

5201.

APPROVAL—BONDS OF BRADNER VILLAGE SCHOOL DISTRICT, WOOD COUNTY, OHIO, \$15,000.00.

COLUMBUS, OHIO, March 2, 1936.

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

5202.

APPROVAL—BONDS OF BLANCHARD RURAL SCHOOL DISTRICT, HARDIN COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, March 2, 1936.

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

5203.

POOR RELIEF—STATE RELIEF COMMISSION AUTHORIZED TO PAY JANUARY ALLOTMENTS TO COUNTIES ALTHOUGH ADMINISTRATIVE EXPENDITURES PAID PRIOR THERETO BY COUNTIES.

SYLLABUS:

The payment prior to January 30, 1936, by counties, of salary and administration expenditures for poor relief purposes in excess of the amounts now allowed by virtue of Section 5 of House Bill No. 627, enacted in the First Special Session of the 91st General Assembly, would not prevent the State Relief Commission from paying January allotments to such counties.

COLUMBUS, OHIO, March 2, 1936.

MR. ROY L. WILDERMUTH, *Chairman, State Relief Commission, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your request for my opinion which reads as follows:

"In Opinion No. 5175, issued by you as Attorney General under date of February 20, 1936, the words 'effective date of this

act' as contained in Section 4-a of House Bill No. 627, are defined as meaning the date on which said act became law, i. e., February 1, 1936.

From the opinion we quote (page 2, paragraph 4): '* * *

whether said term means the date upon which the act actually became effective or whether, in view of Section 16-c, it means January 1, 1936, the date from which "each, every and all of the appropriations, computations, allocations, distributions, advancements, provisions, percentages, rates, terms and administrations of and under this act" shall be interpreted as being effective,' and

From the opinion (page 5, paragraph 3):

'* * * it was solely the intention that by Section 16-c appropriations would be calculated from January 1, 1936, and that the counties would get their allowances for the full month of January although the act would not become effective until January 30, this section having been placed in the act when it was seen that it could not go into effect until late in January.'

If Section 16-c is held to mean that 'each, every and all of the appropriations, computations, allocations, distributions, advancements, provisions, percentages, rates, terms and administrations of and under this act' became effective January 1, 1936, the State Relief Commission, in passing on applications for January funds, is confronted with Section 12-c of the act which reads:

'(c) No payment upon, nor by way of, any allocation, distribution or advance, shall be made to any county until and unless it, from time to time, complies with each and all the provisions of this act as herein required.'

The several counties, by the terms of the law, are restricted in the amounts that can be paid employees, and the cost of administration (Section 5) in expending of funds for poor relief only 'for the administration and provision of poor relief as defined by this act.' (H. B. 627.)

The Commission respectfully requests you to furnish it with a written opinion as to whether the restrictions and conditions contained in the act are retroactive to January 1, 1936, to the extent of requiring the Commission to refuse payment of January allotments to counties that have violated such restrictions and conditions."

House Bill No. 627, enacted in the first special session of the 91st General Assembly, was passed January 23, 1936, and approved by the Governor, January 30, 1936. Since it was emergency legislation, it became effective immediately upon its approval by the Governor. *State v. Lathrop*, 93 O. S., 79. Section 16-c of the act provides:

“Each, every and all of the appropriations, computations, allocations, distributions, advances, provisions, percentages, rates, terms and administrations of and under this act shall be provided, computed, calculated, administered, interpreted and applied under the respective provisions and sections of this act, as beginning at, as being effective from, and as running from January 1, 1936, just as though this act had been enacted upon and had become effective on the first day of January, 1936.”

As pointed out in my opinion No. 5175, rendered February 20, 1936, and as quoted in your communication, the sole purpose of Section 16-c was to give the counties allowances for poor relief purposes for the full month of January by calculating appropriations from January 1, 1936, even though the act would not go into effect until later.

Paragraph (c) of Section 12 of the Act provides:

“No payment upon, nor by way of, any allocation, distribution or advance, shall be made to any county until and unless it, from time to time, complies with each and all of the provisions of this act, as herein required.”

You call my attention to Section 5 of the act, which provides in substance that the cost of administration in a county “paid out of *the funds created by, or distributed under this act*, shall not exceed five (5%) percent of the total amount of monthly expenditure authorized by this act,” and that “No salary or compensation to be paid *from the funds created by this act* shall be in excess of one hundred fifty (\$150.00) dollars per month and that for only one such employee, or person, except in counties having a population of more than fifty thousand persons, in which only one such employee, or person, may be paid from the herein established fund at the monthly rate of \$10.00 additional for each fifty thousand of population in excess of said fifty thousand persons as established by the last federal census.”

Evidently certain counties during the month of January, prior to the effective date of House Bill No. 627, spent more than five percent in the administration of poor relief out of Carey Bond proceeds, or the public utility excise taxes, and paid salaries in excess of those allowed by Section 5 of House Bill 627, and your question put precisely, is whether or not

such counties are eligible for January allowances under the provisions of House Bill 627.

It should be noted that the "funds created by this act" referred to in Section 5, mean the "county relief fund," created by virtue of Section 4 of the act, and as pointed out in my opinion No. 5175, rendered February 20, 1936, this fund, by the terms of this section, was not created on January 1, 1936, but was created on the effective date of House Bill 627, such effective date being January 30, 1936. Consequently, inasmuch as there were not and could not have been any "funds * * * distributed under this act," referred to in Section 5, until January 30, 1936, it appears that the restrictive provisions of Section 5 of House Bill 627, providing for a maximum of five percent for administration and setting certain maximum salaries, had no applicability to administration or salary expenditures prior to January 30, 1936.

Consequently, in specific answer to your inquiry, it is my opinion that the payment, prior to January 30, 1936, by counties, of salary and administration expenditures for poor relief purposes in excess of the amounts now allowed by virtue of Section 5 of House Bill 627, enacted in the First Special Session of the 91st General Assembly, would not prevent the State Relief Commission from paying January allotments to such counties.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5204.

APPROPRIATION—PROCEEDS OF CERTAIN EXCISE TAXES
DISTRIBUTABLE FOR SCHOOL PURPOSES REGARDED
AS 1935 REVENUE IF ACCRUED OR IN YIELD PRIOR TO
JANUARY 1, 1936.

SYLLABUS:

1. *Proceeds of liquid fuel taxes, cigaret taxes and sales taxes which under the law are distributable for school purposes and which accrued or which were the yield of those taxes prior to January 1, 1936, should be regarded as 1935 revenue whether actually paid into the treasury of the State of Ohio prior to that date or later, and should be distributed to school districts as were other funds accruing from said taxes during the year 1935.*

2. *The appropriations made by the General Assembly to the Department of Education under the headings "State Board of Vocational Education, Regular—1936," "State Board of Vocational Education (Smith*