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COUNTY COMMISSIONERS—§ 4710.02 RC.—LICENSING OF DEBT-POOLING COMPANIES — COUNTY COMMISSIONERS NOT A “LEGISLATIVE AUTHORITY” WITHIN PURVIEW OF § 4710.02 RC.

SYLLABUS:

County Commissioners do not constitute a legislative authority within the purview of Section 4710.02, Revised Code.

Columbus, Ohio, December 27, 1957

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

"We are in receipt of a letter from a firm of attorneys representing Dayton's four debt pooling companies, which letter in effect asks this Board to license debt pooling companies under and by virtue of Section 4710.01, et seq. The important provision appears to be whether or not the Board of County Commissioners of Montgomery County, Ohio constitutes a legislative authority as referred to by Section 4710.02.

"A copy of the letter is attached and you are respectfully requested to advise this Board as to whether or not we do constitute a legislative authority and therefore have the authority to license debt pooling companies."

The letter to which you refer presents the following question :

"We would appreciate it very much if you would make a determination of whether the County would have the right to license such a business operation, and if they do, to inform us of the proper procedure by which we may get a proposed resolution before the Commission at an early date."

The 102nd General Assembly enacted Sections 4710.01, 4710.02 and 4710.99, Revised Code, to become effective January 1, 1958.

Section 4710.01, Revised Code, contains among others the following definition :

"(B) 'Debt pooling company' means any person doing business as a budget counseling, debt management, prorating, or debt pooling service, or holding itself out, by words of similar import, as providing services to debtors in the management of their debts, and contracting with a debtor for a fee or other thing of value;

"(1) To effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of the debtor ;

"(2) To receive from the debtor and disburse to his creditors any money or other thing of value."

Section 4710.02, Revised Code, reads as follows :

“No person shall engage in the business of a debt pooling company unless licensed and regulated by the legislative authority of the political subdivision in which such person operates prior to the effective date of sections 4710.01, 4710.02 and 4710.99 of the Revised Code.”

The sole question presented by your inquiry appears to be whether the county commissioners are a legislative body within the purview of the sections above quoted.

The character and general functions of a county are thus stated in 14 Ohio Jurisprudence 2d, page 203 :

“Generally speaking, the function of the county is to serve as an agency or instrumentality of the state for purposes of political organization and local administration, through which the legislature may perform its duties in this regard more understandingly, efficiently, and conveniently than it could if acting directly. As such agency, the county is a creature in the hands of its creator, subject to be molded and fashioned as the ever-varying exigencies of the state may require. Except as restricted by the state Constitution, the power of the legislature, through which the sovereignty of the state is represented and exercised, over counties, is supreme, and that body may exercise plenary power with reference to county affairs, county property, and county funds. Counties, therefore, possess only such powers and privileges as may be delegated to or conferred upon them by statute. These powers and privileges must be strictly construed, and may, in general, be modified or taken away. * * *”

The executive functions of a county are largely vested in the board of county commissioners. As to their powers it is said in 14 Ohio Jurisprudence 2d, page 258 :

“Generally speaking, a board of county commissioners acts for, and in a certain sense acts as, the county, and the courts may not, in the absence of illegality, fraud, or gross abuse of power, substitute their own opinion or discretion for that of the board in respect to matters which the law has placed within the control of the board. At the same time, however, the authority of the board is strictly limited to that expressly or *impliedly conferred upon it by statute*, and it can act for and bind the county only within the limits of such authority. * * *”

(Emphasis added)

It is well recognized that in addition to the powers expressly conferred, public officers have such implied powers as are necessary to carry the express powers into effect.

These propositions are so well understood that I do not consider it necessary to cite authorities in support of the same.

Nowhere in the statutes have I been able to find any suggestions of legislative power conferred upon the county commissioners. It is true that they are authorized by statute to adopt regulations for certain purposes such as zoning regulations but even there they are not given authority to ordain penalties for violations of such regulations, such penalties being expressly provided by the legislature itself.

Likewise county commissioners are authorized to adopt resolutions levying taxes and submitting propositions to the electors both for additional taxes and the issuance of bonds. I do not consider that this amounts to legislative power. Even if we should concede that these acts are in the nature of legislation, the authority of the commissioners is certainly limited to the specific matters authorized.

The situation is quite different with reference to municipalities, although it is provided in Article II of the Constitution that "the legislative power of the State is vested in a general assembly" and although it is well settled that the general assembly is without power to delegate its authority, yet it has long been recognized that in the exercise of the police power vested in the state, the legislature may, consistent with the constitution, confer upon certain bodies, such as municipalities, boards of health, board of liquor control and others the authority to adopt and enforce regulations for the protection of the public health, safety and welfare.

As to municipal corporations, it has been established by a long line of cases decided by our courts that the legislature is not violating the constitutional prohibition against delegation of powers in authorizing municipalities to adopt regulations in the form of ordinances controlling the conduct of their people. Thus it was said in the case of *Markle vs. Town Council of Akron*, 14 Ohio, page 586:

"If it be said that the making of ordinances and by-laws by a town corporate, is legislation, and that, by the constitution, all legislative power is vested in the general assembly, and can be exercised by no other body, the frequent adjudications of this

court, sanctioning the exercise of this power, by the cities of Cincinnati and Cleveland, overthrow the argument.

“It is not, however, the exercise of legislative power. A statute enacted by the general assembly prescribes a rule of action which operates upon all—the willing and unwilling. It comes from the superior, and the inferior is bound to obey it. The charter to a municipal corporation is the exercise of legislative authority. It permits the establishment of by-laws and ordinances; but these are a matter of compact and agreement among the corporators. They do not act upon others, but only upon themselves, and by mutual consent, either directly or indirectly expressed, through the city or town council. These ordinances, so made, are not the legislative power vested exclusively in the general assembly.”

See also *Mays vs. Cincinnati*, 1 Ohio St., 268; *Zanesville vs. Richards*, 5 Ohio St., 589; *Commissioners vs. Newark*, 43 Ohio St., 451; *State vs. Toledo*, 48 Ohio St., 112.

It may further be noted that by the adoption in 1912 of the Home Rule Amendment to the Constitution, *viz*, Article XVIII, municipalities are expressly authorized by Section 3 of that article, “to adopt and enforce within their limits such local police, sanitary and similar regulations as are not in conflict with general laws”.

What has been above said relative to the limited powers of the county commissioners would be equally applicable to township trustees and the board of education, they being also organizations created by the legislature for the sole purpose of administering certain functions of the state.

It is accordingly my opinion and you are advised that the county commissioners do not constitute a legislative authority within the purview of Section 4710.02, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General