

other expenses authorized under this act from the date it becomes effective.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1247.

EXPENSES OF AUDITING ACCOUNTS OF MUNICIPALLY OWNED PUBLIC UTILITIES—TRANSFER FROM GENERAL FUND TO UTILITY FUND.

SYLLABUS:

When the expenses pertaining to the inspection and auditing of the accounts of a municipally owned public utility by the Bureau of Inspection and Supervision of Public Offices under authority of Section 288, General Code, have been paid out of the general fund of such municipality, such general fund may be reimbursed in the amount so paid from the public utility fund by transfer under authority of Sections 5625-13a, et seq., General Code.

COLUMBUS, OHIO, September 28, 1937.

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

GENTLEMEN: Your letter of recent date is as follows:

“In 1931 the Attorney General’s Department informally held that the actual cost of the Bureau’s audit of accounts of municipally owned utilities might be charged to such utilities, and we have so held since that time.

We are now presenting for your formal opinion, the following question:

May a municipality’s General Fund be reimbursed from its Public Utility Funds (water and electric light) for the cost of an examination conducted by the Bureau of Inspection and Supervision of Public Offices?”

Water rentals derived from the operation of a municipally owned waterworks are expressly authorized by Section 3958, General Code, to be used “for the purpose of paying the expenses of conducting and managing the waterworks.” It is my judgment accordingly that

there is no doubt but that the expense of auditing the accounts of such waterworks by your Bureau is properly one of the expenses of conducting and managing the waterworks within the meaning of the phrase as used in such Section 3958 and accordingly payable from the waterworks fund. The same principle is true as to other municipally owned public utilities.

Coming to your specific question, however, as to whether or not a municipality's general fund may be reimbursed from its waterworks or other public utility funds to cover the cost of an examination conducted by your Bureau, the matter of reimbursement involves the question of transfer of funds. Paragraph d of Section 5625-13, General Code, reads as follows:

“Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with G. C., Section 5625-9, paragraph (d), (f), or (g) or G. C., Section 5625-11, 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.”

In view of the fact that Section 5625-9, paragraph (g), requires that there be established “a special fund for each public utility operated by a subdivision,” it is apparent that Section 5625-13, the pertinent portion of which is hereinabove quoted, does not authorize transfers of moneys from a public utility fund at least as long as such public utility is in operation.

Sections 5625-13a, et seq., General Code, originally enacted in 1933 and amended in 1935, authorize transfers in addition to those authorized by Section 5625-13, General Code. Under these sections, transfers may be effected upon securing the approval of the Tax Commission and pursuant to decree of the common pleas court. Section 5625-13a provides:

“In addition to the transfers authorized in Section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or

balances of any license fees imposed by law for a specified purpose or purposes.”

In view of the fact that revenues of municipally owned public utilities are not excise taxes (*Cincinnati vs. Roettinger*, 105 O. S. 145), it is my opinion that the general fund of a municipality may be reimbursed from its public utility funds to pay the cost of an examination conducted by your Bureau which was heretofore paid out of the general fund.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1248.

APPROVAL—CONTRACT BY AND BETWEEN R. P. CARBONE COMPANY AND THE STATE OF OHIO FOR GENERAL WORK ON THE MAIN BUILDING, CLEVELAND STATE HOSPITAL.

COLUMBUS, OHIO, September 28, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between R. P. Carbone Company, Cleveland, Ohio, and the State of Ohio, acting by Carl G. Wahl, Director of Public Works, for the General Work known as North and South Porches, Main Building, Cleveland State Hospital, Cleveland, Ohio, as set forth in Item I, General Contract, and Item 5, Alternate "G-1," which contract calls for the total expenditure of eighteen thousand two hundred and fifty dollars (\$18,250.00).

You have also submitted the following papers and documents in this connection: Encumbrance estimate No. 65, dated September 20, 1937, the estimate of cost, the division of contract, the notice to bidders, the proof of publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, the form of proposal containing the contract bonds signed by the United States Fidelity and Guaranty Company, its power of attorney for the signer, its financial statement and its