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TOWNSHIP HOSPITAL—

1. PROCEEDS, TAX LEVY FOR OPERATING EXPENSES — §513.13 RC — CANNOT BE USED TO CONSTRUCT PERMANENT IMPROVEMENTS.
2. FUNDS LIMITED BY LAW AS TO EXPENDITURE CANNOT BE USED FOR ANY OTHER PURPOSE; ACCOUNTING DEVICES, “FUND” OR “RESERVE” CANNOT AFFECT SPECIFIC FUNDS AS TO EXPENDITURE.

SYLLABUS:

1. The proceeds of a tax levy for operating expenses voted by the electors of a joint township hospital district under the provisions of Section 513.13, Revised Code, may not be expended to pay the cost of the construction of permanent improvements to the hospital.
2. Funds the expenditure of which is limited by law to specified purposes, cannot be expended for other purposes merely because by an accounting device they have been assigned to a certain “fund” or “reserve.”

Columbus, Ohio, July 11, 1957

Hon. James I. Shaw, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

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

"I have been requested by the Board of Hospital Governors of Jackson, German, Noble and St. Mary Joint Hospital District to obtain from you your opinion on the expenditure of accumulated funds derived from a one mill tax levy for operational expenses for the construction of an additional twenty-bed wing to the present hospital.

"The Jackson, German, Noble and St. Marys Joint Township Hospital District was created some seven years ago under Ohio General Code 3411, et seq. (now Ohio Revised Code Section 513.01, et seq.) and bonds were issued for the construction of the hospital.

"In 1951 a one mill tax levy for operating expenses was submitted to the electors in the district and was approved under Ohio General Code 3414-3 (now Ohio Revised Code Section 513.13). Since that time the funds received under the one mill operating levy have been used for the payment of expenses in operating the hospital but the funds so received have been in excess of the expenditures and a sizeable amount of money has accumulated. It is now the desire of the Board of Hospital Governors to add an additional twenty-bed wing to the present hospital with the funds which have accumulated under the one mill operating levy and from donations which have accumulated since the hospital has been in operation.

"Question 1. Can a Board of Governors of a Joint Township Hospital District expend funds which accumulated under a one mill operating levy for the construction of an additional wing to the hospital?

"If your answer to question No. 1, is 'no', question No. 2 is submitted:

"Can the Board of Governors of a Joint Township Hospital District expend funds which are set aside under a building depreciation reserve fund for the construction of an additional wing to the hospital?"

Section 513.13, Revised Code, provides, in pertinent part, as follows:

"The board of elections of the county in which a joint township hospital district lies shall, by resolution approved by a two-

thirds vote of the joint township district hospital board, place upon the ballot for submission to the electorate of such district, at the next primary or general election, occurring not less than thirty nor more than ninety days after the request is received from such joint township district hospital board, the question of levying a tax, not to exceed one mill outside the ten-mill limitation, for a period not to exceed five years, to *provide funds for the payment of necessary expenses incurred in the operation of the hospital.*
* * * ”
(Emphasis added)

Section 5 of Article XII of the Constitution of Ohio provides :

“No tax shall be levied, except in pursuance of law ; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.”

Thus funds derived from a tax levy for operating expenses can be expended only for operating expenses. Section 5705.01, Revised Code, the definition section of the general tax levy law, defines “current operating expenses” to exclude expenses for permanent improvements.

It has been suggested that certain sections of the general tax levy law, Chapter 5705., Revised Code, may be so interpreted as to authorize the expenditure of these funds for construction of permanent improvements. However, Section 513.13, *supra*, authorizes the levy of a tax to provide funds for operating expenses, and Section 5 of Article XII of the Constitution of Ohio, *supra*, limits the expenditure of the proceeds of tax levies to the statutory purposes for which they are levied. Inasmuch as statutes having more than one possible interpretation must be so interpreted as to avoid unconstitutionality, I am compelled to conclude that no section of Chapter 5705., Revised Code, may be so interpreted as to authorize the expenditure of funds derived from the tax levied under Section 513.13, Revised Code, for construction of permanent improvements.

Your second question involves the use of moneys set aside in a “building depreciation reserve fund” for purposes of construction of permanent improvements.

There is no provision in the statutes for a “building depreciation reserve fund,” and the creation of such a fund is merely a convenient business device. It amounts to no more than assigning a name to a segregated portion of an agency’s moneys. Attaching words to a fund does not authorize its expenditure for purposes for which the constituent moneys could not be spent.

It is my opinion, therefore, and you are advised, that :

1. The proceeds of a tax levy for operating expenses voted by the electors of a joint township hospital district under the provisions of Section 513.13, Revised Code, may not be expended to pay the cost of the construction of permanent improvements to the hospital.

2. Funds the expenditure of which is limited by law to specified purposes, cannot be expended for other purposes merely because by an accounting device they have been assigned to a certain "fund" or "reserve."

Respectfully,

WILLIAM SAXBE

Attorney General