

Note from the Attorney General's Office:

1950 Op. Att'y Gen. No. 50-1532 was overruled by 1991 Op. Att'y Gen. No. 1991-008.

1532

1. SOLDIERS' RELIEF COMMISSION—AMOUNT OF MONEYS APPROPRIATED BY BOARDS OF COUNTY COMMISSIONERS IN ANY FISCAL YEAR—RESTRICTED TO FIVE-TENTHS OF MILL PER DOLLAR ON ASSESSED VALUE OF PROPERTY OF COUNTY—SECTIONS 2936, 5625-32 G. C.
2. NO AUTHORITY FOR BOARD OF COUNTY COMMISSIONERS TO APPROPRIATE ANY AMOUNT IN ADDITION TO FIVE-TENTHS OF MILL PER DOLLAR FROM OTHER UNAPPROPRIATED MONEYS IN HANDS OF BOARD.

SYLLABUS:

1. Sections 2936 and 5625-32, General Code, restrict the amount of moneys which may be appropriated by boards of county commissioners to the Soldiers' Relief Commission in any fiscal year to five-tenths of a mill per dollar on the assessed value of the property of the county.

2. No authority is given to the board of county commissioners to appropriate to the Soldiers Relief Commission any amount in addition to that stated in syllabus one from other unappropriated moneys in the hands of said board.

Columbus, Ohio, March 7, 1950

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion is as follows:

"The Board of County Commissioners of Clermont County have appropriated for the Soldiers' Relief Commission of Clermont County one-half mill to be used by said Soldiers' Relief Commission. Due to the unusual amount of necessary aid given by the Soldiers' Relief Commission, this one-half mill heretofore appropriated will be used up.

"I would like to know whether or not the Board of County Commissioners of Clermont County would be permitted to appropriate additional funds for the use of the said Soldiers' Relief Commission of Clermont County out of the moneys now in the hands of the Board of County Commissioners of Clermont County, which have not otherwise been appropriated."

Section 2930, General Code, provides for a soldiers' relief commission in each county of Ohio. Section 2936, General Code, requires the Commission to determine the probable amount necessary for aid and relief to indigent soldiers, and after determining such amount, to certify it to the county commissioners, who shall make the levy necessary to raise the required amount. Section 2936, General Code, reads as follows :

“On such last Monday in May the commission shall meet and determine from such lists the probable amount necessary for the aid and relief of such indigent persons for the ensuing year, together with an amount sufficient in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief shall be established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the county commissioners, who, at their June session shall make the levy necessary to raise the required relief, not to exceed *five-tenths of a mill* per dollar on the assessed value of the property of the county hereinafter authorized.” (Emphasis added.)

There have been numerous opinions rendered by my predecessor on the question of soldiers' relief, but I am unable to find an opinion on the specific question you raise.

Thus, in 1930 Opinions of the Attorney General, Volume II, page 1149, the then attorney general was of the opinion that a board of county commissioners is required under the provisions of Section 5625-5, General Code, to include in the general levy the amount which the soldiers' relief commission has certified to it. The syllabus of that opinion is as follows :

“1. The board of county commissioners is required, under the provisions of Section 5625-5, General Code, to include in the general levy, the amount which the soldiers' relief commission has, under Section 2936, General Code, certified to it as necessary for soldiers' relief, providing such amount does not require a levy in excess of one-half mill.

“2. The budget commission may not reduce the amount certified to be necessary for soldiers' relief unless such amount should require a levy in excess of the one-half mill limitation set forth in Section 2936, General Code.

“3. It is the mandatory duty of the county commissioners to appropriate the amount appearing in the budget for soldiers' relief.”

In Opinions of the Attorney General for 1935, Volume I, page 382, the then attorney general in the syllabus of that opinion stated:

“1. In the event of the failure of a county soldiers’ relief commission to certify to the county commissioners any amount necessary for the uses of such commission for the ensuing year as required by Section 2936, General Code, with the result that no tax levy is made for such purpose and no provision made for such a levy in the annual tax budget, the county commissioners may appropriate from the general fund to the soldiers’ relief commission any available moneys therein in such amount as in the discretion of the board of county commissioners shall be necessary for the purposes of soldiers’ relief, providing the aggregate amount so appropriated in any year does not exceed an amount equal to the proceeds of a levy of five-tenths of a mill.

“2. Subject to the statutory limitation of five-tenths of a mill set forth in Section 2936, General Code, the board of county commissioners has discretionary power to appropriate to the soldiers’ relief commission an amount in excess of that certified as necessary for the needs of that commission as provided by Section 2936, General Code.”

In Opinions of the Attorney General for 1933, Volume I, page 239, the then attorney general was asked whether after the commissioners have passed the budget resolution they may reconsider the budget and change the amount of any appropriation therein. In the syllabus of that opinion the then attorney general answered the question as follows:

“County commissioners may change the amount of any appropriation subject to two limitations:

“1. That the change violated no laws which govern the taxing authority in making an original appropriation.

“2. That it does not reduce the appropriation below an amount sufficient to cover all unliquidated contracts or obligations certified from or against said appropriation.”

The reason for such opinion was because of the provisions of Sections 5625-29 and 5625-32 of the General Code, which are parts of the so-called Budget Law.

Section 5625-29 reads as follows:

“On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary,

based on the revised tax budget and the official certificate of estimated resources or amendments thereof. If it desires to postpone the passage of the annual appropriation measure until an amended certificate is received based on the actual balances, it may pass a temporary appropriation measure for meeting the ordinary expenses of the taxing unit not later than April first of the current year, and the appropriations made therein shall be chargeable to the appropriations in the annual appropriation measure for the fiscal year when passed. Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; provided that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, custody and control of the funds of the university, such funds shall be appropriated as a lump sum for the use of the university."

However, as the attorney general in 1933 said, this is not final and reference is necessary to Section 5625-32, General Code, which reads as follows :

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and provided further, 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 for such purpose. Transfers may be made by resolution or ordinance from one appropriation item to another. At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations; provided, however, that funds unexpended at the end of such fiscal year and which had theretofore been appropriated for the payment or performance of obligations unliquidated and outstanding, shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year.

"The annual appropriation measure or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be ex-

pending, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure.”

Continuing at page 241, the 1933 opinion stated:

“It is obvious from the latter section (5625-32) that the taxing authority may either supplement or amend any appropriation ordinance or measure only within the limitations set out in section 5625-32, supra, in the following language:

‘* * * provided that such amendment or supplement shall comply with all the provisions of law governing the taxing authority in making an original appropriation and provided further, 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 for such purpose.’

“In answering your question I have assumed that you are referring to the power of the taxing authority to amend an appropriation after the same has been made and do not have in mind any question relative to changing or amending the budget.”

(Parenthesis mine.)

In your request you state that the one-half (five-tenths) mill levy has been appropriated. This complies with the “provisions of law governing the taxing authority in making the original appropriation” since the original levy could not exceed five-tenths (one-half) of a mill under Section 2936, General Code, supra. Therefore, because of the provisions of Section 5625-32, General Code, the county commissioners may not appropriate additional funds to the Commission.

Summarizing and in conclusion, it is my opinion that:

1. Sections 2936 and 5625-32, General Code, restrict the amount of moneys which may be appropriated by boards of county commissioners to the Soldiers' Relief Commission in any fiscal year to five-tenths of a mill per dollar on the assessed value of the property of the county.

2. No authority is given to the board of county commissioners to appropriate to the Soldiers' Relief Commission any amount in addition to that stated in syllabus one from other unappropriated moneys in the hands of said board.

Respectfully,

HERBERT S. DUFFY,
Attorney General.