

1829.

POOR RELIEF — UNDER SENATE BILL 462, 92ND GENERAL ASSEMBLY, 117 O. L., 868, AMENDED BY HOUSE BILL 572, 93RD GENERAL ASSEMBLY, NO PART OF PROCEEDS OF NOTES ISSUED UNDER ACT AS AMENDED MAY BE USED FOR POOR RELIEF AFTER DECEMBER 31, 1939 — ANY REMAINING FUNDS MUST BE PLACED IN SPECIAL FUND FOR RETIREMENT OF OUTSTANDING NOTES OR BONDS.

SYLLABUS:

By reason of the express provisions of Senate Bill No. 462 (117 O. L., 868) as amended by House Bill No. 572 of the present general assembly, no part of the proceeds of notes issued pursuant to the authority of such Act as amended, may be used for the purpose of poor relief after December 31, 1939. Any remaining balance of such funds must be placed in a special fund for the retirement of such outstanding notes or bonds.

Columbus, Ohio, February 8, 1940.

Hon. Rex F. Bracy, Prosecuting Attorney,
Norwalk, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads:

"G. W. L., Relief Director of Huron County, desires an opinion from your office upon the following two questions:

In planning our budgets for the relief department for the year 1940, it is necessary to request an opinion on two items pertinent thereto. (1) Is it permissible under the provisions of Senate Bill No. 462 as amended by House Bill No. 572 to issue the maximum amount of notes possible prior to December 31, 1939, despite the fact that this would provide funds not needed for relief purposes in 1939 but which will be needed in 1940? (2) Can any unencumbered balance remaining in the poor relief fund on December 31, 1939, be appropriated for relief expenditures in 1940?

In asking these two questions, your attention is called to the fact that the last session of the State Legislature adopted Substitute House Bill No. 675 which provided the method of administering poor relief to December 31, 1940. Also, your attention is called to the amendment of section 2, of Senate Bill No. 562 by House Bill No. 572. It is contended that by this amendment (H. B. 675) the Legislature clearly showed its intention of providing a relief law and means of financing relief until December 31, 1940. The amended House Bill No. 572 provides additional funds; but by failure to amend Section 3 of Senate Bill No. 462 it appears that the Legislature overlooked the provisions of that Section which forbid an expenditure of money derived from the sale of notes, after December 31, 1939.

This county could issue approximately \$8,000.00 in additional notes provided it is done before December 31, 1939. There will, also be an estimated unencumbered balance in our poor relief fund on December 31, 1939, amounting to \$3,000.00, which, together with the note procedure referred to above, would finance our poor relief program for at least eight months of the year 1940."

Senate Bill No. 462 referred to in your request is that enacted by the 92nd General Assembly (117 O. L., 868) and House Bill No. 572 is that enacted by the 93rd General Assembly (118 O. L., 572).

An examination of such Senate Bill No. 462, will disclose that at the time of its enactment, Section 2 thereof, fixed the final date for the issuance of notes thereunder as December 31, 1938. Then follows Section 3, which reads:

"The proceeds of the sale of any bonds or notes issued under section 2 of this act by any county, municipality or township shall be placed in a special fund to be denominated the 'emergency relief fund, and shall be deemed to be appropriated for the purposes only for which the bonds or notes were issued, but no expenditure shall be made from such special fund after December 31, 1939. Any unencumbered balance resulting from the sale of such bonds, not needed for the purpose for which such fund is established, shall be transferred to the special fund for the retirement of any outstanding bonds or notes authorized under the provisions of this act, or if the treasurer of state has been appointed paying agent of the county under the provisions of section 6 of Amended Senate Bill No. 4, passed March 31, 1932, and approved April 5, 1932, and amendments thereto, shall be paid to the treasurer of state as such paying agent in the amount necessary to meet the payment of principal and interest on bonds issued under section 2 of this act."

Under authority of Section 2 of such Act the notes, which might have been issued, had a final maturity date of March 1, 1942. The present General Assembly in the enactment of House Bill No. 572 amended Section 2 of such Senate Bill No. 462 so as to permit the issuance of notes during the year 1939 and extended the possible maturity date of the notes to be issued during the year 1939 to March 1, 1943 and limited the aggregate amount of the notes that might be issued, by providing that the aggregate amount of notes issued under the former provision of the Act plus those issued during the year 1939 should not exceed 80% of the revenues anticipated under Section 7 of House Bill No. 741 as enacted in 117 O. L., 753, 756, plus 90% of the revenues anticipated from the levies made by the enactment of Sections 5544-17, 5545-2 and 6212-49b of the General Code. No other material changes were made in Section 2 of such Senate Bill No. 462 by the enactment of such House Bill No. 572, and no change whatsoever was made in Section 3 of such Senate Bill No. 462. Such Section 2 as amended reads:

"In anticipation of the collection and distribution of the revenues herein provided for poor relief purposes, the board of county commissioners of any county, or the council or other legislative body of any municipality or the trustees of any township

may borrow in the year 1939 and may from time to time issue notes of the county, municipality or township therefor; provided, however, that the amount so borrowed, when added to any amounts borrowed in 1938 under this act and any amounts borrowed or encumbered under authority of section 7 of House Bill No. 741, passed January 20, 1938, shall not exceed eighty per centum of the revenue anticipated under said section 1 of House-Bill No. 741 aforesaid as amended by this act plus ninety per centum of the revenues anticipated for the years 1939, 1940 and 1941 by reason of the levy provided by sections 5544-17, 5545-2 and 6212-49b of the General Code. In all cases such percentages shall be computed upon the anticipated revenue as determined by the bureau of inspection of the office of the auditor of state.

Such notes shall be issued on forms provided by the bureau of inspection, pursuant to a resolution of such county commissioners, council or township trustees, which sets forth the amount of notes to be issued, the denomination thereof, the rate of interest to be paid, and that such notes are issued pursuant to this act, and a complete report covering the details of the issuance of such notes shall be filed with the auditor of state on such forms as he may prescribe.

Such notes shall be payable on or before March 1, 1943, and shall bear interest from date at a rate not exceeding four per centum per annum, payable semi-annually, shall be signed as provided in the uniform bond act of Ohio, and shall recite on their face that they are issued pursuant to this act and the resolution authorizing the same. The proceeds of such notes shall be allocated to a special fund in such subdivision for poor relief and the administration thereof, including payment of premiums to the industrial commission of Ohio for the public work-relief employes' compensation fund. The principal and interest of such notes shall be paid from the proceeds of the taxes provided in this act or any amendment thereto. The notes may be sold at not less than par and accrued interest, and shall be sold at public sale after not less than one advertisement at least ten days prior to said sale, anything in section 2293-28 of the General Code and the uniform bond act to the contrary notwithstanding.

Said notes may be issued pursuant to the provisions hereof notwithstanding and irrespective of the provisions of section 2293-4 of the General Code and/or any other provisions of the General Code."

As was held by the court in *State ex rel. v. Cincinnati*, 52 O. S., 419:

"An amended section of a statute takes the place of the original section and must be construed with reference to the other sections, and they with reference to it; the whole statute, after the amendment; has the same effect as if re-enacted with the amendment
* * *"

And in *McKibben v. Lester*, 9 O. S., 627, the Court held:

“Where one or more sections of a statute are amended by a new act, and the amendatory act contains the entire section or sections amended, and repeals the section or sections so amended, the section or sections as amended must be construed as though introduced into the place of the repealed section or sections in the original act, and, therefore, in view of the provisions of the original act as it stands after the amendatory sections are so introduced.”

It would, therefore, seem that we must now interpret such Senate Bill No. 462, just as though at the time of its enactment, it had contained the numbered section 2 of such House Bill No. 572. You infer that the failure of the legislature to amend section 3 of such Senate Bill No. 462 so as to extend the time for the expenditure of the money derived from the sale of the notes authorized by section 2 might indicate an intent on the part of the legislature to also authorize the expenditure of such funds so derived during the year 1940 and that the failure to amend such section 3 was a mere oversight.

In the construction of statutes it is always to be presumed that the legislature has placed everything in a statute that it intended to there appear. *State ex rel. Skinner Engine Company v. Commissioners*, 124 O. S., 404, 406; *Board of Education v. Boal*, 104 O. S., 482. It is likewise to be presumed that when the legislature amends a statute it intends to change the meaning only to the extent required by the change of language. In *re Harry Allen*, 91 O. S., 315; *Board of Education of Hancock County v. Boehm*, 102 O. S., 292; *Board of Education v. Board of Education*, 112 O. S., 108.

While it may well be that there would have been some propriety in the action of the legislature extending the time of expenditure of moneys to be derived from the sale of the notes after the maximum date for the issuance of the bonds, nevertheless the legislature has not made such provision. As stated by the court in *Farrolt v. Moberly*, 103 U. S., 580, 586: “The judicial function is that of interpretation; it does not include the power of amendment under the guise of interpretation. * * What the court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require.”

Since it is possible to give effect to the enactment of the legislature as written it appears that your inquiries must be answered in the negative.

It may well be that as a result of the placing of such funds in such special fund for the retirement of the bonds so issued, such special fund may be so increased that a greater amount of moneys would be contained therein than will be necessary for the payment of bonds so issued. If such condition be found to exist, I do not herein hold that a portion of the excise tax receipts which were anticipated by the issuance of such notes may not be used for poor relief purposes, in the manner described in my opinion dated November 22, 1939, bearing number 1467.

Specifically answering your inquiry, it is my opinion that by reason of the express provisions of Senate Bill No. 462 (117 O. L., 868), as amended by House Bill No. 572 of the present general assembly, no part of the proceeds of notes issued pursuant to the authority of such Act as amended, may be used for the purpose of poor relief after December 31, 1939. Any remaining balance of such funds must be placed in a special fund for the retirement of such outstanding notes or bonds.

Respectfully,

THOMAS J. HERBERT,
Attorney General.