the benefit of the Firemen's Pension Fund is mandatory.*
2. *The fact that the Trustees of such fund have created a trust fund out of moneys received from sources other than taxation affords no excuse for refusal or failure to make the levy by the authority upon whom such duty devolves.*
3. *The funds that go to make up the corpus of such Trust Fund are not immune from the payment of firemen's pensions, if the Trustees see fit to use them for such purpose, but there is no authority in law whereby the municipality can compel the Trustees so to do.*
4. *A fireman's pension is no longer a gratuity under the laws of Ohio, Sections 4612-1 and 4612-2, G. C., providing in effect that subsequent beneficiaries of such fund have a vested right thereto and such pensions are immune from seizure under any process legal or equitable.*
5. *The proceeds of such Trust Fund should be applied to the payment of firemen's pensions as such Trust Fund could subservise no other purpose, and the taxing authority has the right to consider this augmentation when making its levy for such pension fund.*

6. *The tax levy provided for in Section 4605, G. C., is within the ten mill limitation provided by Section 5625-2, G. C. Opinion No. 491, Vol. 1, p. 731, et seq. O. A. G. (1929), cited and approved.*

COLUMBUS, OHIO, April 26, 1938.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*  
GENTLEMEN:

I am in receipt of your communication of recent date as follows:

"Officials of the City of Springfield have submitted to this Bureau the following statement of fact:

A fund has been accumulated by the Trustees of the Firemen's Pension Board for some years under existing statutes and prior statutes, the income from which has been used in connection with current payment of firemen's pensions to supplement the moneys derived from the city under current tax levies for current pensions. This investment fund has been known and designated by the Trustees as 'Fund No. 2', and so referred to in the rules and regulations of the Firemen's Pension Board. This investment fund has been derived from the following sources:

Foreign insurance companies fees and taxes.

Benefits, such as entertainment.

Donations without expression from the donors as to endowment.

Dues from members specifically allocated as provided in Rule 12 of the rules and regulations of the Firemen's Pension Board, to supplement the investment fund known as Fund No. 2.

In connection with the above we have been requested to ask your opinion on the following questions:

Question 1. Are any of these funds exempt from the payment of pensions and assuming that these funds are sufficient to meet the needs of the Trustees of the Firemen's Pension Fund for one year, must the City, anyway, levy a tax for pension purposes?

Question 2. If these funds may be used for payment of current pensions can the City require the Trustees to use such funds, or is it discretionary with the Trustees?

Question 3. If it is discretionary with the Trustees must the City levy a tax of not to exceed 3/10th of a mill on each dollar upon all the real and personal property in accordance with Section 4605 of the General Code?

Question 4. Is the levy so authorized by Section 4605 within or outside the constitutional limitation of 10 mills?"

But for the new legislation, your inquiry in the main, could have been disposed of by two opinions of my predecessors, namely, Opinion No. 491, Vol. 1, p. 731 (1929) O. A. G. and Opinion No. 1976, Vol. 11, p. 928 (1928) O. A. G.

I find no provision made in the charter of the City of Springfield for a Firemen's Pension Fund, and the ordinances of the City are not before me. I do find this provision in the charter:

Sec. 84.

"All general laws of the state applicable to municipal corporations, now or hereafter enacted, and which are not in conflict with the provisions of this charter, or with ordinances or resolutions hereafter enacted, by the city commission, shall be applicable to this city; provided, however, that nothing contained in this charter shall be construed as limiting the power of the city commission to enact any ordinance or resolution not in conflict with the constitution of the state or with the express provisions of this charter."

I take it from this section that when the state has legislated relative to a particular subject and such legislation does not run counter to the city charter, the state law becomes the law of the city by adoption.

You state that you have an investment fund in your city, designated by the Trustees of your Firemen's Pension Board as "Fund No. 2" and that this fund has been in existence for some years and was derived from the following sources, which I will designate alphabetically for the purpose of reference:

- (a) Foreign insurance companies' fees and taxes;
- (b) Benefits, such as entertainments;
- (c) Donations without expression from the donors as endowment.
- (d) Dues from members specifically allocated as provided in Rule 12 of the rules and regulations of the Firemen's Pension Board.

Your first inquiry is whether or not any of these funds are exempt from the payment of pensions?

The authority for the creation and disbursement of The Firemen's Pension Fund and a declaration of the duties of the Trustees of such fund relative thereto and the rights, privileges and immunities of beneficiaries thereunder was, prior to May 26, 1937, taken care of by Sections 4600 to 4615 G. C., inclusive, but the 92nd General Assembly, by the en-

actment of Amended Senate Bill No. 14, effective on May 26, 1937, supplemented the existing sections and added appreciably to the original law as will be discerned later. It is not necessary to cite the year book as the new law has been carried into the General Code, viz., Amended Senate Bill No. 14 supplemented original Section 4612 with Sections 4612-1, 4612-2 and 4612-3, G. C. The first purpose of the original law was the establishment of a fund out of which pensions for the city firemen could be paid. The law makes no specific provision for a trust fund, however, the General Assembly must have anticipated an eventual surplus in the fund, as it did, by the provisions of Section 4611, G. C., authorize the Trustees to invest moneys received by them otherwise than by taxation, in interest bearing bonds of the United States, or of this state, or of any county, township, school district or municipal corporation in the state.

If the Trustees saw fit and did invest money in accordance with such statutory authorization, such securities would surely represent the corpus of a trust fund.

Your immediate concern is whether or not the Trustees having established such trust fund, is it under the law irrevocable, or to put it in another way, can the corpus of the fund be used to pay pensions?

While in my opinion, the Trustees may establish a trust fund, it has no particular sanctity and most certainly can never attain the character of an irrevocable trust. To so hold would encourage the maintenance of a trust fund at the possible expense of the pension fund, contrary to the legislative intent. The funds you enumerate are not exempt from the payment of pensions, if the Trustees see fit to so use them, but I fail to ascertain the city's right to require the Trustees to use such funds in an endeavor to escape the levy provided for in Section 4605, G. C., as follows:

"In each municipality availing itself of these provisions, to maintain the firemen's pension fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, shall levy tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in such municipality, but sufficient in amount within three-tenths of a mill to provide funds for the payment of all pensions granted to firemen under existing laws. In the matter of such levy, the board of trustees of the firemen's pension fund shall be subject to the provisions of law controlling the heads of departments in the municipality, and shall discharge all the duties required of such heads of departments."

There is an apparent omission in this section as printed, namely,

"shall levy tax not to exceed three-tenths of a mill on each dollar upon all the real and personal property", etc. I am of opinion that the General Assembly intended to say "upon each dollar of valuation of all real and personal property." I have not compared the printed section with the enrolled bill, nor do I deem it necessary, as there is enough in the section to disclose the legislative intent.

This office did hold in effect in Opinion No. 1976 (1928), *supra*, that such a pension was a mere gratuity in so far as the city was concerned, that no one had a vested right in a pension and that the law requiring such levy to be made was not mandatory. That was perfectly good law then, but it does not suffice now.

Permit me to quote the sections causing the upset.

Section 4612-1 G. C.:

"The granting of a pension to any person hereafter pursuant to the rules adopted by the trustees shall operate to vest a right in such person, so long as he shall remain the beneficiary of such pension fund, to receive such pension at the rate so fixed at the time of granting pension."

Section 4612-2 G. C.:

"No sum of money due or to become due to any pensioner shall be liable to attachment, levy or seizure by or under any legal or equitable process whatever, whether the same remains with the treasurer of the pension fund or any officer or agent of the board of trustees, or, is in the course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

The sections above quoted must be read in connection with the section they were enacted to supplement, namely,

Section 4612 G. C.:

"Such trustees shall make all rules and regulations for the distribution of the fund including the qualifications of those to whom any portion of it shall be paid and the amount thereof, but no rules or regulations shall be in force until approved by a majority of the board of trustees."

The "Trustees" referred to in the above quoted section have reference to the Trustees of The Firemen's Pension Fund as provided by Sections 4600, 4600-1, 4601, 4602, 4603 and 4604 G. C.

Summing up the effect of the new legislation relative to The Firemen's Pension Fund, we must conclude that any fireman granted a pension since May 26, 1937, has a vested right therein and that such pension is immune from process, legal and equitable. A vested right to such pension carries with it a vested right to the benefit of all the laws by means of which it is created and paid to the fireman entitled thereto.

You do not state the amount of money in the Trust Fund, but I take it that it is at least an appreciable sum from the fact that it is made up in part from taxes and fees charged against foreign insurance companies. The law allocating such taxes and fees to The Firemen's Pension Fund has not been operative for a number of years and the fact that some of the moneys collected from that source remain in the fund furnishes the basis for the assumption that the trust fund is, at least, worth while. When the General Assembly took this source of income away, it removed one of the three props upon which the firemen's fund structure stood. In other words, it was a fixed income, the other fixed income being produced by the annual tax levy and dues from individual firemen. At the present time, this fund must depend on the tax levy and dues collected. Benefits and donations cannot be depended upon to produce a fund and it is unlikely that the dues collected from firemen would be sufficient, consequently it would seem to me that it would be necessary to resort to the annual tax levy to preserve the integrity of the fund.

I am of the opinion that the General Assembly had this thought in mind when it enacted Amended Senate Bill No. 14, *supra*, and its purpose was to make the annual tax levy mandatory. In view of the recent legislation I can do none other than hold that Section 4605 G. C. providing for such annual levy is mandatory. I do not think that the Trust Funds are immune from the payment of pensions, if the occasion demands, and the Trustees see fit to so apply them, neither do I think that the presence of funds in the Trust Fund sufficient to pay all pensions for a particular year, furnishes any excuse to the taxing authority to refuse to levy the annual tax, having held such section to be mandatory.

The General Assembly has not given the city council any jurisdiction over the Trustees of the pension fund and I am unable to see just how council can require the Trustees to pay pensions out of the corpus of the Trust Fund, if the levy required by law is all sufficient for that purpose. However, I am of opinion that such Trustees must apply the income from the Trust Fund to the payment of such pensions, as that must be the purpose of the creation of the fund and council would have the right to consider this augmentation of the pension fund when making its annual levy, even to the extent that if the income from such fund was sufficient in amount to take care of all it would not be necessary for council to make a levy for such purpose at all. The bald provisions of

Section 4605 G. C. probably furnish the best additional argument as to its mandatory character.

The General Assembly provided by the enactment of Sections 4607, 4608 and 4609 G. C. that the pension fund could be complemented with certain fines, licenses, fees, donations by way of gift, grant, devise or bequest of moneys, real or personal property upon such terms as to investment or expenditure as is fixed by the grantor *or determined by such trustees*, and voluntary contributions from members of the fire department. Section 4608 G. C. takes care specifically of the question submitted as to whether or not donations made to the fund without direction or designation are immune from the payment of pensions as the section specifically provides that the trustees may determine the destination of such donations.

Note the subject of Section 4605 G. C.

*"Section 4605 Tax to maintain fund; how levied."*

The subject of a statute is expressed in its title and in its broad and extended sense, is the thing forming the generic head of the matter submitted. It is the matter to which the statute in question relates and with which it deals. By itself the subject may be indefinite but when taken in connection with the language of the statute, it may be of much assistance in determining the class or character of the section. I again quote part of the section, viz.:

*"In each municipality availing itself of these provisions, to maintain the firemen's pension fund the council thereof each year, in the manner provided by law for other municipal levies and in addition to all other levies authorized by law, shall levy, tax \* \* \* sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted firemen under existing laws." \* \* \* (Italics the writer's.)*

You will find this subject very well treated in a general way in case of *Moxon vs. State*, 36 Ohio Appeals, p. 24.

I come now to your final question, namely, is the levy provided for in Section 4605 G. C. within or without the ten mill limitation? It is not necessary to enter into an argumentative maze to determine this question.

Section 5625-2 G. C. provides as follows:

*"The aggregate amount of taxes that may be levied on any taxable property in any sub-division or other taxing unit of the state shall not in any one year exceed ten mills of each dollar of tax valuation of such sub-division or other taxing unit.*

*except taxes specifically authorized to be levied in excess thereof.* The limitation provided by this section shall be known as the 'ten mill limitation' and whenever said term is used in this chapter, or elsewhere in the General Code, it shall be construed to refer to and include both the limitation imposed by this section and the limitation imposed by Article XII, Section 2 of the constitution."

Section 4605 G. C. does not specifically authorize the levy therein provided for to be levied in excess of the ten mill limitation, hence the converse, in the absence of such specific authorization. I must conclude that such levy is within the ten mill limitation.

This identical question was passed on by one of my predecessors in 1929 under the then fifteen mill limitation. It was therein held that the tax levy provided for in Section 4605 G. C. was within the fifteen mill limitation. I refer to Opinion No. 491, Vol. 1, page 731, O. A. G. (1929) in which I concur.

The absence of authorities in this opinion may be explained by the fact that supplemental law that changed the entire legal complexion of the Firemen's Pension Fund, has been in effect about ten and one-half months.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General*

2390.

THE UNIFORM DEPOSITORY ACT—PUBLIC MONEYS MAY NOT BE DEPOSITED IN BUILDING AND LOAN ASSOCIATIONS—SECTIONS 2296-1 ET SEQ. G. C.

*SYLLABUS:*

*Under Sections 2296-1, et seq., General Code, known as "the uniform depository act", public moneys may not be deposited in a building and loan association.*

COLUMBUS, OHIO, April 28, 1938.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: Your communication reads as follows:

"Kindly advise me whether a township trustee, or other official, is permitted to deposit either active or inactive funds in a building and loan association chartered under the State, and carrying insurance of accounts."