

expressed that where a section of an act provided for a tax levy such section would go into effect immediately, although other sections of the act not exempt from the referendum would not go into effect until after the lapse of the referendum period.

In view of the position taken by the Supreme Court in the case of *State ex rel. vs. Roose*, supra, and the rule that the provisions of Section 1d of Article II as exceptions to the general right of referendum to any law, section or appropriation item reserved and granted by the provisions of Sections 1 and 1c of Article II of the Constitution, are to be strictly construed, I do not believe that any conclusions can be safely reached with respect to the question presented in your communication other than those above stated, to-wit: that Section 9, as amended in House Bill No. 17, providing for a levy of taxes, went into immediate effect on approval of said act by the governor, and, that the other sections of the act of April 17, 1925, as amended in said House Bill No. 17, do not go into effect until ninety days from the time said act was filed in the office of the Secretary of State.

Respectfully,
GILBERT BETTMAN,
Attorney General.

328.

COUNTY AUDITOR—DUTY TO PUBLISH FINANCIAL REPORT THOUGH
UNABLE TO MAKE CERTIFICATE OF AVAILABILITY OF FUNDS—
PROCEDURE WHEN COUNTY COMMISSIONERS MAKE NO APPROPRIATION.

SYLLABUS:

1. *It is the duty of the county auditor to publish his financial report under the provisions of Section 2507, of the General Code, notwithstanding he may not be able to make the certificate required by Section 5625-33, of the General Code.*

2. *In the event such report is published and no appropriation has theretofore been made by the county commissioners, Section 2510 of the General Code, authorizes any person interested to apply to a Court of Common Pleas for an allowance to cover the expenses of such publication, and the court shall issue an order instructing the county auditor to issue his warrant for such purpose.*

COLUMBUS, OHIO, April 22, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“You are respectfully requested to render this department your written opinion upon the following:

Sections 2507 to 2510, G. C., inclusive, as enacted in 112 O. L. 355, relate to the publication of the annual financial report of the county auditor.

Section 5625-33, G. C., 112 O. L. 406, provides that no taxing unit may make any contract or give any order involving an expenditure of money unless there is attached thereto a certificate of the fiscal officer that the amount required to meet the same has been lawfully appropriated for such purpose and

is in the treasury or in the process of collection to the credit of the appropriate fund, free from any other incumbrance.

Question 1: If the county commissioners of a county fail to make an appropriation to cover the expense of publishing the auditor's financial report, is it the duty of the county auditor to cause such report to be published, although he cannot make the certificate required by Section 5625-33 of the General Code?

Question 2: If your answer to the first question is in the affirmative, how may the newspaper publishing such report receive compensation out of the county treasury in the absence of an appropriation made by the county commissioners?"

As stated in your communication, Sections 2507 to 2510, General Code, provide in substance that the county auditor shall annually, on or before the 31st day of March, make a complete detailed report in writing of all the financial transactions of the county for the fiscal year ending December 31st. Such report shall show the receipts and expenditures in the manner designated in said sections. Such report is further required, upon completion, to be submitted to the Court of Common Pleas who shall determine whether said report is in conformity to the Act and if it is determined by the judge of said court to be in compliance with law, said auditor shall cause it to be published as required by said sections.

Section 2509, General Code, provides :

"The auditor of each county shall forfeit and pay into the county treasury five dollars for each day after the thirty-first day of March of each year that the submitting of said report to the judge is delayed.

If any county auditor fails or neglects to make the report required of him by this chapter, and have same published at the time therein required, he shall be fined in any sum not exceeding one hundred dollars; and the prosecuting attorney of any such county shall prosecute any county auditor who neglects or refuses to publish the required report and statement as herein provided."

Also, Section 2510, General Code, provides :

"The proper and necessary expenses of publishing said annual statement shall be paid from the county treasury as county expenses are paid and the county commissioners shall make the necessary appropriations therefor. If the county commissioners fail to make such appropriation, or if the appropriation is insufficient to meet such expense, any person interested may apply to a Court of Common Pleas within the county for an allowance to cover such expense and the court shall issue an order instructing the county auditor to issue his warrant upon the county treasurer for the amount deemed necessary, and the order by the court shall be final and shall be complied with forthwith."

Upon an analysis of the foregoing sections, it appears to be clear that it was the intent of the Legislature in the enactment of said sections to make it the mandatory duty of the county auditor to publish such report. This conclusion can not be escaped for the reason that a penalty is imposed upon the auditor for each day that he fails to make the report. Furthermore, Section 2510, General Code, expressly authorizes the payment by the county auditor. In the event the commissioners fail to make an appropriation, any person interested may apply to a Court of Common Pleas for an

allowance to cover such expenses and the court shall issue an order instructing the auditor to issue his warrant for such purpose.

While it is true that the so-called budget law, Section 5625-33, General Code, and its related sections, does not contemplate any expenditures being made unless appropriations have been properly made by the county commissioners and unless the certificate of the auditor to the effect that the funds are available before a contract is entered into has been made, it must be concluded that this is a general rule and not applicable to the particular case about which you inquire.

Sections 2507 to 2510, inclusive, of the General Code, were passed notwithstanding the objection of the Governor, on May 11, 1927. Section 5625-33, General Code, and its related sections were passed April 13, 1927, (112 O. L. 355). Therefore, it will be apparent that the law relating to the auditor making and publishing the financial report is later in the order of enactment than the budget law.

It is a well known rule of statutory construction in this State that when there is a marked inconsistency between two Acts of the Legislature, which Acts are of general operation, the one last enacted will control. While, as above stated, the budget law is a law of general nature, and probably contemplated covering expenditures generally, the law relating to the publishing of the financial report by the auditor must, in my opinion, be read as an exception to the budget law in so far as it is inconsistent. The provision of Section 2510, General Code, expressly authorizes the payment for the publication of said report, irrespective of whether the commissioners have made an appropriation or not. This compels the conclusion that the auditor, in exercising these powers in reference to making and publishing such report, is not limited by any of the provisions of the budget law.

Based on the foregoing, and in specific answer to your inquiry, it is my opinion that:

First, it is the duty of the county auditor to publish his financial report under the provisions of Section 2507, of the General Code, notwithstanding he may not be able to make the certificate required by Section 5625-33, of the General Code.

Second, in the event such report is published and no appropriation has theretofore been made by the county commissioners, Section 2510 of the General Code authorizes any person interested to apply to a Court of Common Pleas for an allowance to cover the expenses of such publication and the court shall issue an order instructing the county auditor to issue his warrant for such purpose.

Respectfully,

GILBERT BETTMAN,
Attorney General.

329.

TOWNSHIP TRUSTEES—AUTHORITY TO ACCEPT EASEMENT ACROSS PRIVATE LANDS EVEN THOUGH CONDITIONS IMPOSED.

SYLLABUS:

The trustees of a township are authorized to accept a conveyance of a right of way and easement in, on, upon and across the lands of another for use as a driveway in connection with the conduct of a township cemetery, although in the deed by which such easement is conveyed to the township trustees, there is inserted the condition or reservation that said driveway shall be used for cemetery purposes only, and that if