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NOTES ISSUED BY COUNTY COMMISSIONERS—POOR RELIEF—PART OF PROCEEDS OF SALE—MAY NOT BE ALLOCATED TO SOLDIERS RELIEF COMMISSION OF COUNTY FOR CARE OF APPLICANTS SEEKING RELIEF—AMENDED SENATE BILL 395, 98 GENERAL ASSEMBLY.

SYLLABUS:

A part of the proceeds of the sale of notes issued by county commissioners, under authority of Amended Senate Bill No. 395, 98th General Assembly, may not be allocated to the Soldiers Relief Commission of the county for the care of its applicants seeking relief.

Columbus, Ohio, April 11, 1950

Hon. William A. Ambrose, Prosecuting Attorney  
Mahoning County, Youngstown, Ohio

Dear Sir:

The pertinent portion of your request for my opinion reads as follows:

“Amended Senate Bill 395, Regular 1949 session, authorizes the issuance of bonds or notes by counties to provide for emergency poor relief in an amount approved by the Tax Commissioner.

Due to the emergency created by the steel strike involving all the steel mills in this district, the Soldiers Relief fund is exhausted. Under the provisions of the above act the Tax Commissioner has approved the issuance of notes for \$100,000.00 for emergency poor relief. I am writing for your opinion as to whether or not any part of the sum realized from the sale of these notes could be given to the Soldiers Relief Commission for the care of its applicants seeking relief.”

Amended Senate Bill No. 395, 98th General Assembly, was enacted as a temporary emergency measure and the powers therein granted expired at the end of the calendar year 1949 unless the jurisdictional resolution required by the first section of said act had been adopted within said calendar year. Because of its temporary nature said act has not been codified.

That portion of said act which is relevant to the discussion here reads as follows:

“Section 1. Whenever, within the calendar year 1949, the county commissioners of any county adopt a resolution finding that it is necessary to issue bonds for emergency poor relief within the county, the county commissioners of such county may borrow money to provide funds for emergency poor relief within the county and evidence such indebtedness by the issuance of negotiable bonds or notes in the amount approved by the tax commissioner. On submission of such resolution to the tax commissioner he shall estimate the amount which will probably be allocated to such county from public utility excise taxes levied by sections 5474, 5475, 5483, 5485, 5486, 5487, 5487-1 and 5491 of the General Code, and shall calculate the total amount of bonds, the principal of and interest on which can be paid out of such

estimated allocation, and the tax commissioners shall not approve the issue of an amount of bonds by any county in excess of the total amount so calculated nor in excess of one million dollars, whichever is the lesser. So much of the installments of interest falling due prior to the receipt of the taxes so allocated to such county shall be paid out of the proceeds of the bonds, and the net amount thereof as calculated by the tax commissioner shall be set aside out of such proceeds in a special fund and held in trust for the payment of such interest; or if the treasurer of state has been appointed paying agent of such county under the provisions of section 3 of this act, shall be paid to the treasurer of state as such paying agent.

The maximum maturity of such bonds shall be ten years after the issuance thereof. Bonds issued in anticipation of such public utility taxes shall mature in annual installments. The maturities shall be fixed by the tax commissioner and shall be so arranged that the total amount of principal and interest payable at each maturity shall not exceed the amount of taxes anticipated by such bonds as are estimated to be allocated to such county and available for the payment of the principal and interest of such bonds at such maturity. Issuance, sale and characteristics of said bonds or notes shall conform to article XII, section 11 of the constitution and to the provisions of the uniform bond act governing the issuance and sale and characteristics of bonds or notes issued without a vote of the people except as otherwise provided in this act and except that the indebtedness evidenced by such bonds or notes shall not be subject to any limitations except those provided in this act.

The proceeds of the bonds issued under the provisions of this section shall be expended for poor relief.

Section 2. The proceeds of the sale of any such bonds or notes, heretofore or hereafter issued under section 1 of this act by any county, shall be placed in a special fund to be denominated the 'emergency relief fund', and shall be deemed to be appropriated for the purpose only for which the bonds or notes were issued. 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 3 of this act, 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 1 of this act.

Section 3. At the time of the issuance of bonds under the provisions of section 3 of this act the county commissioners of any

county may adopt and deliver to the treasurer of state a resolution appointing the treasurer of state the paying agent of the county as to such funds. In such event the treasurer of state out of the total amount called for by the warrant of the auditor of state shall retain such amount as may in his opinion be necessary to pay the principal and interest on the bonds of the county issued under section 1 of this act, and hold the same as the paying agent of said county, and pay over only the balance if any to the treasurer of the county. After the adoption of such resolution by the county commissioners such appointment may not be revoked as long as any bonds issued under the provisions of section 1 of this act are unpaid. If the general bond of the treasurer of state does not and cannot be made to cover the custody of such funds he shall give a special bond in favor of the state of Ohio for the benefit of the county or counties affected in an amount to be fixed by the governor.

Section 4. No disbursement of any part of the emergency relief fund shall be made by the county commissioners or the council or other legislative body of any city or any county until the budget of such county or city for relief expenditures has been approved by the county commissioners. At any time after such approval and in accordance therewith the county commissioners of any county shall, from time to time, distribute such portion of said fund to any or all of the cities (whether charter cities or otherwise) and townships of such county, according to their relative needs for poor relief as determined by such county and as set out in such approved budget; such moneys so distributed to any city or township shall be expended for poor relief in such city or township."

An examination of this act reveals that the bonds and notes authorized to be issued thereunder are in fact bonds or notes issued in anticipation of future receipts of the public utility excise taxes to be allocated to the issuing authority. As such they are similar in nature to tax anticipation bonds and notes. The several statutes which authorize the issuance of tax anticipation bonds or notes specifically provide that the proceeds derived from the sale of such bonds or notes shall be used only for the purposes for which the taxes are levied. I am inclined to the view that in the absence of such statutory provision it would be only equitable, just and in furtherance of sound public finance that such limitation be applied to this type of public funds. To permit the use of the proceeds of such bonds for other purposes would defeat the intent for which the proceeds of such taxes were accumulated. While normal tax anticipation bonds and notes may be distinguishable from those author-

ized to be issued by Amended Senate Bill No. 395, I fail to see any distinction which may be drawn between them with reference to the legal principles which would govern the application of the proceeds of the sale of such bonds. I am therefore of the opinion that such proceeds could only be used for the same purposes as those for which the excise taxes are allocated to the county. It follows that the last sentence of Section 1 of said act which provides that the proceeds of the bonds issued under the provisions of this section shall be expended for poor relief, has reference to the poor relief purposes for which the utility excise taxes are allocated to the county.

Section 5491, General Code, provides for the allocation of these public utility excise taxes to the county poor relief excise fund. The moneys accruing to this fund are authorized to be distributed and expended by Section 5491-1, General Code, which reads as follows:

“That portion of the funds collected under the provisions of sections 5474, 5475, 5483, 5485, 5486, 5487 and 5487-1 of the General Code, and allocated under the provisions of section 5491, to poor relief, together with any and all other revenues required by law to be credited to a fund to be known as the ‘county poor relief excise fund.’ The moneys therein arising from funds collected under the provisions of sections 5474, 5475, 5483, 5485, 5486, 5487 and 5487-1 of the General Code shall constitute one division of said fund and shall be allocated to all counties in the state by the following method: one-half of said fund shall be distributed on the ratio of all expenditures for poor relief made in the county during the preceding fiscal year, including those made by the county itself and by the townships and municipal corporations therein, to the aggregate expenditures for said purpose made during said period in all the counties of the state, which shall be computed and certified to the auditor of state and to the department of taxation of Ohio and the remaining one-half of said funds distributed to all the counties of the state on the ratio that the population of the county at the last census bore to the total population of the state. And in the counties where poor relief is furnished by townships and municipal corporations, rather than by the county commissioners on a county-wide basis, the county auditor shall apportion all the proceeds received from the ‘county poor relief excise fund’ among the county, townships, and municipalities in direct proportion to the expenditures of each subdivision for poor relief during the preceding fiscal year. The fractional part of the total sum produced by the crediting of such other moneys to the county poor relief excise tax fund indicated by said ratios shall be allocated to the respective

counties. All revenues accruing to the county poor relief excise fund from the date this act takes effect, by law distributable to the counties, are hereby appropriated for that purpose to be distributed to and expended by such counties, townships and municipalities in accordance with law.

Provided that such portion of the funds collected under the provisions of sections 5474, 5475, 5483, 5485, 5486, 5487 and 5487-1 of the General Code and allocated under the provisions of section 5491 of the General Code and heretofore set aside for the retirement of bonds issued under the provisions of section 2 of House Bill No. 501 (116 v. 571, D-13) passed May 23, 1935, approved June 5, 1935, and filed in the office of the secretary of state June 10, 1935, as are in excess of the amounts required to meet the principal and interest payments of the outstanding bonds issued under the provisions of said section may at the discretion of the director of public welfare of the state of Ohio be distributed to the counties, townships and municipal corporations which furnish poor relief, in the ratio herein set forth."

The question then arises as to whether or not the poor relief contemplated by Sections 5491 and 5491-1, *supra*, includes expenditures for soldiers' relief under the provisions of Section 2930 et seq., General Code. It will be noted that Section 5491-1, *supra*, provides for apportionment of the "county poor relief excise fund" among the county, townships and municipalities in proportion to the expenditures of each subdivision for poor relief where such poor relief is furnished by townships and municipalities rather than by the county commissioners, and that the last paragraph of said section authorizes the Director of Public Welfare of the State of Ohio, in his discretion, to permit the distribution to said subdivision of excess amounts required to meet the principal and interest payments of certain outstanding bonds. Since the Soldiers' Relief Commission Act, Section 2930 et seq., *supra*, does not contemplate the furnishing of such relief by townships or municipalities but on the contrary by counties alone and since the relief authorized thereunder is totally independent of the Department of Public Welfare it would appear that soldiers' relief was not intended to be included within the meaning of poor relief as contemplated by Sections 5491 and 5491-1, *supra*.

It is to be presumed that when the legislature used the term "poor relief" in said Amended Senate Bill No. 395 that they used it advisedly. Prior legislative enactments appear to draw a definite distinction between

soldiers' relief and other forms of relief. Not only has the relief of needy soldiers, sailors and marines and their needy parents, wives, widows and minor children been specially treated by said Section 2930 et seq., supra, but illustrative of the legislative distinction is Section 5625-5, General Code, which requires that the county general tax levy "shall include the amounts certified to be necessary \* \* \* for relief of support of the poor, \* \* \* for the relief of honorably discharged soldiers, indigent soldiers, sailors and marines."

In answer to your question, it is my opinion therefore that a part of the proceeds of the sale of notes issued by county commissioners, under authority of Amended Senate Bill No. 395, 98th General Assembly, may not be allocated to the Soldiers Relief Commission of the county for the care of its applicants seeking relief.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.