

These two sections provide a further method whereby such transfers may be made. As therein provided authority is vested in the Probate Courts of Franklin and Richland Counties to order the transfer of insane inmates of the Ohio Penitentiary and the Ohio State Reformatory, respectively, to the Lima State Hospital.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1325.

COUNTY BUDGET COMMISSION—GENERAL AUTHORITY.

SYLLABUS:

The county budget commission is without legal authority to prescribe that the entire amount other than that for debt charges, derived, within the fifteen mill limitation, from the general levy of a municipality for current expenses shall be applied to the payment of a final judgment against said municipality.

COLUMBUS, OHIO, December 2, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“Under the provisions of Sections 5625-22, et seq., of the General Code, the Village of Bremen filed its 1927 budget with the auditor of Fairfield County, in which it asked to be allowed to raise by taxation in said village for the fiscal year 1928 the sum of \$15,315.13 under the following heads:

Within the 15 mill limitation	
For debt charges.....	\$909 87
For other purposes.....	10,681 26
Outside the 15 mill limitation	
For debt charges.....	3,724 00

Among the items of expense to be paid out of the monies received during the fiscal year was listed in the manner provided for by Section 5625-8 of the General Code a certain judgment existing against said village in favor of one Sarah Turner in the sum of \$6,381.26.

The said auditor submitted said budget to the county budget commission who allowed and approved the same as follows:

Within the 15 mill limitation	
For debt charges.....	\$910 00
For other purposes.....	4,700 00
Outside the 15 mill limitation	
For debt charges.....	3,740 00

Said budget commission, however, attempted to designate the item of \$4,700.00 set forth above so that it might be used by the village for the sole purpose of making a payment on the Turner judgment.

To this action on the part of the budget commission objection was raised on behalf of the fiscal authorities of the village and an appeal lodged with this commission. As we understand the situation, it is admitted by the village that the sum of \$4,700.00 so allowed by the county budget commission is the maximum amount which may be levied in the village within the limitations on tax rates but the claim is made that such budget commission is without legal authority to set apart the item mentioned or to prescribe to the council of said village how the same should be expended, especially in view of the fact that if said item is applied on the judgment there will be no revenue of any sort available to defray the general operating expenses of the village.

Will you please advise us if the budget commission was within its powers when providing that the levy outside of that for debt charges should be paid on the judgment?

Your department has already passed on another feature of this matter in Opinion No. 1113 handed down a few days ago."

My Opinion No. 1113 to which you refer was rendered October 5, 1927, to Hon. W. S. Dutton, Prosecuting Attorney, Lancaster, Ohio, in regard to the decision of the Supreme Court in the case of *State of Ohio, ex rel. Sarah H. Turner vs. The Village of Bremen, et al.*, No. 20095, in which it was ordered and adjudged that a peremptory writ of mandamus issue commanding the defendant, the clerk of the village of Bremen, if within the limits of its funds available under the statutes for this purpose, the village was unable with due consideration of its best interests to pay the final judgment in question, to certify that fact to the village council of Bremen, and that a peremptory writ of mandamus issue commanding the council to appropriate the money to pay such judgment if any there be in the treasury of said village available under the statutes for such purpose, or that if there were no such fund in the treasury that could be so appropriated and employed, said council be required either to levy a proper and sufficient tax according to law upon all the taxable property in said village to pay the judgment with the interest thereon, or that the council enact the necessary legislation to issue bonds of the village according to law in an amount not exceeding the amount of the judgment and carrying interest not to exceed six per cent, and that the council issue said bonds according to law and that a writ of peremptory mandamus issue commanding the treasurer of the village to receive the money collected from such tax or from such bonds issued for the payment of said final judgment, and disburse said fund in the manner provided by law.

The question was as to whether the taxing authorities could levy this tax outside of the fifteen mill limitation by reason of the aforesaid order of the Supreme Court. In said Opinion No. 1113 it was held that the Supreme Court in said case did not order the tax levy to be made outside of the fifteen mill limitation to pay the judgment against the village.

It appears then that the village of Bremen filed its 1927 budget with the county auditor, in which it asked to be allowed to raise by taxation in the village for the fiscal year 1928, the sum of \$15,315.13 as follows:

"Within the 15 mill limitation	
For debt charges.....	\$909 87
For other purposes.....	10,681 26
Outside the 15 mill limitation	
For debt charges.....	3,724 00"

The final judgment against the village of Bremen in favor of Sarah H. Turner was listed as provided for by Section 5625-8 of the General Code, which reads as follows:

"On or before the first Monday in May of each year, the fiscal officer of each subdivision shall certify to the taxing authority thereof the amount necessary to provide for the payment of final judgments against the subdivision, except in condemnation of property cases; and said taxing authority shall place such amount in each budget and in the annual appropriation measure for the full amount certified."

The budget commission in considering the budget of the village of Bremen allowed and approved the same as follows:

"Within the 15 mill limitation	
For debt charges	\$910 00
For other purposes	4,700 00
Outside the 15 mill limitation	
For debt charges	3,740 00"

It is noted that the budget commission reduced the item within the fifteen mill limitation "for other purposes" from \$10,681.26 to \$4,700.00 and designated that said item of \$4,700.00 was to be used by the village for the sole purpose of making payment on the aforesaid Sarah H. Turner judgment.

The taxing authorities of the village of Bremen were dissatisfied with the action of the budget commission in regard to the village and through its fiscal officer appealed to the Tax Commission of Ohio under the provisions of Section 5625-28, General Code. Said section reads as follows:

"The taxing authority of any subdivision which is dissatisfied with any action of the budget commission may, through its fiscal officer, appeal to the tax commission of Ohio, which commission shall forthwith consider the matter or matters presented to the budget commission, and shall have power to modify any action of the budget commission with reference to the budget, the estimate of revenues and balances or the fixing of tax rates. The finding of the tax commission shall be substituted for the findings of the budget commission, and shall be certified to the county auditor and the taxing authority of the subdivision affected as the action of such budget commission under this act.

Nothing in this section shall be construed as giving the tax commission any authority to place any tax levy outside of the fifteen mill limitation, that is authorized by law within such limitation, nor to reduce any levy below any minimum fixed by law."

There is no contention on the part of the village officers that the sum of \$4,700.00 so allowed by the county budget commission is not the maximum amount which may be levied in the village within the limitations, but they assert that the budget commission is without legal authority to prescribe to the council of said village how the same shall be expended, claiming that if said amount is applied on the payment of the judgment there will be no revenue of any sort available to defray the general operating expenses of the village. The question, therefore, is as to the authority of the budget commission to provide that the levy outside of that for debt charges should be paid on the judgment.

The powers and duties of the county budget commission are defined in Enacted House Bill No. 80, 112 O. L. 391, effective August 10, 1927. The provisions of said enacted bill have been given the code section numbers from 5625-1 to 5625-40, both inclusive.

Section 5625-20, General Code, provides in part that:

“On or before the 15th day of July each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year.”

Section 5625-21, General Code, provides in part as follows:

“Such budget shall present the following information which shall be presented in such detail as may be prescribed by the bureau:

1. (a) A statement of the necessary current expenses for the ensuing year for each department and division of the subdivision, classified as to personal services and other expense, and the fund or funds from which such expenditures are to be made. This estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expense.

(b) * * *

(c) Amounts required for the payment of final judgments.

* * * * *

Under the quoted provisions of the above sections it is evident that the taxing authorities of the village of Bremen were required to adopt a tax budget, and to include therein a statement of the amount required for the payment of said final judgment in favor of said Sarah H. Turner.

Section 5625-22, General Code, provides that the budget after adoption, shall be submitted to the county auditor.

Section 5625-23, General Code, provides that the county auditor shall lay before the budget commission the annual tax budgets submitted to him.

The answer to your question involves a consideration of the powers and duties of the budget commission.

Section 5625-19, General Code, provides for the creation of the budget commission, fixes the time for its meetings, and for the completion of its work. Said section also provides that said commission shall be governed by the amount of the taxable property as shown on the auditor's tax list for the current year, or the auditor's estimate of taxable property if list is incomplete, for the purpose of adjusting the rates of taxation and fixing the amount of taxes to be levied.

The section refers to adjusting the rates of taxation, and fixing the amount of taxes to be levied; but there is no authority therein conferred on the budget commission to designate in what manner, or for what purpose any part of the general fund shall be expended.

Section 5625-23, General Code, provides in part as follows:

“* * * The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification.

(a) All levies outside of the fifteen mill limitation.

(b) All levies for debt charges not provided for by levies outside of the fifteen mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levy prescribed by Section 7575 of the General Code, or any other school equalization levy which may be authorized.

(d) A minimum board of education levy for current expense in case the levy referred to in paragraph 'c' hereof is less than four and eighty-five hundredths mills. Such minimum board of education tax levy shall be at such rate in each school district that the sum of the levy referred to in paragraph 'c' hereof, and such minimum board of education tax levy shall be four and eighty-five hundredths mills in such district, unless the board of education requests an amount requiring a lower rate.

If any debt charge is omitted from the budget the budget commission shall include it therein."

The authority granted in the above section to the budget commission is to:

1. "Examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein."

2. "Ascertain that the levies named in said section, 'are properly authorized and if so authorized' to 'approve them without modification.' "

Having ascertained the total amount of taxes to be raised for the purposes of the subdivision, ascertained that the levies named are properly authorized, and approving the same, the budget commission has exhausted the authority granted under the above section, with the exception that said commission is authorized to include debt charges omitted from the budget. There is no authority granted in the above section to require that any portion of the general fund shall be expended for any particular purpose.

Section 5625-24, General Code, provides as follows:

"The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom."

This section grants the authority to the budget commission to so adjust the estimated amounts required for each fund as to bring said levies within specified limitations, and to revise and adjust estimates of balances from receipts and to determine the total appropriations.

This section pertains to total amounts and adjustments and confers no authority upon the budget commission to designate that any portion of the general fund shall be used to pay final judgments or any other particular item in the general fund. Neither do I find in any other sections or parts of sections in the act creating the budget commission and defining its powers and duties any authority for such designation.

Section 5625-4, General Code, reads in part as follows:

"The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

* * *

2. The general levy for current expense within the fifteen mill limitation.

* * *"

Section 5625-1, General Code, defines "current expenses" as:

"* * * the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision."

The said final judgment against the village of Bremen is within the term "current expenses," and the amount required for its payment if levied, is included within the general levy for current expenses.

Section 5625-5, General Code, provides in part as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made * * *. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary for the payment of final judgments * * *."

Section 5625-9, General Code, provides that:

"Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness."

Then follows tabulation of various special funds.

Section 5625-10, General Code, reads in part as follows:

"All revenue derived from the general levy for current expense within the fifteen mill limitation; * * * and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund. * * *"

Section 5625-25, General Code, reads as follows:

"When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the fifteen mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. If the proposition of levying a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under the provisions of this act, the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed."

Section 5625-26, General Code, reads as follows:

"The certification of the budget commission to the taxing authority of each subdivision or taxing unit as set forth in the preceding section shall

show the various funds of such subdivision other than the funds to be created by transfer. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and the rate of the levy and what portion thereof is within and without the fifteen mill limitation, and on the debit side the total appropriations that may be made therefrom. There shall be attached thereto a summary which shall be known as the 'Official certificate of estimated resources,' which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

In these sections provision is made for certifying the action of the budget commission, and also the contents of said certificate. It is expressly commanded that said certificate "shall show the various funds of such subdivision."

It is evident that the function of the budget commission is to determine amounts and make adjustments to conform to limitations. In an opinion of this department, Opinions of the Attorney General, 1919, page 1014, it is stated:

"The budget commission deals with amounts, * * *. Having fixed amounts, its action is certified to the county auditor who determines rates."

When said commission has adjusted the amount of the general fund within the limitations prescribed by law, its duty is then to certify said amount to the taxing authority of the subdivision.

Section 5625-39, General Code, provides that on or before the first day of each year, the taxing authority of the subdivision shall pass an annual appropriation measure; and Section 5625-30, General Code, provides that the total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the Tax Commission of Ohio, and that appropriations shall be made from each fund only for the purposes for which such fund is established.

It is, therefore, my opinion that when the county budget commission had reduced and adjusted the amount to be levied within the fifteen mill limitation for debt charges, and the amount for other purposes, it had exhausted its power, and it was therefore without legal authority to prescribe to the village of Bremen how the amount "for other purposes" should be expended.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1326.

TAXES—COLLECTED ON THE DELINQUENT LIST AFTER THE AUGUST SETTLEMENT BETWEEN THE COUNTY AUDITOR AND TREASURER
—MAY NOT BE DRAWN UPON PREVIOUS TO JANUARY 1st.

SYLLABUS:

After the August settlement between the county auditor and treasurer, taxes collected on the delinquent list are carried into the February settlement, and advancements under