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COUNTY OFFICES—COUNTY COMMISSIONERS—APPROPRIATIONS FOR OPERATION, COUNTY OFFICES—COMMISSIONERS MAY AMEND AND REDUCE—§§5705.38, 5705.40 R.C.

SYLLABUS:

Where the county commissioners have, pursuant to the provisions of Section 5705.38, Revised Code, made an annual appropriation covering the amount of the allowed payrolls for clerks, deputies and other employees in the county offices, the county commissioners have authority under Section 5705.40, Revised Code, to amend and reduce such appropriations.

Columbus, Ohio, April 17, 1959

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

I have before me your communication in which you request my opinion, your letter reading in part as follows:

“Our County Commissioners have requested that I secure a formal opinion from your office as respects the following factual situation, concerning which I shall also set forth a little of the background.

“The County Commissioners on *February 3, 1959*, passed their annual appropriation measure. It included, among other items, the appropriation of \$19,000.00 for the salary item of our County Auditor’s office appropriation. As background, the amount of \$19,000.00 had been appropriated for that item for the past two or three years, but the Auditor’s office had always had about \$2,000.00 of that item unexpended at the end of the year and returned the same to the general fund.

“* * *

“Thereafter, effective March 1, 1959, the Auditor granted pay raises to all twelve employees in his office, the raises ranging from \$15.00 to \$35.00 per month. The Auditor felt that he would again have the unexpended portion of the salary appropriation, as well as some unexpended funds in other items, these unexpended portions furnishing the money and being the basis of the increases. No other office granted increases.

“* * *

Based upon these facts your request for my opinion is as follows :

“1. Where the annual appropriation measure has been passed by them, and \$19,000.00 was appropriated in the salary item for the Auditor’s office, and it was understood by all county offices that no funds were available for salary raises for employees, and the Auditor thereafter increases the salaries of his 12 employees on the basis of contemplated unexpended funds for the year, based upon prior years experience when the same amount was appropriated, can the County Commissioners by action recall or withdraw from the Auditor’s office the amount of the salary raises ?

“2. Or stating the question in strictly legal terms, can the County Commissioners amend their annual appropriation measure by decreasing the amount of any specific items in said appropriation measure, thereby amending the appropriation available to any particular office ?

“* * *

Section 325.17, Revised Code, reads in part as follows :

“The officers mentioned in section 325.27 of the Revised Code (being all of the county officers) may appoint and employ the necessary deputies, assistants, clerks, bookkeepers, or other employees for their respective offices, fix the compensation of such employees and discharge them, and shall file certificates of such action with the county auditor. Such compensation *shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for such office.* When so fixed, the compensation of each such deputy, assistant, bookkeeper, clerk, and other employee shall be paid semimonthly from the county treasury, upon the warrant of the auditor. * * *”

(Emphasis added and parenthetical matter added)

Section 5705.38, Revised Code, requires the taxing authority of each subdivision or taxing unit (in this case the county commissioners) to pass an appropriation measure covering the estimated expenses of the subdivision for the coming year, including the amounts necessary for the operation of each of the several offices.

Section 5705.40, Revised Code, reads in part as follows :

“Any appropriation ordinance or measure may be amended or supplemented, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation, and provided that *no appropriation for any purpose shall be reduced below an amount*

*sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation. * * **

In Opinion No. 59, Opinions of the Attorney General for 1927, page 78, my predecessor, considering the sections of the General Code which were in substantial accord with the statutes above quoted, held as follows:

“1. County commissioners have full authority to fix the amount of the appropriation for deputy hire in the various county offices, and each county officer in fixing the compensation to be paid to his deputies, assistants, clerks, bookkeepers and other employes is limited to the amount of the appropriation.

“2. An appropriation measure governing money for deputy hire in county offices when once passed by county commissioners, may be amended by either increasing or reducing the amount appropriated for such purpose, and the county officer appointing such deputies, assistants, clerks, bookkeepers and other employes, cannot expend in any fiscal year a greater sum for the salary of such deputies and other assistants than is fixed in the appropriation measure as amended.

Commenting on Section 5649.3h of the General Code, which is similar to Section 5705.40, *supra*, it was said:

“Since the salaries of deputies and the other assistants enumerated in Section 2981 cannot be classed as unliquidated and outstanding contracts or obligations and since the limitation contained in Section 5649-3h is the only limitation on the power of county commissioners to reduce the appropriation as first made, it follows that county commissioners may amend their appropriation measure and reduce the amount that was originally appropriated for salaries for deputies and assistants in the various county offices. And in view of the provision of Section 2981 as well as Section 5660 which provides, inter alia, that:

‘No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount * * *’

it is clear that the officer appointing such deputy and assistants cannot expend in any fiscal year a greater sum as salary for such deputy and assistants, than the amount fixed in the appropriation measure as amended.”

A similar holding was made in Opinion No. 192, Opinions of the Attorney General for 1933, page 239.

Accordingly, in specific answer to your question, it is my opinion that where the county commissioners have, pursuant to the provisions of Sec-

tion 5705.38, Revised Code, made an annual appropriation covering the amount of the allowed payrolls for clerks, deputies and other employees in the county offices, the county commissioners have authority under Section 5705.40, Revised Code, to amend and reduce such appropriations.

Respectfully,

MARK McELROY

Attorney General