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RELIEF — PART OF SECTION 5639-1 G.C. WHICH AUTHORIZES COUNTY BUDGET COMMISSIONS TO ALLOCATE A PORTION OF UNDIVIDED CLASSIFIED PROPERTY TAX FUND TO TOWNSHIP TRUSTEES WHEN IN NEED OF FUNDS FOR POOR RELIEF “AS DEFINED BY LAW” BECAME INOPERATIVE UPON ENACTMENT OF SECTIONS 3391 AND 3391-2 G.C. WHICH TOOK FROM TOWNSHIP TRUSTEES THE POWER AND DUTY TO DISPENSE POOR RELIEF AS DEFINED BY LAW.

SYLLABUS:

Upon the enactment of Sections 3391 and 3391-2 of the General Code taking from township trustees the power and duty to dispense poor relief as defined by law, that part of Section 5639-1 of the General Code which, in terms, authorizes county budget commissions to allocate a portion of the undivided classified property tax fund to township trustees, when they had determined that such trustees were in need of funds for purposes of poor relief “as defined by law,” became inoperative.

Columbus, Ohio, May 15, 1942.

Hon. Marcus Shoup, Prosecuting Attorney,
Xenia, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

"I respectfully submit the following statement of facts for your opinion inasmuch as I cannot find any decisions that control the same.

The Budget Commission of this County desires to distribute the surplus receipts from the Classified Property tax as provided for under Sec. 5639-1 G.C.

The first paragraph of Sec. 5639-1 G.C. provides:

'If, in the years 1941 and 1942, the county budget commission of any county shall determine that municipalities and townships are in need of funds for relief purposes, such county budget commission may, by resolution duly passed, request and direct the county treasurer, in lieu of distributing the residue of the undivided classified property tax fund, at the second half settlement, as provided in section 5639, to distribute such surplus or residue as remains over and above the amount of residue allocated to the county school tax fund in the year 1936, in accordance with such allocations as the county budget commission may make among the municipalities and townships on the basis of their respective relief needs, and such surplus funds may be used for poor relief, as defined by law.'

The above section of the Statute stipulates that such surplus or residue of the undivided classified property tax fund may be allocated by the Budget Commission among the municipalities and townships on the basis of their respective relief needs, and such surplus funds may be used for poor relief, *as defined by law*.

It will be noted that while said section permits the allocation of such funds to townships and municipalities for relief needs, it is further specifically provided that said surplus funds may be used for poor relief as defined by law.

By the enactment of H.B. 675, the administration of poor relief was placed with the city officials within the corporate limits of each city and with the County Commissioners in all that part of the County outside the limits of such Cities.

If the definition of 'Poor Relief' as employed in H.B. 675 is the same definition referred to in Section 5639-1 G.C., it would appear that the Township trustees would not be the

proper parties to use such funds and would have no 'need' to be considered in making such allocations, and therefore the question arises as to whether or not such funds should be allocated to the County inasmuch as the County Commissioners are presently empowered to administer poor relief outside of the Cities, rather than the township trustees.

Therefore, under the provisions above cited, I would appreciate receiving at your early convenience your official opinion as to whether or not such townships may have any of said surplus funds allocated to them by the Budget Commission."

Section 5639-1 of the General Code, as originally enacted in 117 O.L., 275, contained the following language in its first paragraph:

"If in the year 1937 the county budget commission of any county shall by resolution, passed within thirty days from the effective date of this act, so request and direct, the county treasurer shall in lieu of distributing the residue of the undivided classified property tax fund, as provided for in section 5639, distribute such surplus or residue as remains over and above the amount of residue allocated to the county school tax fund in the year 1936, such surplus may be allocated by the county budget commission among the municipalities and townships on the basis of their respective relief needs, if the county budget commission determines such needs exist, and may be used for poor relief as defined in an act passed and approved February 11, 1937, and known as House Bill No. 65, entitled 'An act to establish a state relief commission to provide for the administration thereof and to appropriate and provide for the distribution of moneys in the state treasury for poor relief purposes, and to declare an emergency.'"

In such act it is provided that the moneys may be used "for poor relief as defined in an act passed and approved February 11, 1937." Such act is found in 117 O.L., 13. The definition of "poor relief" is contained in Section 1 of such law. Such definition read:

"The term 'poor relief' shall mean within any county (1) the provision of temporary support and medical relief to non-residents, pursuant to sections 3476 and 3484-2 of the General Code; (2) the provision of support and relief to all persons, possessing a legal settlement for relief purposes in the county, who are in a condition requiring such aid; the payment of premiums to the industrial commission of Ohio by the county commissioners for the public work relief employees' compensation fund, whether or not such services or payments are administered by the county or by a township or a municipal corporation in accordance with the provisions of the General Code. * * *

It should be observed that the House Bill No. 65 referred to in original Section 5639-1 of the General Code was a temporary act to expire on April 15, 1937. In House Bill No. 762 (117 O. L., 721) the first paragraph of Section 5639-1 of the General Code was amended to read as follows:

"If, in the year 1937 and/or 1938, the county budget commission of any county shall determine that municipalities and townships are in need of funds for relief purposes, such county budget commission may, by resolution duly passed, request and direct the county treasurer, in lieu of distributing the residue of the undivided classified property tax fund, as provided in section 5639, to distribute such surplus or residue as remains over and above the amount of residue allocated to the county school tax fund in the year 1936, in accordance with such allocations as the county budget commission may make among the municipalities and townships on the basis of their respective relief needs, and such surplus funds may be used for poor relief, as defined by law."

At the time such act was pending in the General Assembly there was pending a bill which later became a law defining poor relief for the purposes of such act during the years 1938 and 1939 as including the dispensation of poor relief by townships and municipalities to those having legal settlements therein and by counties under authority of their existing Sections 3476 and 3484-2 of the General Code (see 117 O.L., 13). Such definition was supplemented in 117 O.L., 858. As I will hereinafter point out, the effect of such change is immaterial to your inquiry.

Such acts were superseded by an act appearing in 117 O.L., 877, which again set forth in Section 1 thereof a specific definition of poor relief.

Again in 118 O.L., 710 the General Assembly repealed the former definition of poor relief and provided a new definition of poor relief. On June 6, 1939, an act was passed "To provide for the administration of poor relief, etc.," (118 O.L., 710). Such act was of permanent nature and has been given section numbers 3391, 3391-1 to 3391-12, both inclusive, of the General Code. In Section 3391 of the General Code the term "poor relief" is defined as follows:

"For the purposes of this act:

'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of

securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters. Payments for shelter shall not exceed the average rental for comparable types of shelter in the area in which such shelter is provided. * * *

Such statutes providing for the administration of poor relief are still in effect and, in so far as I have observed, contain the only definition by law of the term "poor relief."

In such act it is provided that poor relief shall be administered by the "local relief authority to all persons therein (in each local relief area) in need of such poor relief" (Section 3391-2, General Code). The county is divided into two types of "local relief areas;" the "county local relief area" which is composed of all of the territory of the county lying outside of cities, of which the county commissioners are the local relief authority; and the "city local relief areas" which are composed of the territory within the geographical limits of cities, the local relief authorities of which are the respective councils (see Sections 3391-1, General Code).

It seems elemental that since the boards of township trustees are public officers, they have such powers and duties and such only as have been granted them by statute, *Elder v. Smith*, 103 O.S., 369.

By reason of the enactment of the present poor relief statute the power and duty of administering poor relief has been vested in the boards of county commissioners and councils of cities and not in township trustees. See Opinions of the Attorney General for 1939, Numbers 919, 948 and 1484. The only power which can be exercised by township trustees is that authorized by Section 3391-1, General Code, when, by resolution of the county commissioners, they have been designated as agents of the county local relief authority in dispensing poor relief furnished by such agency.

In view of the provisions of the Ohio statutes above referred to, it would seem impossible for a county budget commission to determine that township trustees were in need of funds for poor relief purposes when such trustees do not have the legal capacity to use funds for poor relief purposes "*as defined by law.*" However, if such funds were to be so allotted to the board of township trustees, the allotted funds could not be expended by them when received. It would therefore seem to me that

the purported authorization of allotment of funds to township trustees for poor relief as defined by law ceased to exist when the authority to dispense poor relief was taken away from township trustees.

Specifically answering your inquiry it is my opinion that upon the enactment of Sections 3391 and 3391-2 of the General Code taking from township trustees the power and duty to dispense poor relief as defined by law, that part of Section 5639-1 of the General Code which, in terms, authorizes county budget commissions to allocate a portion of the undivided classified property tax fund to township trustees, when they had determined that such trustees were in need of funds for purposes of poor relief "as defined by law," became inoperative.

Respectfully,

THOMAS J. HERBERT
Attorney General.