

5175.

COUNTY—EXPENDITURE AND ENCUMBRANCE OF FUNDS
AND EFFECTIVE DATE OF H. B. No. 627, 1ST SPECIAL
SESSION OF 91ST G. A.

SYLLABUS:

If the Tax Commission of Ohio authorizes any county in which prior to January 1, 1936, there has been expended more than 50% of the total amount of money which was available to it from the issuance and sale of bonds and notes under Section 2 of House Bill No. 501 of the 91st General Assembly, to issue and sell any additional bonds and notes under said act as affected by the amendment of Section 4 thereof by Amended Senate Bill No. 377 of the first special session of the 91st General Assembly, the money derived therefrom shall not be expended or encumbered until after July 1, 1936, unless prior to January 30, 1936, such county shall have issued more than 85% of the bonds and notes lawfully permitted under Section 2 of said House Bill No. 501 (as estimated and certified by the Tax Commission before the effective date of said Amended Senate Bill No. 377) and shall have expended more than 85% of the total funds derived and derivable therefrom, in which event such money derived from such additional bonds or notes may be expended at any time in such county prior to June 30, 1935, or thereafter, for the purposes set forth in House Bill No. 627 of the first special session of the 91st General Assembly.

COLUMBUS, OHIO, February 20, 1936.

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

GENTLEMEN: Your letter of recent date is as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

House Bill No. 627 was passed by the Legislature on January 23, 1936, approved by the Governor on January 30, and filed in the office of the secretary of state on the first day of February, 1936.

Section 4a of this act provides that if the Tax Commission authorizes the issuance and sale of any additional bonds or notes by any county under the provisions of House Bill No. 501, the money derived from the sale of such additional bonds shall be included in the county relief fund of any county, but shall not be expended or incumbered by or in said respective counties until

after July 1st, 1936, unless prior to the effective date of this act such county shall have expended more than 85% of the total funds derived or derivable therefrom, in which event such money derived from such additional bonds or notes may be expended at any time in such county prior to June 30, 1936, or thereafter, for the purposes set forth in this act.

QUESTION: In arriving at the amount for the purpose of determining whether 85% has been expended, should the expenditures to January 1st be considered, or the expenditures up to February 1st?

In other words, in view of Section 16c of this act, is the effective date of the act January 1, or February 1?"

Said Amended Senate Bill No. 627, among other things, creates a state relief commission to administer the moneys appropriated to the commission for poor relief purposes in accordance with its provisions, and provides for the allocation and distribution of such moneys to the counties. Section 16-c of said act reads:

"Each, every and all of the appropriations, computations, allocations, distributions, advances, provisions, percentages, rates, terms and administrations of and under this act shall be provided, computed, calculated, administered, interpreted and applied under the respective provisions and sections of this act, as beginning at, as being effective from, and as running from January 1, 1936, just as though this act had been enacted upon and had become effective on the first day of January, 1936."

This act was passed January 23, 1936, was approved by the Governor, January 30, 1936, and filed in the office of the Secretary of State, February 1, 1936. Being an emergency law, it became effective immediately upon its approval by the Governor. *State v. Lathrop*, 93 O. S., 79.

The answer to your question depends upon the meaning of the term "effective date of this act" as used in Section 4-a thereof, that is, whether said term means the date upon which the act actually became effective or whether, in view of Section 16-c, it means January 1, 1936, the date from which "each, every and all of the appropriations, computations, allocations, distributions, advancements, provisions, percentages, rates, terms and administrations of and under this act" shall be interpreted as being effective.

The pertinent part of Section 4a provides in substance that if the Tax Commission authorizes any county in which prior to January 1, 1936, there has been expended more than fifty percent of the total amount of money which was available to it from the issuance and sale of bonds or notes under Section 2 of House Bill No. 501 of the 91st General Assembly

to issue and sell any additional bonds or notes under said act as affected by the amendment of Section 4 thereof, by Amended Senate Bill No. 377, of the first special session of the 91st General Assembly, the money derived therefrom shall not be expended or encumbered until after July 1, 1936, unless prior to the effective date of the act such county shall have issued more than 85% of the bonds and notes lawfully permitted under Section 2 of the House Bill No. 501 (as estimated and certified by the Tax Commission before the effective date of said Amended Senate Bill No. 377) and shall have expended more than 85% of the total funds derived and derivable therefrom, in which event the proceeds of such additional bonds may be expended prior to or after June 30, 1936.

If the second paragraph of Section 4-a were the only place in this statute that the term "effective date of this act" appeared, such term might well be construed to mean January 1, 1936, in view of the broad provisions of Section 16c, but this same term appears elsewhere in the act. It is well settled that where a term is used more than once in a statute relating to the same matters if in one or more connections its meaning is clear and in another it is ambiguous, it is ordinarily construed as having the same meaning in the latter case as in the former.

In the case of *Rhodes v. Weldy*, 46 O. S., 234, the second branch of the syllabus reads:

"Where the same word or phrase is used more than once in the same act in relation to the same subject-matter and looking to the same general purpose, if in one connection its meaning is clear and in another it is otherwise doubtful or obscure, it is in the latter case to receive the same construction as in the former, unless there is something in the connection in which it is employed, plainly calling for a different construction."

In the case of *Henry v. Trustees*, 48 O. S., 671, the first branch of the syllabus reads in part as follows:

"In the construction of a statute, it is, as a general rule, reasonable to presume that the same meaning is intended for the same expression in every part of the act."

In the case of *Chilcote, Gdn., v. Hoffman*, 97 O. S., 98, the following is held at pages 109 and 110:

"Certainly the same words in a statute relating to the same subject-matter and originally a part of the same act (75 Ohio Laws, 781) should not receive a different construction."

Section 4 of this act provides that :

“In order to qualify for, and be permitted to receive any advances, distributions or allocations herein provided, each county shall, *upon the effective date of this act*, transfer the unexpended or unencumbered balance of any monies in its ‘emergency poor relief fund’ or in its ‘county poor relief excise fund’, to the within created ‘county relief fund’ and, thereafter, all such monies shall be used for poor relief according to the provisions of this act and not otherwise.”

Obviously, the term “effective date of this act” as used herein can only mean the date when the act actually became effective rather than January 1, 1936, as the county relief fund could not have been created on January 1, 1936. While the legislature may make provisions of a statute, when such statute becomes effective, retrospective so long as vested rights are not thereby impaired, such provisions can have no force until the statute goes into effect. *Evans v. Lumber Co.*, 21 C. C. 80.

Said Section 4 further provides :

“Be it further provided that, wherever in each, any or all of acts, parts or sections of such acts, the term ‘emergency poor relief fund’ or the term ‘county poor relief excise fund’ is employed or set forth, each of the same, from and *after the passage and effective date of this act*, shall be and shall be deemed to be amended, altered, revised and substituted for by the term ‘county relief fund’ and, thenceforth, each and all of the said funds in each county shall be denominated and known as the ‘county relief fund’, and all monies and funds which, *at the time of the effective date of this act*, are in the treasury of any county and known as ‘emergency relief fund’ or ‘county poor relief excise fund’ shall be merged with and shall become a part of the within created and named ‘county relief fund’ and shall be vouchered against, used, spent and employed in accordance with this act; save and except that, to the extent the monies in any such ‘emergency relief fund’ or ‘county poor relief excise fund’ shall be required to meet or pay any obligations existing or contracted for, upon *the effective date of this within act*, and lawfully payable out of any of said last named funds, such obligations and such contracts shall be paid or provided for out of said respective funds and only the remaining balance of said respective funds shall be merged with and shall become a part of the within created and named ‘county relief fund’ and said respective balances in said respective funds shall thenceforth be em-

ployed, spent and used for only those purposes and uses as are defined and set forth in this act.”

It is equally clear that this term as used in the first two places in this paragraph can only refer to the date on which the statute actually went into effect.

Sections 4a and 4b read:

“Sec. 4-a. In counties in which, *prior to January 1, 1936*, there has been expended more than 50% of the total amount of money which was available to such county from the issuance and sale of bonds or notes under section 2 of an act passed May 23, 1935, and approved June 5, 1935, known as House Bill No. 501, such counties shall, on the *effective date of this act*, place the then remainder of such funds into the ‘county relief fund’ and the county commissioners of such counties shall not expend, during any 1936 calendar month hereinafter listed, a greater portion of such total ‘county relief fund’ than the following percentages:

January 24%, February 22%, March 18%, April 14%, May 12%, and June 10%, provided that if the tax commission of Ohio authorizes the issuance and sale of any additional bonds or notes, by any county under the provisions of the above said House Bill No. 501, as affected by the amendment of section 4 thereof by Amended Senate Bill No. 377, passed December 5, 1935, the money derived from the sale of such additional bonds shall be included in the said ‘county relief fund’ of any county, but shall not be expended or encumbered by or in said respective counties until after July 1, 1936, unless, *prior to the effective date of this act*, such county shall have issued more than 85% of all bonds and notes lawfully permitted under section 2 of said House Bill No. 501 (as estimated and certified by the state tax commission *before the effective date of Senate Bill No. 377*, passed December 5, 1935), and shall have expended more than 85% of the total funds derived and derivable therefrom, in which event such money derived from such ‘additional’ bonds or notes may be expended at any time in such county, prior to June 30, 1936, or thereafter, for the purposes set forth in this act.”

“Sec. 4-b. In each county in which, *prior to January 1, 1936*, there has been expended 50% or less of the total money available to such county from the issuance of bonds under section 2 of an act passed May 23, 1935, and approved June 5, 1935, known as House Bill No. 501, such county shall place in the ‘county relief fund’ the total amount of money still unexpended

on January 1, 1936 (derived from the prior sale of such bonds or notes under said House Bill No. 501), and any county that hereafter issued bonds under said House Bill No. 501, shall upon the receipt of the money from the sale of such bonds place it in the 'county relief fund.' The county commissioners shall not expend or encumber during any 1936 calendar month hereinafter listed, a greater portion of a sum calculated by taking one-half ($\frac{1}{2}$) of the total amount of money still unexpended on January 1, 1936, derived from the prior sale of such bonds or notes under said House Bill No. 501, together with one-half ($\frac{1}{2}$) of the amount of bonds or notes that such county is authorized by law further to issue under said House Bill No. 501, as amended by Senate Bill No. 377, passed December 5, 1935, and approved December 5, 1935, than the following respective percentages: January 24%, February 22%, March 18%, April 14%, May 12% and June 10%."

The term "effective date of this act" as used in the first paragraph of Section 4-a can likewise only mean the date the act actually became effective since the funds referred to could not have been placed into the county relief fund until the act went into effect. Since there is nothing in said statute to show a different intent, it must be presumed that this same term as used in the second paragraph of this section was intended to have the same meaning as that term clearly has in the other places it appears.

Moreover, it is significant that when the legislature in these sections intended to refer to January 1, 1936, it expressly referred to it as January 1, 1936, and not as the effective date of the act. When the legislature in some places in these sections referred to January 1, 1936, and in others to the effective date of this act, it will be presumed that the latter phrase was intended to mean a different date than that expressed by January 1, 1936. Otherwise, the legislature would have referred to said date in the same manner in all the places in said section.

Apparently, it was solely the intention that by Section 16-c appropriations would be calculated from January 1, 1936, and that the counties would get their allowances for the full month of January although the act would not become effective until January 30, this section having been placed in the act when it was seen that it could not go into effect until late in January.

Consequently, I am of the opinion that if the Tax Commission of Ohio authorizes any county in which prior to January 1, 1936, there has been expended more than 50% of the total amount of money which was available to it from the issuance and sale of bonds and notes under Section 2 of House Bill No. 501 of the 91st General Assembly, to issue

and sell any additional bonds and notes under said act as affected by the amendment of Section 4 thereof by Amended Senate Bill No. 377 of the first special session of the 91st General Assembly, the money derived therefrom shall not be expended or encumbered until after July 1, 1936, unless prior to January 30, 1936, such county shall have issued more than 85% of the bonds and notes lawfully permitted under Section 2 of said House Bill No. 501 (as estimated and certified by the Tax Commission before the effective date of said Amended Senate Bill No. 377) and shall have expended more than 85% of the total funds derived and derivable therefrom, in which event such money derived from such additional bonds or notes may be expended at any time in such county prior to June 30, 1936, or thereafter, for the purposes set forth in House Bill No. 627 of the first special session of the 91st General Assembly.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5176.

BOARD OF EDUCATION—PROCEDURE IN ADOPTING PLAN
FOR ORGANIZATION OF SCHOOL DISTRICTS OF
COUNTY SCHOOL DISTRICT.

SYLLABUS:

1. *Before a county board of education or the Director of Education may adopt a "plan of organization" of a county school district or modify or change an adopted plan in pursuance of Sections 7600-1 to 7600-8, inclusive, of the General Code of Ohio, hearing must be granted to boards of education within the county school district as well as to interested persons, as provided by Section 7600-3, General Code, after proper notice of such hearing has been published as provided by the statute.*

2. *A plan of organization or reorganization of the school districts of a county school district adopted or modified by a county board of education or by the director of education without first having granted a hearing pursuant to notice as provided by Section 7600-3, General Code, is of no force and effect whatever.*

3. *A county board of education after adopting a plan of organization or modifying such a plan, under the provisions of Sections 7600-3 or 7600-4, General Code, should submit a copy of the minutes of its meeting at which such plan was adopted or modified, to the Director of Education, to the end that it may appear to the Director of Education that the county board of education had jurisdiction to act in the premises, when*