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TOWNSHIPS—CLERK—COMPUTATION OF SALARY; §507.09 R.C.—“TOTAL EXPENDITURES” INCLUDES AMOUNTS WITHHELD UNDER §§319.54 and 321.26 R.C.—3525 OAG 1954, p. 59, APPROVED AND FOLLOWED.

SYLLABUS:

Under the provisions of Section 507.09(C), Revised Code, relating to the compensation of the township clerk in townships having a budget of five thousand dollars or more, the “total expenditures” of such township upon which the compensation of the township clerk is to be calculated, include the compensation of the county auditor and county treasurer in collecting the township’s taxes and withheld from the amount due the township from such tax collections, and paid to said auditor and treasurer, respectively, pursuant to the provisions of Sections 319.54 to 321.26, Revised Code. Opinion No. 3525, Opinions of the Attorney General for 1954, p. 59, approved and followed.

Columbus, Ohio, July 30, 1958

Hon. James I. Shaw, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

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

“Are moneys due a township and required by Sections 319.54 and 321.24 of the Ohio Revised Code, being Auditor’s and Treas-

urer's fees respectively, to be withheld from the township and paid directly by the county auditor, part of the total expenditures of the township upon which the compensation of a township clerk is computed under Sec. 507.09 (C) Revised Code?

"Section 507.09 Revised Code relating to the compensation of a township clerk, first provides for certain fees to be paid by the parties requiring various services. The statute then proceeds with the following:

"(B). In those townships having a budget less than five thousand dollars, the board shall determine the salary of the clerk, which, in no event shall exceed seven hundred dollars per year.

"(C). In townships having a budget of five thousand dollars or over, the clerk shall receive two per cent of the total expenditures of such township in excess of five thousand dollars in addition to the amount provided under division (B) of this section.

"No township clerk shall receive compensation in excess of twenty-four hundred dollars in any one calendar year for said services as such clerk.

"A question similar to the one herein propounded was submitted by Hon. C. Watson Hover, Prosecuting Attorney of Hamilton County, Ohio, and the Hon. C. Wm. O'Neill's Opinion No. 3525 dated February 26, 1954, set forth that all moneys required by law to be withheld by the county auditor from the amounts due the township from tax collection and to be paid by said auditor to the various public agencies in the discharge of his township's obligations were total expenditures on which the compensation of the township clerk was to be computed. This opinion, however, was limited in that it referred only to those various items withheld under Sections 3501.17, 3709.28, 4123.41, 117.16 and 5721.04 of the Revised Code.

"The auditor's and treasurer's fees as allowed under Sections 319.54 and 321.24 of the Revised Code are set out as deductions on the auditor's revised 3-52 forms 6, 7 and 8. The township clerks in Auglaize County had heretofore been advised by a former examiner from the office of the auditor of state that these auditor's and treasurer's fees were to be considered as a part of the total expenditures of the township for the purpose of determining the township clerk's compensation. At the present time an examination is being made of the township clerk's records in Auglaize County and the present examiner has been making findings against the clerks for overpayment of compensation to themselves as clerks on the amount of the auditor's and treasurer's fees.

"These township clerks against whom findings have been made have requested me to obtain your opinion on the query herein first set forth as they were advised in March of 1956 that the auditor's and treasurer's fees should be included as a part of

total expenditures and now a finding has been made against them for including the auditor's and treasurer's fees as a part of the total expenditures."

As you have set out the terms of Section 507.09, Revised Code, relative to the compensation of a township clerk, I do not deem it necessary to repeat that section. I understand from your letter that you are concerned only with townships coming within the purview of Division (C) of said section, to-wit, those having a budget of \$5,000.00 or over. The particular question for consideration is whether the compensation of the county auditor and county treasurer in connection with the taxes due the township may be taken into consideration as a part of the total expenditures of the township in computing the compensation of the township clerk.

You have cited an opinion by my immediate predecessor, to wit, Opinion No. 3525, Opinions of the Attorney General for 1954, p. 59. The syllabus of that opinion is as follows:

"Under the provisions of paragraph (C) of Section 507.09, Revised Code, relating to the compensation of the township clerk in townships having a budget of five thousand dollars or more, the 'total expenditures' of such township upon which the compensation of the township clerk is to be calculated, include all monies required by law to be withheld by the county auditor from the amounts due the township from tax collections and to be paid by said auditor to the various public agencies in the discharge of the township's obligations."

As you have noted, that opinion related to various items of funds which would normally constitute a part of the income of a township but, by the provisions of the statutes, are subjected to certain deductions which are paid directly to the organizations entitled thereto. In other words, but for those statutes providing for such deductions, the funds in question in their entirety would come to the township and the township would pay the expenses or the compensation therein involved. The sections specifically considered in that opinion were, Sections 3501.17, 3709.28, 4123.41, 117.16 and 5721.04, Revised Code.

You may note that of the sections there referred to, Section 3501.17, Revised Code, relates to the expenses of the county board of elections and provides in effect that the expenses of such board shall be paid from the county treasury in pursuance of appropriation by the board of county commissioners. That section further provides in part as follows:

“Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the *amount chargeable* to each subdivision shall be withheld by the auditor from the *moneys payable thereto* at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year. * * *” (Emphasis added)

It will be noted that monies so withheld are a part of the total amount “payable thereto,” to-wit, to the county and the various subdivisions including townships. In other words, instead of the township receiving the full amount of the taxes levied by it to cover the share of the election expenses chargeable to it, and paying the same to the board of elections, the law deducts such charge from the amount of such taxes and requires that it be paid directly to the board of elections on behalf of the township.

Section 3709.28, Revised Code, makes a similar provision and a like deduction from the funds belonging to the township for the payment of its share of the expense of the general health district to which it belongs.

Section 4123.41, Revised Code, makes a similar provision for the payment of the amount due from the township for its share of the expenses of maintenance of the state industrial commission.

Section 117.16, Revised Code, contains a similar provision in regard to the expenses chargeable to the various subdivisions, including townships, of the operation of the bureau of inspection and supervision of public offices.

Section 5721.04, Revised Code, contains a like provision in regard to the expenses chargeable to the various subdivisions of the cost of advertising the list of delinquent taxes.

In the course of the opinion referred to, the Attorney General said:

“In all of these cases it seems obvious that these expenses, which are constant in character although variable in amount from year to year, must be taken into consideration when making up the annual budget of the township. They would certainly enter into the determination as to whether the total tax rate of a subdivision falls within the ten mill limitation. It further appears to me that when an obligation imposed by law on a township or other subdivision is to be paid on its behalf by the county auditor, out of funds which belong to it, these are expenditures of the subdivision and under any process of accounting would be considered

as monies received and paid by the subdivision, just as completely as though they actually passed through the hands of the clerk or treasurer of the subdivision.”

With that statement I fully concur.

It was further said :

“I can see no difference between this transaction as affecting the total income and total expenditures of the subdivision and the situation which arises when employers generally, pursuant to the requirement of the federal law, take out of their employees’ salary or wages a certain portion thereof, and pay it on their behalf to the United States treasurer, on account of their income tax liability. Certainly, any person from whom such deduction is made, in keeping an accurate account of his income and expenses, would count his whole salary as having been received, and credit himself with the payments which he has made either directly or indirectly on account of his income tax.”

It might be added that if the employer was entitled by law to retain a certain percentage as compensation for his trouble and expense in the matter, that too would form a part of the employee’s “total expenditure.”

The words “having a budget of \$5,000.00 or more,” as used in Division (C) of Section 507.09, Revised Code, quoted in your letter, certainly requires no explanation or interpretation. As a matter of common knowledge and by general definition “budget” is an advance estimate of the expected income and total expenses of a business or, as in this case, of a public subdivision, for a stated period; and when we consider that townships, along with all other subdivisions, are required to prepare an annual budget for the purpose of enabling the taxing authorities to determine the precise rate of taxation which shall be levied for the ensuing year, it becomes evident that this annual budget, in order to be complete, and in order to be informative as to the precise tax levy that must be made, must include an estimate of the entire gross income and the entire expense of the subdivision, whether paid by it or for it. The preparation and submission of this budget for each subdivision is provided by Section 5705.28, Revised Code, which in part reads as follows:

“On or before the 15th day of July of each year the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year.”

Section 5705.29, Revised Code, relates to the contents of this budget and requires that the information contained therein shall be in such detail

as is prescribed by the bureau of supervision and inspection of public offices. This section goes on to require, among other things, that the budget shall contain :

“(5) Comparative statements, so far as possible, in parallel columns for the current year and the two preceding years.

“(B) (1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current year, and the funds to which such estimated receipts are credited;

“(2) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditure from the fund and the estimated receipts, as provided in this section. The section of the Revised Code under which the tax is authorized shall be set forth;

“(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenue for the current year and the two preceding years.”

The sections which follow require the county auditor to submit the budgets presented by the several taxing authorities to the budget commission, and require the budget commission to make such adjustments as they find necessary to keep the total taxes for any subdivision within the ten mill limitations of the law. After the completion of this process, the budget commission is required by Section 5705.44, Revised Code, to certify its action to the taxing authority of each subdivision, together with an estimate by the county auditor of the rate of the tax necessary to be levied by each taxing authority, and each taxing authority thereupon shall proceed to authorize the necessary tax levies and certify them to the county auditor.

Coming now to the two sections which are referred to in your letter, which relate to the fees allowed to the county auditor and county treasurer for their services in connection with the collection of taxes, we find in Section 319.54, Revised Code, the following provisions :

“(A) On all moneys collected by the county treasurer on any tax duplicate of the county, other than inheritance duplicates, and on all moneys received as advance payments of personal property and classified property taxes, *the county auditor, on settlement with the treasurer and auditor of state*, shall be allowed as compensation for his services the following percentages :

“(4) * * * *Such compensation shall be apportioned ratably by the county auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, corporations, and school districts.*” (Emphasis added)

I direct particular attention to the provisions of above paragraph (4) to the effect that such compensation is to be “deducted from the *shares or portions* of the revenue payable to the * * * townships * * *.” This language makes it very clear that the total amount of the taxes collected on behalf of the township includes the compensation that is to be deducted and paid to the county auditor. In other words, it is plainly a part of the total income from taxation which the township must have estimated in its budget as necessary for its operation and it must follow that every payment or deduction from such total income must be considered a part of the “total expenditure.” I do not think it can be claimed that the income of the township from taxes, which must be estimated in advance, can be confused with the *net income* which it *actually receives after the deduction* is made for the compensation of the auditor in connection with the same. If for instance the township finds in making its budget that it will require \$100,000.00 for its current operations, it would not be sufficient for it to estimate and report that amount and then have it reduced by deduction for the auditor’s compensation. In order that it may provide for the payment of that compensation, whether paid by it directly or withheld from it by the provision of the law, it must estimate and levy a tax for the amount which it will require for its operation, plus the percentage which it will have to bear in paying the compensation of the auditor.

In Section 321.26, Revised Code, we find similar provisions for the payment of the compensation allowed the county treasurer for the collection of these taxes. It is there provided that such treasurer shall be allowed certain percentages, the section reading in part:

“The county treasurer, on settlement with the county auditor, shall be allowed as fees on all moneys collected by him on any tax duplicates other than the inheritance duplicate and on all moneys received by him as advance payments of personal and classified property taxes, the following percentages:

“* * * Such compensation shall be apportioned ratably by the auditor and *deducted from the shares or portion of the revenue payable to the state as well as to the county, township, corporations, and school districts.* * * *” (Emphasis added)

This language again shows clearly the recognition by the legislature that the *total amount* of taxes which the treasurer collects belong to and is a *part of the income of the township*, but is subject to a deduction for the compensation allowed to the treasurer. Accordingly I can see no reason why the deductions from the “revenue payable to the township,” and

withheld for the compensation of the auditor and treasurer, should not be regarded in precisely the same light as those deductions that were mentioned in the 1954 opinion.

It is accordingly my opinion and you are advised that under the provisions of Section 507.09 (C), Revised Code, relating to the compensation of the township clerk in townships having a budget of five thousand dollars or more, the "total expenditures" of such township upon which the compensation of the township clerk is to be calculated, include the compensation of the county auditor and county treasurer in collecting the township's taxes and withheld from the amount due the township from such tax collections, and paid to said auditor and treasurer, respectively, pursuant to the provisions of Sections 319.54 and 321.26, Revised Code. Opinion No. 3525, Opinions of the Attorney General for 1954, p. 59, approved and followed.

Respectfully,

WILLIAM SAXBE

Attorney General