

OPINION NO. 91-008**Syllabus:**

1. Pursuant to R.C. 5901.11, as amended in 1987-1988 Ohio Laws, Part III, 4689 (Am. Sub. H.B. 626, eff. Sept. 14, 1988), the board of county commissioners is authorized to review and revise budget requests made by the veterans service commission and is then required to make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves; the board of county commissioners is no longer required to make a levy necessary to raise the amount determined by the commission. (1985 Op. Att'y Gen. No. 85-066 (syllabus, paragraph 6); 1983 Op. Att'y Gen. No. 83-032; 1966 Op. Att'y Gen. No. 66-170; 1962 Op. Att'y Gen. No. 3067, p. 441; 1950 Op. Att'y Gen. No. 1532, p. 127; 1948 Op. Att'y Gen. No. 3435, p. 348 (syllabus, paragraph 2); 1935 Op. Att'y Gen. No. 3897, vol. I, p. 108; 1930 Op. Att'y Gen. No. 2114, vol. II, p. 1149, overruled in relevant part on the basis of statutory amendment.)
2. The board of county commissioners may, in the reasonable exercise of its discretion, modify budget requests submitted by the veterans service commission for amounts to be allocated to various purposes; the board of county commissioners may not, however, dictate within each aggregated amount the manner in which money allocated to a specified purpose is to be expended.

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, January 11, 1991

I have before me your request for an opinion concerning the budget of a veterans service commission. As your request notes, R.C. 5901.11, as amended by Am. Sub. H.B. 626, reads as follows:

On or before the last Monday in May in each year, the veterans service commission shall meet and determine in an itemized manner the probable amount necessary for the aid and financial assistance of indigent persons and for the operation of the veterans service office for the ensuing year. *After determining the probable amount necessary for such purposes, the commission shall prepare and submit a budget in the manner specified in division (C) of section 5705.28 of the Revised Code to the board of county commissioners which may*

review and revise the budget requests. The board, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves.

1987-1988 Ohio Laws, Part III, 4689 (Am. Sub. H.B. 626, eff. Sept. 14, 1988) (emphasis added).

You have raised the following questions:

- 1) Should the County Veterans Service Commission determine that the probable amount necessary equals the entire five-tenths of a mill per dollar does the Board of County Commissioners have to appropriate the entire amount requested?
- 2) Does the Board of County Commissioners have a statutory right and ability to look at specific budgetary requests from the Veterans Service Commission and add and/or delete these particular budget requests as they independently see fit?

Your questions arise from the fact that Am. Sub. H.B. 626 amended R.C. 5901.11 in significant respects. Prior to that amendment, R.C. 5901.11 stated:

On the last Monday in May in each year, the soldiers' relief commission [now veterans service commission] shall meet and determine from the lists provided for in section 5901.08 of the Revised Code the probable amount necessary for the aid and relief of indigent persons for the ensuing year, together with an amount sufficient, in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief are established to the satisfaction of the commission. *After determining the probable amount necessary for such purpose, the commission shall certify it to the board of county commissioners, which, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief.*

1987-1988 Ohio Laws, Part III, 4689 (Am. Sub. H.B. 626, eff. Sept. 14, 1988) (emphasis added). This language was consistently construed to mean that the commission could determine the probable amount that would be necessary for the appropriate purposes and that the board of county commissioners was required to levy a tax, not to exceed five-tenths of a mill per dollar, to raise the amount determined by the commission. *See Madden v. Bower*, 20 Ohio St. 2d 135, 141, 254 N.E.2d 357, 361 (1969); *State ex rel. Binder v. Board of County Commissioners*, 174 Ohio St. 23, 23, 186 N.E.2d 476, 476 (1962) (it is "a mandatory duty of the Board of County Commissioners to provide the sum certified for the use of the Soldiers' Relief Commission"); *State ex rel. Semetko v. Board of Commissioners*, 30 Ohio App. 2d 130, 283 N.E.2d 648 (Lucas County 1971); 1985 Op. Att'y Gen. No. 85-066 (syllabus, paragraph 6) ("[p]ursuant to R.C. 5901.11, the board of county commissioners must make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of property in the county, to raise the amount certified by the soldiers' relief commission as the probable amount necessary to carry out its duties under R.C. Chapter 5901"); 1983 Op. Att'y Gen. No. 83-032; 1966 Op. Att'y Gen. No. 66-170; 1962 Op. Att'y Gen. No. 3067, p. 441; 1950 Op. Att'y Gen. No. 1532, p. 127; 1948 Op. Att'y Gen. No. 3435, p. 348; 1935 Op. Att'y Gen. No. 3897, vol. I, p. 108; 1930 Op. Att'y Gen. No. 2114, vol. II, p. 1149.

Am. Sub. H.B. 626 amended R.C. 5901.11 so that it now provides that, instead of certifying a probable necessary amount to the board of county commissioners, the commission prepares and submits a budget in the manner specified in R.C. 5705.28(C). R.C. 5705.28 states, in part:

(A) Except as provided in division (B) of this section [pertaining to school library districts], the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year....

....
(C)(1) To assist in the preparation of the budget, the head of each department, board, commission and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority...an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision.

Prior to its amendment in 1988, R.C. 5901.11 required the board of county commissioners to make such levy (not to exceed five-tenths of a mill) as was necessary to raise the amount determined by the commission. The board of county commissioners had no authority to modify the amount determined by the commission pursuant to statute. *See* 1948 Op. No. 3435; 1930 Op. No. 2114. *See generally* 1962 Op. No. 3067; 1935 Op. Att'y Gen. No. 4134, vol. I, p. 382.

As amended in 1988, R.C. 5901.11 states that the board of county commissioners may "review and revise the budget requests" submitted by the commission, and that the board shall make the necessary levy (not to exceed five-tenths of a mill) to raise the "amount that the board approves." The words "review and revise" indicate that the board may examine and modify the budget requests submitted by the commission. The directive that the board of county commissioners make such levy (not to exceed five-tenths of a mill) as is necessary to raise the amount that the board approves indicates that the amount approved by the board may be different from the amount requested by the commission. It is clear that, as currently in effect, R.C. 5901.11 authorizes the board of county commissioners to examine the budgetary requests submitted by the veterans service commission, to revise those requests, and to levy a tax in accordance with the board's determination of the amounts that will be required for the purposes of the veterans service commission.

You have asked whether the county commissioners may "look at specific budgetary requests from the Veterans Service Commission and add and/or delete these particular budget requests as they independently see fit." The language currently appearing in R.C. 5901.11 grants the county commissioners the authority to revise the commission's budget requests in such manner as the commissioners, in the reasonable exercise of their discretion, see fit. *See generally* R.C. 5705.28; *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878); 1986 Op. Att'y Gen. No. 86-048; 1958 Op. Att'y Gen. No. 1744, p. 98. R.C. 5901.11 directs that the veterans service commission "determine in an itemized manner the probable amount necessary for the aid and financial assistance of indigent persons and for the operation of the veterans service office for the ensuing year." The budget requests submitted by the commission should, in accordance with R.C. 5705.28, consist of "an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state." It thus appears that the budget requests will be for amounts to be allocated to various purposes. *See* R.C. 5705.28; R.C. 5901.03-.04; R.C. 5901.06-.08; R.C. 5901.11; R.C. 5901.14-.15; Op. No. 86-048 at 2-257 ("[j]ust as the county submits its budget to the county budget commission for approval and possible adjustment,...the various departments, boards, commissions and district authorities entitled to participate in any county appropriation or revenue submit a statement of their estimated revenues and expenditures to the county commissioners [in accordance with R.C. 5705.28] to assist the county in allocating its resources"); Op. No. 66-170; 1948 Op. No. 3435. *See generally* R.C. 5705.29; R.C. 5705.38; 1958 Op. No. 1744. The county commissioners have authority to modify the aggregate amounts allocated to the various purposes. *See, e.g.*, R.C. 5901.11; Op. No. 86-048; 1958 Op. No. 1744. They do not, however, have authority to dictate, within each aggregated amount, the manner in which money allocated to a particular purpose is to be expended. *See* 1958 Op. No. 1744, at 103-04 (there is no requirement "relative to budget requirement reports of subordinate agencies of [a] subdivision, that amounts for 'personal services' be shown in any detail whatever, and certainly no requirement to show the compensation of individual employees"; the board of county commissioners, as the taxing authority, is "without voice in the

matter except as to approval of the aggregate amount allowed for personal services," and the subordinate agency may fix the compensation of its employees within the limits of the aggregate amount allowed for personal services in the budget; "although the board of county commissioners may not fix [the] salary [of a particular individual], its action [in setting the aggregate amount available for personal services] may well have the practical effect of limiting the action of the child welfare board in doing so"); cf. R.C. 5901.04 ("[o]n the presentation of an itemized statement, the board of county commissioners...shall allow the persons composing the veterans service commission their reasonable expenses incurred in the performance of their duties, and shall fix a fair compensation for their services"); Op. No. 35-066 (discussing the allowance of claims by the county commissioners).

The conclusion that the 1988 amendment of R.C. 5901.11 gave the county commissioners authority to revise the veterans service commission's budget requests is supported by the Legislative Service Commission's analysis of Am. Sub. H.B. 626, which states:

[This act] requires the commission, after determining the probable amount needed for the financial assistance and for the veterans service office operating expenses, to submit a budget to the board of county commissioners in the same manner as other county agencies do, to assist in preparation of the county tax budget. The act permits the board to review and revise the commission's budget requests.

Ohio Legislative Service Commission, *Summary of Enactments September 1987 - June 1988*, 318 (1988) (emphasis added). The same analysis states that Am. Sub. H.B. 626 "[c]hanges the name of soldiers' relief commissions to veterans service commissions and requires them to...submit a budget to the board of county commissioners, which is given the power to revise and approve the budget..." *Id.* at 316. See generally *Meeks v. Papadopoulos*, 62 Ohio St. 2d 187, 191, 404 N.E.2d 159, 162 (1980) (bill analyses prepared by the Ohio Legislative Service Commission are not binding but may be helpful in construing a statute).

Your letter of request states that this issue has been intensely debated because "veteran organizations perceive this source of aid and financial assistance for indigent veterans as well as the operations of Veterans Service Office as inviolate to scrutiny by elected officials." The position that a board of county commissioners must levy a tax (not to exceed five-tenths of a mill) sufficient to provide the amount requested by the commission was firmly established under prior law. The recent amendment of R.C. 5901.11 has changed the law on that subject and rendered the commission's budget subject to review and revision by the county commissioners.

It is, therefore, my opinion, and you are advised, as follows:

1. Pursuant to R.C. 5901.11, as amended in 1987-1988 Ohio Laws, Part III, 4689 (Am. Sub. H.B. 626, eff. Sept. 14, 1988), the board of county commissioners is authorized to review and revise budget requests made by the veterans service commission and is then required to make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves; the board of county commissioners is no longer required to make a levy necessary to raise the amount determined by the commission. (1985 Op. Att'y Gen. No. 85-066 (syllabus, paragraph 6); 1983 Op. Att'y Gen. No. 83-032; 1966 Op. Att'y Gen. No. 66-170; 1962 Op. Att'y Gen. No. 3067, p. 441; 1950 Op. Att'y Gen. No. 1532, p. 127; 1948 Op. Att'y Gen. No. 3435, p. 348 (syllabus, paragraph 2); 1935 Op. Att'y Gen. No. 3897, vol. I, p. 108; 1930 Op. Att'y Gen. No. 2114, vol. II, p. 1149, overruled in relevant part on the basis of statutory amendment.)
2. The board of county commissioners may, in the reasonable exercise of its discretion, modify budget requests submitted by the veterans service commission for amounts to be allocated to

various purposes; the board of county commissioners may not, however, dictate within each aggregated amount the manner in which money allocated to a specified purpose is to be expended.