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COUNTY COMMISSIONERS—WITHOUT AUTHORITY TO USE ANY PORTION OF FUNDS BELONGING TO COUNTY VETERANS HOUSING FUND—PURPOSE TO PROVIDE TUITION OR TRANSPORTATION TO SCHOOL FOR CHILDREN OF VETERANS OCCUPYING HOUSING FACILITIES PROVIDED BY COUNTY COMMISSIONERS — SECTIONS 1078-62 THROUGH 1078-71 G. C.

SYLLABUS:

County commissioners are without authority to use any portion of the funds belonging to the county veterans housing fund provided by Sections 1078-62 to 1078-71, inclusive, of the General Code, for the purpose of providing tuition or transportation to school for children of veterans occupying the housing facilities provided by said county commissioners.

Columbus, Ohio, August 13, 1948

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir :

I have before me your request for my opinion reading as follows :

“We have the following situation in Montgomery County : In August, 1946, the legislature enacted House Bill No. 508, to provide immediate temporary emergency housing for veterans of World War II and their families, and to declare an emergency, Laws of Ohio, Vol. 121, page 806.

“At that time, owing to the local housing situation, Montgomery County was unable to take immediate temporary advantage of this law for the assistance of Montgomery County veterans. The U. S. Government had certain housing quarters at Patterson Field, Greene County, not then being used, that could be made available for housing ex-soldiers and their families.

“As an emergency existed, and as these Government housing quarters were located in the adjoining county of Greene, I requested your opinion as to the authority of the Montgomery County Commissioners to use money allocated to it under the provisions of House Bill No. 508, in order to provide temporary housing for these veterans and their families in a county other than Montgomery.

“Your opinion was favorable, and authorized the commissioners to use the money for that purpose. Your opinion was based on the fact that by the terms of the act, only temporary, the occupants, who are legal residents of Montgomery county would not cease to be such residents by being temporarily housed in another county. Opinion No. 1211, September 24th, 1946. The county commissioners then established the Montgomery County Housing Project, and made arrangements with the U. S. Government to take possession of these housing accommodations, and at considerable expense remodeled them for the use of veterans and their families. Some eighty (80) veterans' families now occupy these quarters.

“These families consist of some one hundred sixty (160) adults and one hundred fifteen (115) children, some forty (40) of which are of school age, and more approaching school age.

“At the present time, these children are attending Skyway Schools in Bath Township, Greene County, and are required to pay Fifty (\$50.00) dollars per school year per child.

“These families and their children are from the various school districts in Montgomery County, and the City of Dayton. In fact, a tuition would be charged should these children attend the schools of any school district in Montgomery County.

“As the schools in Bath Township, Greene County, are the nearest to the project, the transportation to these schools would be less expensive.

“The families living in this project have nice accommodations and pay very reasonable rent. The question of tuition and transportation of the children, under present conditions, becomes a serious question to veterans with one, two or three children.

“The Montgomery County Commissioners have now accumulated a maintenance and operating fund of about Ten Thousand (\$10,000.00) dollars from the rentals, and are confident that they can take care of these children from this fund, if they have the authority. If the Board of County Commissioners have the authority to expend the money from this maintenance and operating fund for this purpose, it could bargain with the school boards, for the best interests of the children.

“The county commissioners desire your ruling as to their authority to arrange for the tuition and transportation of these children, with the school board of the most convenient district, and pay the expenses necessary from the maintenance and operating fund of the project.”

H. B. No. 508 of the 96th General Assembly, to which you refer, was codified as Sections 1078-62 to 1078-71, both inclusive, of the General Code. The first section of the act carries an appropriation as follows :

“There is hereby appropriated out of any moneys not heretofore appropriated or encumbered the sum of \$6,000,000 for the purpose of providing financial assistance to the political subdivisions of the state to provide immediate temporary emergency housing for veterans of World War II, who have been discharged other than dishonorably, and their families.”

This fund is to be allocated to the counties of the state in proportion to their population.

The concluding paragraph of section 1078-62 reads as follows :

“All moneys allocated to a county pursuant to the provisions of this act shall be placed in a special fund in the treasury of the county to be known as the county veterans housing fund. The moneys allocated to *the county veterans housing fund shall be expended only as provided in this act.*” (Emphasis added.)

Section 1078-63 reiterates in almost the same language as that first above quoted, the purpose for which the commissioners are authorized to expend all or any part of their county veterans housing fund. By the provisions of Sections 1078-64 and 1078-65, the various political subdivisions of each county are authorized to make contributions and the county commissioners are authorized to accept contributions for the purpose of supplementing the county veterans housing fund.

Section 1078-66 outlines specifically the powers and duties of the county commissioners and authorizes them for the purpose of providing such housing facilities "to acquire by purchase, lease, gift or otherwise improved or unimproved land, structures, materials, equipment, facilities and services, and to erect structures for the purpose of making such temporary emergency housing available." It further authorizes the commissioners to rent these facilities and provides that all rents collected shall be deposited in the county veterans housing fund, and limits the portion of such rents that may be used for maintenance and operation of the property.

Section 1078-67 requires reports by the county commissioners in each county to be made to the treasurer of state semi-annually, showing receipts, disbursements and balances.

Section 1078-70 authorizes the sale of such properties and provides that the proceeds of such sale shall be deposited in the general fund of the county. This section was held in an opinion reported in 1946 Opinions of the Attorney General, page 660, to be applicable only to final liquidation of the project.

Section 1078-71 provides as follows:

"Any sum remaining to the credit of the county veterans housing fund of a county on the thirty-first day of December, 1949, shall be paid to the treasurer of state and placed in the general revenue fund."

There are no other provisions whatsoever in the act authorizing the expenditure or disposition of the county veterans housing fund for any other purpose than that above stated. It will be noted that the money originally appropriated by the General Assembly together with all accre-

tions from gifts and contributions and together with all rents arising from the operation of the houses are to go into the same "county veterans housing fund" and be used for the single purpose of providing and maintaining the emergency housing facilities contemplated by the act. It is further to be noted that any sum remaining in the hands of any county to the credit of this fund on the 31st day of December, 1949, is to revert to the state, and be paid to the treasurer of state and placed in its general revenue fund.

Your letter suggests very plausible and appealing reasons why it might be desirable in the case of the Montgomery county fund, to use a portion of the surplus now in the hands of the commissioners for the purpose of providing tuition and transportation to school for the children of the veterans who are housed in the buildings provided by the county. However, it is obvious that it would be impossible so to construe the act in question as to find in it any authority for such use of these funds. It is only necessary to mention the well established principle that county commissioners have only such authority in financial transactions as is clearly and distinctly granted by the law. 32 Ohio Juris., page 933; Jones v. Commissioners, 57 O. S., 189; Locher v. Menning, 95 O. S., 97.

The conduct of the schools of the state is distinctly and exclusively a function of the state, and the entire control of the school system has been withheld from the counties and municipalities and has been lodged in a state department of education and county, municipal and local boards of education. Even if the surplus in the hands of the county commissioners could be by them transferred to their own general funds, I find no authority vested in the commissioners to use any funds whatsoever to pay tuition for school children or the expense of their transportation to school.

Accordingly, it is my opinion and you are advised that county commissioners are without authority to use any portion of the funds belonging to the county veterans housing fund provided by Sections 1078-62 to 1078-71, inclusive, of the General Code, for the purpose of providing tuition or transportation to school for children of veterans occupying the housing facilities provided by said county commissioners.

While not bearing directly on the question you have submitted, yet possibly throwing light on your problem, I call your attention to Section 4832-2, General Code, which provides that the schools of each district "shall be open to all school residents between six and twenty-one years of

age”, and further defines “school residents” as all youth who are children or wards of “*actual residents* of the school district.” I further direct your attention to 1922 Opinions of the Attorney General, page 32, where it was held that such actual residence is not the same as voting residence, but merely requires physical presence and dwelling in the district by the parents or guardian for the time being.

Respectfully,

HUGH S. JENKINS,  
Attorney General.