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1. BUDGET LAW — SECTION 5625-1 ET SEQ., G. C. — SCHOOL DISTRICTS AND OTHER POLITICAL SUBDIVISIONS SHALL KEEP WITHIN RESPECTIVE INCOMES DURING ENSUING FISCAL YEAR — NO TAXING AUTHORITY SHALL INCUR INDEBTEDNESS IN EXCESS OF ESTIMATED REVENUE — BUDGET COMMISSION — OFFICIAL CERTIFICATES — ESTIMATED RESOURCES.
2. TAX BONDS, DELINQUENT — MAY NOT BE ISSUED BY TAXING AUTHORITY OF SUBDIVISION TO FUND DEFICIT CREATED PRIOR FISCAL YEAR IN VIOLATION OF LIMITATION AND RESTRICTIONS ON INDEBTEDNESS — SECTION 2293-43 G. C.

SYLLABUS:

1. The budget law (Section 5625-1, et seq., General Code) contemplates that school districts and other political subdivisions subject to its provisions, shall keep within their respective incomes during the ensuing fiscal year, and that no taxing authority shall incur any indebtedness for such fiscal year in excess of its estimated revenue therefor from all sources, as determined and certified by the budget commission in its official certificates of estimated resources.

2. Delinquent tax bonds may not be issued by the taxing authority of a subdivision under Section 2293-43, General Code, for the purpose of funding a deficit created during the previous fiscal year in violation of the limitation and restrictions on indebtedness imposed by the budget law.

Columbus, Ohio, January 17, 1944

Hon. Kenneth C. Ray, Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

Your letter of recent date has been received requesting my opinion on the following questions:

- "1. Can a city board of education legally enter into contractual salary obligations with its employees and other contractual obligations during any fiscal year, in excess of the amount of revenue certified to said board of education from local and state sources?
2. Can a city board of education legally fund a deficit created as indicated in Question Number One and existing on the first day of January subsequent to its creation, from unpledged delinquent taxes under Section 2293-43 of the Ohio General Code?"

On or before July 15th in each year the board of education of a city school district, in like manner as the taxing authorities of the other subdivisions, is required by the budget law to adopt a budget for the next ensuing fiscal year. This budget must contain, in addition to other information, a statement of the necessary current operating expenses of the subdivision for such ensuing fiscal year, classified as to personal services and other expenses, and the fund or funds from which such expenditures are to be made, and also an estimate of balances and receipts for such fiscal year (Sections 5625-20 and 5625-21, General Code). After its adoption,

the budget is laid before the county budget commission for revision and adjustment of the estimate of balances and receipts "from all sources" for each fund, and in this connection it is also expressly provided that the commission "shall determine the total appropriations that may be made therefrom." (Sections 5625-23 and 5625-24, General Code.)

When the budget commission has completed its work, it is required to certify its action to the taxing authority of the subdivision (Section 5625-25, General Code). This certification must show the various funds of the subdivision, and also set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and on the debit side must be shown "the total appropriations that may be made therefrom". It is also provided that there shall be attached to the certification a summary known as the "official certificate of estimated resources," which shall state the total estimated resources of each subdivision other than those created by transfer (Section 5625-26, General Code).

It is also provided in the budget law (Section 5625-26, General Code) as follows:

"Before the end of the year, the taxing authority of each subdivision * * * shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

The budget law also makes provision for an amended official certificate of estimated resources by the budget commission, in the event the subdivision collects revenue from a new source which is not included in the original certification (Section 5625-27, General Code), and in this connection it is expressly provided that:

"The total of appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof certified prior to the making of the appropriation or supplemental appropriation."

The budget law further provides (Sections 5625-29 and 5625-30, General Code) that on or about the first day of each year, the taxing

authority of each subdivision shall pass an annual appropriation measure, and thereafter during the year may pass supplemental appropriation measures based on the official certificate of estimated resources or amendments thereof, and that:

“The total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the tax commission of Ohio. * * * ”

It is also provided in paragraph (a) of Section 5625-33, General Code, that, “No subdivision or taxing unit shall make any appropriation of money except as provided in this act.”

It will be seen from the foregoing summary of the budget law that it contemplates that each subdivision shall keep within its income during the ensuing fiscal year, and that no taxing authority shall incur any indebtedness for that year in excess of the subdivision's revenue from all sources, local and state, as determined and certified to it by the budget commission. In other words, the budget commission's official certifications of estimated resources in effect operate as a limitation on the power of the subdivision to create obligations and make appropriations during the particular fiscal year involved.

This conclusion is in harmony with my previous opinion involving the authority of county commissioners to make appropriations, and reported in Opinions of the Attorney General for 1941, No. 3681, page 299, wherein I held:

“The county commissioners may not appropriate from the general fund in excess of the total estimated revenue available as certified by the budget commission or, in case of appeal, by the board of tax appeals.”

Inasmuch as your first question refers to the authority of a board of education to enter into contractual salary obligations with employees in excess of the amount of estimated revenue certified to it by the budget commission, attention should be called to the fact that the provision of paragraph (d) of Section 5625-33, General Code, that no subdivision shall make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same has been lawfully appropriated for such purpose and is in the

treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, does not apply to contracts of employment of regular employes and officers. It was so held by one of my predecessors in Opinions of the Attorney General for 1932, No. 4872, page 1487.

That opinion, however, does not reach or dispose of your first question, because the question of the right of a board of education or other taxing authority to obligate itself in excess of the maximum amount of funds and resources certified to it by the budget commission, was not involved, and presumably the amount to be expended under the contracts involved in that opinion did not exceed the amount certified by the budget commission. My 1941 opinion, hereinbefore referred to, is more directly in point, and, in addition to the provision of the budget law hereinabove specifically referred to, the latter opinion is further supported by another section of the budget law (Section 5625-38, General Code) which provides that expenditures for payrolls shall be made upon the authority of a "proper appropriation". In my opinion, a "proper appropriation" is one that can be made within the amount determined by the budget commission in its official certification of estimated resources. Section 5625-38, General Code, just referred to, reads in part as follows:

"Each political subdivision shall have authority to make expenditures for the payment of current pay rolls upon the authority of a proper appropriation for such purpose provided that the positions of such employees and their compensation have been determined prior thereto by resolution or ordinance or in the manner provided by law. * * * "

Apparently the only case specifically dealing with a contemplated expenditure of public funds in excess of the amount that may be appropriated for a particular fiscal year, as determined by the budget commission's official certificate of estimated resources, is *City of Fostoria vs. The State, ex rel.*, 125 O. S. 1. The opinion in the case discloses that a public health nurse had been employed in the year 1930 at a salary of \$1800.00 for the ensuing fiscal year 1931, and that the salary could not be paid within the amount determined by the budget commission. In that case, which was a mandamus proceeding brought to compel the city council to appropriate sufficient money with which to pay the salary, the court denied the writ because the appropriation sought was prohibited by the budget law. The syllabus of the case reads

as follows:

"1. Mandamus will not issue to compel the council of a municipality to do an act expressly prohibited by statute.

2. The total of the contemplated expenditures in a certain city for a certain fiscal year greatly exceeded the total appropriations which could be made, as determined by the budget commission in its official certification. To conform to such official certification, the city council reduced the city budget for all departments, and appropriated all but \$2.92 of the maximum amount certified by the budget commission as available for appropriation during such year. In the course of such reduction the city council omitted an item for the salary of a public health nurse appointed by the city board of health. No certificate had been made by the city auditor to the budget commission that revenue available for the purposes of such fiscal year had been collected from a new source not included in the official certificate, or that the actual balances and receipts in any fund exceeded the certified estimate. No amended official certificate had been made by the budget commission including any additional or excess balances and receipts. Held, that by virtue of Sections 5625-26, 5625-27, 5625-30 and 5625-33, General Code, mandamus will not lie to compel the city council to pass an ordinance appropriating funds for such omitted item."

Your second question involves the authority of a board of education to issue delinquent tax bonds under the provisions of Section 2293-43, General Code, for the purpose of paying an obligation incurred during a prior fiscal year in excess of the amount of available revenue certified to it by the budget commission for that particular year.

Section 2293-43, General Code, is quite lengthy, and for that reason will not be quoted in full in this opinion. Suffice it to say that the statute authorizes school districts and other political subdivisions to issue bonds in an amount not to exceed seventy per centum of the net unobligated delinquent taxes and assessments due and owing the subdivision at the last semiannual tax settlement, for the purpose of paying "outstanding accounts or notes payable of the subdivision, incurred prior to the commencement of the current fiscal year", or, as expressed in another part of the statute, "for the sole purpose of assisting the various subdivisions in paying their unsecured indebtedness as herein defined."

After having considered Section 2293-43, General Code, in connection with the provisions of the budget law, I have reached the conclusion that it was not enacted for the purpose of permitting the taxing

authority of a subdivision to create excess obligations during a particular fiscal year in violation of the limitations and restrictions of that law, to be financed by the issuance and sale of delinquent tax bonds during the following year, but that the purpose of its enactment was to enable a subdivision, in the event revenue anticipated by the budget commission's official certificates of estimated resources was not received, to recoup such loss or failure of revenue by the issuance and sale of bonds, thereby enabling the subdivision to meet obligations which otherwise could and would have been paid from the anticipated revenue, had it been received. This view also finds support from the emergency section of the Act enacting Section 2293-43, General Code (115 Ohio Laws, Pt. 2, pages 266, 268, 297), which reads:

"This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that existing economic conditions have given rise to delinquencies in the payment of taxes assessed upon real property in unforeseen proportions requiring immediate measures in anticipation of the ultimate collection of such delinquent taxes for debt payment. Therefore this act shall go into effect immediately."

You are therefore advised that:

1. The budget law (Section 5625-1, et seq., General Code) contemplates that school districts and other political subdivisions subject to its provisions, shall keep within their respective incomes during the ensuing fiscal year, and that no taxing authority shall incur any indebtedness for such fiscal year in excess of its estimated revenue therefor from all sources, as determined and certified by the budget commission in its official certificates of estimated resources.

2. Delinquent tax bonds may not be issued by the taxing authority of a subdivision under Section 2293-43, General Code, for the purpose of funding a deficit created during the previous fiscal year in violation of the limitations and restrictions on indebtedness imposed by the budget law.

Respectfully,

THOMAS J. HERBERT
Attorney General