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FUNDS RAISED FOR SOLDIERS' RELIEF MAY NOT BE TRANSFERRED TO A COUNTY DEPARTMENT OF PUBLIC WELFARE FOR ADMINISTRATION AND DISTRIBUTION—§5901.11, R.C.

SYLLABUS:

Funds raised for soldiers' relief under Section 5901.11, Revised Code, may not be transferred to a county department of public welfare for administration and distribution.

Columbus, Ohio, June 23, 1961

The Ohio Senate,
State House, Columbus, Ohio

To the Senate:

Substitute Senate Resolution No. 77 requests my opinion on the following question:

“Under existing sections of the Revised Code of Ohio and in particular under sections 329.04 and 329.05 of the Revised Code, can moneys raised by a tax levy under section 5901.11 of the Revised Code for purposes of soldiers' relief be transferred to a county department of public welfare for administration and distribution?”

Section 5901.02, Revised Code, creates a five-member “soldiers' relief commission” in each county of the state. Under Section 5901.05, Revised Code, the commission is given the duty to appoint a soldiers' relief committee of each township and ward. Each such committee prepares a list of persons eligible to receive relief under Sections 5901.02 to 5901.15, inclusive, Revised Code (Section 5901.08, Revised Code). The lists are given to the soldiers' relief commission which determines what amount shall be paid to each person on the list (Section 5901.12, Revised Code). Payments are then made through the county auditor (Section 5901.14, Revised Code).

Section 5901.11, Revised Code, referred to in your letter of request, reads as follows:

“On the last Monday in May in each year, the soldiers’ relief commission shall meet and determine from the lists provided for in section 5901.08 of the Revised Code the probable amount necessary for the aid and relief of 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 are established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the board of county commissioners, which, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief.”

It will be noted that the amount raised by the levy is to be used for indigent persons on “the lists provided for in section 5901.08 of the Revised Code.”

Section 329.01, Revised Code, creates a county department of welfare in each county. Under Section 329.04, Revised Code, the county department of welfare is authorized to administer poor relief (insofar as the administration of poor relief was, prior to September 12, 1947, imposed upon the board).

Chapter 5113., Revised Code, deals with “poor relief” which is defined as “food, clothing, public or private shelter, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency (Section 5113.01, Revised Code). Poor relief is administered by the state department of welfare through local relief authorities (board of county commissioners, county department of welfare, legislative authority of a city). Poor relief is available to any person who meets the eligibility requirements contained in Chapter 5113., *supra*. Funds for the program are raised by local taxation, by the excise taxes on public utilities, and by the state’s reimbursement to local relief authorities of up to fifty per cent of their expenditures (Section 5113.12, Revised Code).

From the foregoing, therefore, it is apparent that the operation of soldiers’ relief is in no way related to the operation of poor relief. Each is a separate program with its own separate procedure of operation. As I stated in my Opinion No. 548, Opinions of the Attorney General for 1959, page 277, at page 280:

“Your question, however, introduces the specific matter of the relation of the poor relief agencies to ‘soldiers’ relief’ as pro-

vided for in Section 5901.02, et seq., Revised Code. These sections provide for the establishment in each county of a commission known as the 'Soldiers' Relief Commission' and set up a system entirely independent of the statutes relating to poor relief, whereby veterans of various wars are provided certain special relief with money furnished by appropriation of the county commissioners."

Division (D) of Section 329.04, Revised Code, referred to in your letter of request, authorizes the county department of welfare:

"To co-operate with state and federal authorities in any matter relating to public welfare and to act as the agent of such authorities."

While this provision gives the board authority to cooperate with, and act as the agent of, public welfare authorities, I do not believe it may be extended to include authority for the board to take and use money which has been raised specifically for soldiers' relief. The county welfare board has only such powers as are expressly delegated or reasonably implied from those delegated (37 Ohio Jurisprudence, Section 74, pages 933, 934), and the power in this case is not expressly delegated nor do I believe it may be implied as necessary for the board to perform its duties.

Further, it must be remembered that the levy under Section 5901.11, Revised Code, is for indigent persons on the soldiers' relief lists. To use this for other than soldiers' relief would be contrary to the requirement of Section 5 of Article XII, Ohio Constitution, stating "* * * every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied."

Also, Section 5705.14, Revised Code, provides when one fund of a subdivision may be transferred to another fund. As to a special fund, which would include the fund for soldiers' relief, division (D) reads:

"The unexpended balance in any special fund, other than an improvement fund, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund."

It will be noted that a transfer of a special fund may not be made to another special fund but may only be transferred to the *general* fund *after*

the termination of the activity concerned. Thus, the above provision would not authorize the transfer referred to in your question.

Section 329.05, Revised Code, also referred to in your letter of request, allows a county department of welfare to “administer or assist in administering any state or local public welfare activity other than those mentioned in section 329.04 of the Revised Code” by agreement. The section quite clearly, however, does not allow the board to administer soldiers’ relief, the last paragraph of the section reading :

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“This section does not permit a county department of welfare to manage or control county or district tuberculosis or other hospitals, humane societies, detention homes, jails or probation departments of courts, *or soldiers’ relief commissions.*” (Emphasis added)

In conclusion, therefore, it appears apparent that there is no authority for a county department of welfare to participate in any way in the operation of the soldiers’ relief program. And certainly, there is no authority for soldiers’ relief funds to be transferred to the department.

Accordingly, it is my opinion and you are advised that funds raised for soldiers’ relief under Section 5901.11, Revised Code, may not be transferred to a county department of public welfare for administration and distribution.

Respectfully,
 MARK McELROY
 Attorney General