

2918.

POLICE PENSION FUND—DETERMINATION OF LEVY TO BE MADE—
WHAT FUNDS OR DONATIONS ON HAND SHOULD BE TAKEN
INTO ACCOUNT BY COUNCIL.

SYLLABUS:

The council of a municipality, in making the levy provided for under Section 4621 of the General Code, may take into account any sums in the pension fund arising by virtue of the provisions of Section 4623, General Code, in determining the amount needed. It may also consider balances arising under Section 4624—except, when gifts or donations have been made with conditions attached by the donor or fixed by the trustees which preclude their use for the purpose of pensions and relief generally, such funds may not be considered in making such levy.

COLUMBUS, OHIO, February 5, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication presenting the following inquiry:

“Section 4623, G. C., provides that moneys from sources therein designated shall be credited to the Police Relief Fund. Section 4624, G. C., provides that gifts, etc., may be received on terms as to investment or expenditure fixed by the grantor or determined by trustees. In many instances, the sole condition made by the grantor is that the amount of a gift or donation is to be added to the Relief Fund. Section 4621, G. C., reads:

‘In each municipality availing itself of these provisions to maintain the police relief fund the council thereof each year in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law shall levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen under existing laws. In the matter of such levy the board of trustees of the police relief fund shall be subject to the provisions of law controlling the heads of the departments in the municipality and shall discharge all the duties required of such heads of departments.’

Question: May the balance in a pension fund made up of awards, gifts, etc., available for the general purposes of such fund, be deducted from the amount of the pensions payable in the fiscal year, and a levy of taxes be made by a municipal council to supply the difference.”

In my opinion, No. 2267, issued to you under date of August 29, 1930, among other things, it was stated:

“It will be noted that Section 4621, supra, provides in substance that each municipality availing itself of the provisions of the act ‘to maintain the police relief fund * * * shall levy a tax not to exceed three-tenths of a mill,’ etc. It is true that the remaining portion of the sentence, relating to a fund ‘sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen

under existing laws' might be construed as limiting the power to levy for the purpose of paying pensions. However, by taking the provisions of the section by its four corners, it is believed that the purpose of the levy is to provide for relief and such relief as the board of trustees has determined shall be granted. As pointed out in Opinion 1697, issued to your Bureau under date of March 30, 1930, there is no valid distinction between pensions and relief. In effect, relief and pensions are one and the same thing. Therefore, it is believed that where a municipality has taken such action as is necessary for the establishment of a police relief fund and the creation of a board of trustees of such fund, it is the mandatory duty of council of such municipality to provide a reasonable sum under the provisions of Section 4621 to maintain the police relief fund even though there are no pensions to be paid therefrom but there are contemplated payments for relief. In other words, the act contemplates that there will be obligations to be paid from the fund and in anticipation thereof the council should provide a reasonable amount for said purpose notwithstanding at the time the relief is requested there are no existing obligations."

From the above, it will be seen that this office is on record as having decided that both relief and pensions are covered by the terms of Section 4621, General Code, or rather that the terms are used interchangeably in said section. Your question arises, of course, by reason of the provisions of the various sections of the statute creating said fund. Section 4623, General Code, to which you refer, provides:

"All fines imposed upon members of the police department of the municipality by way of discipline or punishment by the authority having charge or control thereof, and all rewards, fees, or proceeds of gifts and emoluments allowed by the authority in charge or control of the department, paid and given for or on account of any extraordinary service of any member of the force, and moneys arising from the sale of unclaimed property or money, after deducting all expenses incident thereto, shall be credited to the police relief fund."

It is believed that the funds arising under the provisions of Sections 4621 and 4623, General Code, are not in the same status as those arising under Section 4625, General Code. In other words, the former funds are to be used generally for the purpose of pensions and relief and the trustees of the fund have the power to make rules and regulations for the distribution thereof.

In the case of *State ex rel v. Connors*, No. 22158, decided by the Supreme Court of Ohio May 28, 1930, reported in Ohio Bar issued under date of June 24, 1930, the court considered the sections hereinbefore mentioned, with reference to the power of a board of trustees to refuse a pension to one who was entitled thereto by reason of the established rules. In the course of the opinion by Judge Robinson, in discussing the status of the fund, it is stated:

"By Section 4623 it is mandatory that all fines imposed upon members of the police department by way of discipline or punishment, and all rewards, fees or proceeds of gifts and emoluments allowed by the authority in charge or control of the department, paid and given for or on account of any extraordinary service of any member of the force, and all net moneys arising from the sale of unclaimed property, or money, be

credited to the police relief fund; and while by Section 4624 there is a provision authorizing the acceptance of gifts, and by Section 4625 there is an option to the various members of the police force to increase by voluntary contributions the relief which may be granted to them, yet the fund is substantially maintained by mandatory taxation upon all the property listed in the municipality and by mandatory transfer of funds arising in the manner detailed in Section 4623. That fact would seem to be an important factor in interpreting the language of Rule 45, and a controlling factor in determining whether it was the purpose of the Legislature to empower the board of trustees of the police relief fund with a discretion to grant or withhold pensions."

While, of course, the opinion quoted does not specifically so state, there is an intimation that, in the mind of the writer, the pension fund is to be regarded as a whole, irrespective of the sources from which it is established. Nevertheless, it is believed that exceptions must be made in so far as the fund is composed of contributions from the individual members and also in case of donations made by individuals with conditions attached to the gift which would require its use to be restricted to some particular purpose.

In your communication you specifically inquire with reference to those sources of revenue mentioned in Sections 4623, and 4624, *supra*, and apparently do not intend to present the inquiry as to whether the portion of the fund received from the provisions of Section 4625, General Code, which provides for voluntary contribution from members of the police department, which shall be used as a fund to increase the benefit which may be granted to such person or his beneficiaries, may receive consideration.

In my opinion, No. 1697, issued under date of March 3, 1930, it was pointed out that contributions mentioned in Section 4609, General Code, relative to contributions by members of the fire department could not be expended except for the express purpose of increasing the benefits of the person making the contribution. By analogy, the funds contributed by the members of the police department could not properly be used for other than the express purpose mentioned in Section 4625, General Code. As hereinbefore pointed out, such funds as are mentioned in Section 4625, General Code, are in a different status from those funds mentioned in Section 4623, except where gifts or donations are made with conditions attached which would require some specific use.

In my opinion, No. 2267, it was held as disclosed by the second branch of the syllabus, that:

"Under the provisions of Section 4621 of the General Code, it is the duty of council to provide funds to maintain the police relief fund even though there are no pensions to be paid therefrom at the time said levy is requested, in the absence of legislation repealing the ordinance establishing the police relief fund."

Section 4624, General Code, reads:

"The trustees of the fund may take by gift, grant, devise or bequest, moneys or real or personal property, upon such terms as to the investment or expenditure thereof as is fixed by the grantor or determined by the trustees."

It will be noted that this section expressly authorizes the donor to attach conditions to a gift and also empowers the trustees to determine the terms of investment or expenditure. It therefore will follow that so long as the terms

of the gift, as fixed by the donor or determined by the trustees deny its use for the general purposes of the fund, such conditions will govern.

It would appear to be absurd to require a municipality to make a levy when there are ample funds to cover all existing needs available for the purpose. Inasmuch as the entire fund is available for the purposes of relief or pensions, save for the exceptions hereinbefore noted, it would seem illogical to require an additional burden upon the taxpayer by making a levy under Section 4621, General Code, where there is an ample fund available for the same purpose for which the levy is made. The language is that a levy shall be made sufficient in amount within the three-tenths of a mill to provide for payment of all pensions. As heretofore indicated, this office has held that such levy must be made to care for relief when no pensions have actually been granted. It follows, as a matter of logic, that when there is no amount needed there is no requirement to make any levy.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that the council of a municipality in making the levy provided for under Section 4621, General Code, may take into account any sums in the pension fund arising by virtue of the provisions of Section 4623, General Code, in determining the amount needed. It may also consider balances arising under Section 4624, except when gifts or donations have been made with conditions attached by the donor or fixed by the trustees which preclude their use for the purpose of pensions and relief generally in which event such funds may not be considered in making such levy.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2919.

STRAIGHTENING RIVER—PROJECT WHOLLY WITHIN CORPORATE
LIMITS OF MUNICIPALITY—COUNTY MAY COOPERATE—HOW
COST TO BE ALLOCATED—MUST PROCEED UNDER SINGLE
COUNTY DITCH LAW.

SYLLABUS:

Under the provisions of Sections 6442, et seq., of the General Code, commonly known as the single county ditch law, the county commissioners of a county may straighten or otherwise improve that part of a river within the limits of a municipal corporation in such county where the petition for such improvement is filed by the mayor or council of such municipal corporation; and such municipal corporation may participate in the improvement by paying to the county the amount assessed to it by the county commissioners for the benefits received by the municipal corporation on account of such improvement.

COLUMBUS, OHIO, February 6, 1931.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This is to acknowledge the receipt from you of a communication which reads as follows: