

the keeping within the department such records and journals as are necessary to exhibit its official acts and proceedings. A letter addressed to the board of education, signed only by the Chief of the Division of Factory Inspection, giving notice that the use of the school building is prohibited, unless designated changes are made by a specified time, there being no record of any official action by the department with reference to such matter, or showing any authority conferred upon the chief of the division of factory inspection relative thereto, is not an order of the department whereon may be predicated action by the board of education to issue and sell bonds of the district for the erection of a school building pursuant to the provisions of section 7630-1 General Code, as it existed April 9, 1925."

In view of the decision of the court I cannot approve the legality of this issue of bonds, and you are therefore advised not to purchase the same.

Respectfully,
C. C. CRABBE,
Attorney General.

3235.

MUNICIPALITY—UNENCUMBERED BALANCE OF JUDGMENT FUND
IN CITY TREASURY ON DECEMBER 31st, 1925, MAY BE TRANS-
FERRED TO OTHER TAX LEVY FUNDS.

SYLLABUS:

1. *An unencumbered balance of the judgment fund in the city treasury on December 31st, 1925, may be transferred to other tax levy funds as provided by law.*
2. *The deductions made by the county auditor for workmen's compensation premiums, election expenses, state examinations, etc., may not be included as accounts payable from the city's funds as of December 31st, 1925.*

COLUMBUS, OHIO, April 1, 1926,

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

GENTLEMEN:—I am in receipt of your communication as follows:

"We are enclosing herewith opinion of Mr. J. B. Harshman, City Attorney, Dayton, Ohio, to the effect that the balances of the judgment fund in the city treasury on December 31, 1925, may not be transferred to the general city funds having deficits. Section 3 of House Bill No. 527, passed January 15, 1926, provides for such transfers by the taxing authorities or by court action.

"Question: May the unencumbered balance of the judgment fund in the city treasury on December 31, 1925, be transferred to other tax levy funds under authority of section 3799 G. C. or sections 2296 et seq. G. C.?"

Also the following communication:

"One Ohio municipality having a deficit to fund on December 31, 1925, as provided in House Bill 527, passed January 15, 1926, wishes to include as an obligation or account payable December 31, 1925, amounts deducted by the county auditor from the February, 1926, tax settlements for workmen's compensation, election expenses and state examinations.

"The form of budget prescribed by the Bureau for the use of municipalities provides for the inclusion as an expenditure of deductions to be made by the county auditor from tax settlements. This form of budget was used by municipal corporations in July, 1925, and the receipts from taxation in 1926 are the result.

"Question: In view of this condition, may the deductions in question be included as an account payable from the city's fund on December 31, 1925?"

The opinion of the Law Director enclosed with your communication finds that the money now in the judgment fund properly belongs in the sinking fund and is not subject to application as surplus towards reduction of the city's deficit for the purposes of House Bill No. 527. He arrives at this conclusion by reason of the provisions of General Code, section 5654.

Under House Bill No. 527 in making up a statement of the balance or overdraft in the several funds and a showing of outstanding indebtedness for the purposes of such act the bond payment or sinking funds are excluded. Therefore, if the judgment fund may be considered as a sinking fund then such fund may not be included in such statement.

Section 5654 of the General Code provides as follows:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

It will be noted that this section provides that the proceeds of a special tax, loan or bond issue shall not be used for any other purpose, and the latter part of said section provides that when there is a surplus of the proceeds of such special tax, loan or bond issue which cannot be used, all of such surplus shall be immediately transferred to the sinking fund.

The judgment fund as provided by section 5649-1c of the General Code, it is believed may not be considered a sinking fund. While it is true that all judgments formerly were paid from the sinking fund by the sinking fund trustees, in 109 Ohio Laws, page 346, the sections relating to the sinking fund, sections 4506 to 4522 inclusive of the General Code, were amended by striking out all references to the payment of judgments, and that the enactment of section 5649-1c provided for a levy for the payment of judgments.

By funds derived from a special levy, loan or bond issue, it is believed is meant levies made for a special purpose or a loan or bond issue made for a specific purpose. Levies made under section 5649-1c it is believed are not special levies as they are levies which are annually levied, collected and appropriated for the purpose of paying judgments. The levy is not made for the purpose of paying any specific or special judgment but is made for the purpose of paying all judgments and may anticipate the amounts needed for the payment of future payments.

In the case of *State ex rel. Turner vs. Sayre*, 12 O. N. P. (N. S.) page 337; Bigger, Judge, in considering what were special levies, loans or bond issues says as follows:

"As to the election fund, this is, as I understand it, a fund levied and collected, but I am of the opinion it is not within the meaning of the law a special fund, as it is, as I understand it, one of the regular funds of the county, for which taxes must be regularly levied, collected and appropriated."

In this opinion is discussed the transfer of funds under the statutes as they then existed and at that time the statutes permitted the transfer from a special tax, loan or levy, but the same principle enunciated is applicable to section 5654.

The trend of modern legislation in the state is away from the holding of funds for particular purposes as is shown by the Griswold Act, which abolishes sinking funds as such after all term bonds now outstanding are retired. All bonds issued at this time are serial bonds and levies are made each year for the retirement of bonds which fall due during such fiscal year.

The Vorys Bill, the most recent pronouncement of the trend of legislation, provides for the appropriation at the beginning of each fiscal year for all purposes and includes in such purposes the payment of all bonds and interest.

Under the Vorys Bill theoretically there would be no need for the collection of a tax under section 5649-1c, except for the payment of judgments on non-contractual obligations. Under the present budget and appropriation law obligations cannot be incurred unless there is in the treasury sufficient funds to meet the obligation and therefore judgments on contractual obligations theoretically could not be secured as there must be funds for the payment of all contractual obligations before the obligation is incurred.

Section 2295-8 of the General Code, a part of the Griswold Act, provides for the issuing of bonds to pay final judgment by a municipality in an action for personal injuries or based on other non-contractual obligations.

By this recent legislation provision is made for the funding of judgments on non-contractual obligations, and under the Vorys Act it is apparently impossible for there to be any other kind of judgments against a subdivision.

It is therefore my opinion that an unencumbered balance of the judgment fund in the city treasury on December 31st, 1925, may be transferred to other tax levy funds as provided by law.

Your second question is whether deductions made by the county auditor for workmen's compensation premiums, election expenses and state examinations may be included in accounts payable from the city's funds on December 31st, 1925.

It is noted that in the form prescribed by the Bureau of Inspection and Supervision of Public Offices for budgets of the different subdivisions that there is included deductions for the county auditor for the above purposes.

In other words the deductions that are to be made by the county auditor from the February tax settlement for workmen's compensation premiums, election expenses and state examinations are placed in the budget as an item of expenditure for the fiscal year. To permit such deductions to be included as an account payable under House Bill No. 527, would be allowing the subdivisions to get credit for the same amount twice as they are credited against next year's expenditures and would also be included in the amount of the deficit of the succeeding year.

You are therefore advised that the deductions made by the county auditor for workmen's compensation premiums, election expenses, state examinations, etc., may not be included as accounts payable from the city's funds as of December 31st, 1925.

Respectfully,

C. C. CRABBE,
Attorney General.