

municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district."

Section 2987 of the General Code, which is a part of the same bill, provides as follows:

"The deputies, assistants, clerks, bookkeepers and other employes of such office shall be paid from the salary fund of the office in which they are employed, upon the warrant of the county auditor."

This section taken together with section 5649-3g as quoted, is the only one relating to the payment of the salaries of deputies, assistants and other employes.

Under section 5649-3g of the General Code, the county commissioners at the beginning of the fiscal year shall make appropriations classified for the several purposes for which expenditures are to be made for and during said fiscal year from the funds of such county. By such appropriation the amount which can be expended during a fiscal year for the salaries of deputies, assistants and other employes is fixed by the county commissioners and is in the nature of an allowance as formerly required under section 2980 of the General Code.

Of course, this appropriation may be changed from time to time thereafter as provided in section 5649-3h, but until such appropriation resolution is amended the amount which may be expended by any county office is limited to the amount which is appropriated by the county commissioners for such use.

Respectfully,

C. C. CRABBE,
Attorney General.

2935.

FUNDS RECEIVED BY A MUNICIPALITY FROM THE EARNINGS OF A WATERWORKS OR ELECTRIC LIGHT SYSTEM ARE TO BE REGARDED AS RECEIVED FROM "PUBLICLY OPERATED" PUBLIC UTILITIES AS REFERRED TO IN SECTION 5660 G. C.

SYLLABUS:

The funds created by the earnings of a system to distribute water, electric light, etc., to a municipality are to be regarded as received from "publicly operated" public utilities as referred to in section 5660, and as amended by the 86th General Assembly, notwithstanding the municipality may purchase the commodity from private parties or other municipalities.

COLUMBUS, OHIO, November 11, 1925.

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

GENTLEMEN:—In your recent communication you request my opinion upon the following:

"The syllabus of Opinion No. 994, page 832 Annual Report of the Attorney General for 1914, volume 1, reads:

"Where a municipality having a waterworks, supplies water to another municipality, a village under the authority of section 3973, General Code, and the municipality thus supplied constructs a system of pipes for distributing such water to its inhabitants, it has "waterworks" within the meaning of section 4357, General Code.'

"The concluding paragraph of section 5660, as amended, 111 O. L. 376, reads:

"The above mentioned certificate as to money in the treasury shall not be required for the making of contracts on which payments are to be made from the earnings of a publicly operated public utility; but in the case of any such contract made without such certification of the auditor or other fiscal officer, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable except out of said earnings.'

"Many Ohio municipalities own and operate distribution systems but purchase water and electric current from private parties or other municipalities. In all such instances boards of public affairs have been established as provided for in sections 4375 et seq., G. C.

"Question: Are the funds, earnings, etc., of such distribution systems to be considered those of 'publicly operated public utilities,' within the meaning of section 5660, General Code, as amended, 111 O. L. 376?"

From the Opinion of 1914, to which you refer, it is clear that an undertaking wherein the municipality operates distributing systems and purchases water and electric current from private parties or other municipalities, is to be regarded as the operation of a public utility. This view is in some respects in accordance with an opinion recently rendered by this department relative to the power of a municipality to lease a public utility and require the furnishing of service to the municipality.

In other words, it would seem to be the power that is given in such matters rather than the physical property that must be considered. In view of the express provisions of section 5660 as amended in 111 O. L., that the earnings of a publicly operated utility is excepted from the operation of the certification requirement, it would seem to be clear that the earnings from such distribution systems are to be within the exception referred to. However, it may be pointed out that section 4363 which authorizes the levying of taxes to aid the development of a water system in villages should be noted, and it may be that there are other sources of revenue for the aid of waterworks or public utilities in municipalities. If such funds are to be expended, undoubtedly they would not come within the exception. In other words, the exception made relates to the earnings of such utilities and not to receipts that it may receive from taxation or other sources.

Respectfully,
C. C. CRABBE,
Attorney General.