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1. MONEYS, STATE, TO LOCAL GOVERNMENTS—AMENDED SENATE BILL 362, 96 GENERAL ASSEMBLY—EFFECT IF ENACTED INTO LAW—SECTIONS 5546-18, 5546-19, 5546-20 G. C.
2. STATUS, \$16,000,000.00 ALLOCATED TO LOCAL GOVERNMENT FUND AND \$5,000,000.00 TO BE ADDED—SECTION 5546-18 G. C.—DISTRIBUTION SHOULD BE TO LOCAL SUBDIVISIONS WITHIN RESPECTIVE COUNTIES IN TWO EQUAL INSTALLMENTS ON OR BEFORE TENTH DAY OF NOVEMBER AND DECEMBER, 1946.

SYLLABUS:

1. Amended Senate Bill No. 362 of the 96th General Assembly, if enacted into law, will operate prospectively after its effective date and, consequently, will have no application to apportionments and distribution of the local government fund made to the local subdivisions of the various counties under the authority of and pursuant to Sections 5546-18, 5546-19 and 5546-20 of the General Code as they now exist.

2. If Amended Senate Bill No. 362 of the 96th General Assembly becomes effective as law, the balance of the \$16,000,000 allocated to the local government fund under Section 5546-18 of the General Code, as it now exists, which is remaining in the state treasury on the effective date of said bill, together with the \$5,000,000 added to such fund by the terms of said bill, should be allocated to the various counties and distributed to the local subdivisions within the respective counties in two equal installments on or before the tenth of each of the months of November and December of 1946 in accordance with the terms of said bill.

Columbus, Ohio, July 15, 1946

Hon. Frank J. Lausche, Governor of Ohio
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“There has been delivered to me for my approval or disapproval Amended Senate Bill #362 which has increased from Sixteen Million (\$16,000,000.00) to Twenty-one Million (\$21,000,000.00) the allocation of state moneys to local governments for the year of 1946 and also has changed the formula of distribution after the money reaches the various counties of the

State. I understand that the formula of distribution down to the County door is identical in the Bill as it is in the present law, but the change in the law affects the distribution by the County Budget Commission.

Several questions have arisen about the Bill upon which I would like to have the benefit of your legal opinion before I act upon it:

(1) Will Amended Senate Bill #362 in any manner affect the moneys which were distributed under the provisions of Section 5546-18, et seq., General Code, which were in effect prior to the time that the new Bill becomes effective?

(2) If the \$16,000,000 which was allocated by the regular session of the Legislature is affected, to what extent and in what manner?

(3) Specifically, after Amended Senate Bill #362 becomes effective will the new formula of distribution apply to any portion of the \$16,000,000 which is then undistributed as well as to the additional \$5,000,000?"

Amended Senate Bill No. 362 of the 96th General Assembly, if enacted into law, will operate to effect amendments to existing Sections 5546-18 and 5546-19 of the General Code. Under the terms of said bill, the provisions of the former section which prescribe the amount of moneys received by the state from the collection of the so-called sales tax, which is to be credited and paid into the "local government fund", is to be increased in the year 1946 from \$16,000,000 to \$21,000,000. In this respect said section, as proposed to be amended, reads:

"The moneys received in the state treasury under the provisions of this act shall be credited to funds therein as follows:

To a fund known as the 'local government fund' which is hereby created, sixteen million dollars in the year 1945 and twenty-one million dollars in the year 1946. * * *"

The law dealing with the creation of the local government fund and prescribing the method of distributing the same to the local subdivisions of the state, as it became effective on July 10, 1945 and is presently in force, is set out in Sections 5546-18, 5546-19 and 5546-20 of the General Code. The first of said sections provides that said funds shall, in the year 1946, consist of \$16,000,000 and that approximately one-twelfth of said amount shall be distributed monthly during said year to the various

counties in the manner set out in Section 5546-19, General Code, and that thereafter the distributive share of each county be placed in the undivided local government fund of such county.

Section 5546-20, General Code, to which no reference is made in Amended Senate Bill No. 362 either by intended amendment or repeal, sets out the manner in which apportionment of the undivided local government fund of each county is to be made to the subdivisions within the county for the years 1945 and 1946. Relative thereto said section provides:

“* * * Within ten days after this amendatory act of 1945 shall take effect, the board of tax appeals of the department of taxation of Ohio shall cause to be made and shall certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to the county in the year 1945 and on or before December 1, 1945, shall make a like certificate for the year 1946. Immediately upon receiving the certificate of the board of tax appeals, each county auditor shall convene the budget commission of his county in special session for the purpose of reviewing its work of determining tax rates pursuant to the first paragraph of this section if such work has been theretofore completed without such revision, and of determining the amounts to be distributed in the years 1945 and 1946 from the local government fund in the county treasury. Notice of the time and place of such meeting shall be given by mail to the fiscal officer of each subdivision in whole or in part within the county.
* * *

The budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions in which need for additional revenues has been found in proportion to the amount of the needs of each as so determined provided that in counties having a population of less than one hundred thousand, not less than ten per cent shall be distributed to the townships therein.

On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government fund and certify such percentage shares to the county treasurer, who shall be governed thereby in making distribution of the moneys in the undivided local government fund in the years 1945 and 1946, pursuant to this act, and the county auditor shall at the same time certify to the auditor of state the percentage share of the county as a ‘subdivision.’ * * *”

The provisions for the payment of the amount allotted to the subdivision within the county are contained in Section 5546-19, General Code, and read:

“* * * On or before the tenth day of each month, the county treasurer shall distribute and pay the undivided local government fund in the county treasury to the subdivisions therein in the respective amounts allowed by the budget commission to each.”

It is thus apparent that under the present law the monthly installments of the amounts apportioned by the various county budget commissions to the subdivisions within their respective counties for the year 1946 are to be paid to such subdivisions on or before the tenth day of each month.

Amended Senate Bill No. 362 was not passed by the General Assembly as an emergency measure, nor is it an act providing for a tax levy or for an appropriation for current expenses of the state government. Therefore, if signed by you, it will not go into effect until ninety days after it has been filed in the office of the Secretary of State, and, consequently, it can not in any event become effective until after October 10, 1946, the date upon or before which distribution for the month of October will have been made to the local subdivisions by the various county treasurers pursuant to the present law.

The provisions of Amended Senate Bill No. 362 dealing with the distribution of the local government fund to the subdivisions within the respective counties are contained in Section 2 thereof, which section reads:

“Within ten days after this amendatory act of 1946 shall take effect, the board of tax appeals of the department of taxation of Ohio shall cause to be made and shall certify to the county auditor of each county an estimate of the total amount of the local government fund to be allocated to the county in the year 1946.

Immediately upon receiving the certificate of the board of tax appeals, each county auditor shall convene the budget commission of his county in special session for the purpose of determining the amounts to be distributed in the year 1946 from the local government fund in the county treasury. Notice of the time and place of such meeting shall be given by mail to the fiscal officer of each subdivision in whole or in part within the county.

The county auditor shall lay before the budget commission, when so convened, the certificate of the board of tax appeals,

and the budget commission shall thereupon apportion the estimated amount of the undivided local government fund of the county to and among the several subdivisions, as defined in section 5546-18 of the General Code, in the ratio which the total tax receipts of each subdivision of the county from the real, public utility and tangible property tax duplicate during the previous five years bears to the aggregate tax receipts of all such subdivisions from the real, public utility and tangible property tax duplicates during the previous five years."

The fact that Section 5546-20, General Code, which as above stated, was left undisturbed by Amended Senate Bill No. 362, contains provisions presenting a different basis for apportionment to the local subdivisions in the year 1946 than that prescribed in Amended Senate Bill No. 362, may, in my opinion, be entirely disregarded in resolving your questions, if the latter bill becomes law. It is a well settled rule of statutory construction that an act which is repugnant to or contradictory of a prior act to such a degree that the two can not be harmonized, the later act, notwithstanding the fact that it does not in express terms repeal the prior, operates as a repeal of the prior to the extent of the inconsistency existing between the two. Consequently, the expression of the General Assembly in Amended Senate Bill No. 362 will, from the effective date thereof if enacted into law, control over any provisions in Section 5546-20 which are in conflict therewith.

In this regard, however, it must be borne in mind that distribution to the local subdivisions for the first seven months of the year 1946 has already been made under the terms of Section 5546-20, General Code, and that further distribution in accordance with the provisions of said section will have been made for the months of August, September and October of this year before the bill in question, if signed by you, can be effective.

Therefore, since Amended Senate Bill No. 362 deals only with the distribution to be made in the year 1946, the sole remaining payments to be made in accordance with the method of apportionment prescribed by said bill are those to be made in November and December of this year, and the amount to be distributed will, of course, be one-sixth of the \$16,000,000 which remains in the state treasury undistributed to the counties on the effective date of the bill, if signed by you, plus the \$5,000,000 by which such balance of the \$16,000,000 was augmented under the terms of the

bill. In other words, the "total amount of the local government fund" to be allocated to the respective counties, apportioned and distributed to the subdivisions within the respective counties in the year 1946, under the terms of Amended Senate Bill No. 362, are those moneys which will be in such fund at the time said bill, if enacted into law, will become effective.

The terms "local government fund to be allocated to the county in the year 1946" and "amounts to be distributed in the year 1946 from the local government fund in the county treasury", as they appear in the bill, obviously can have reference only to such portion of the local government fund for the year 1946 which remains undistributed when and if the bill becomes effective as law. To hold otherwise would give the bill a retroactive operation and require a different method of apportionment and distribution for that period of the year which preceded the effective date of the bill than that provided for by the law in effect when such apportionment and distribution was made and one which might conceivably require moneys already paid to some subdivisions to be returned to the undivided local government fund of the county.

Such construction would, in my opinion, render the act unconstitutional as being in conflict with Section 28 of Article II of the Constitution of Ohio, which provides that "the General Assembly shall have no power to pass retroactive laws".

A retroactive law which offends our Constitution has been defined by our Supreme Court as one which takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions or considerations already passed. See *Rairden, et al. v. Holden, Admr., etc.*, 15 O. S. 207; *Miller, et al. v. Hixson, Treas.*, 64 O. S. 39.

While no subdivision of the state has a vested right in any taxes levied and in the process of collection, it must be kept in mind that in the instant case distribution to the subdivisions will have been made when the bill in question, if enacted into law, becomes effective. Certainly, after payment has been made to the subdivisions, a new obligation will be imposed upon them if the bill is given a retrospective operation, to-wit, the duty to pay back moneys already received.

Furthermore, unless a law is retrospective in the express terms which permit no other construction, such law must be given an interpretation

which will cause it to operate prospectively. In regard thereto, it is stated in 37 O. Jur. 819:

“Courts indulge in the presumption that the legislature intended statutes enacted by it to operate prospectively rather than retroactively. Indeed, the general rule is that they are to be so construed if susceptible of such interpretation or unless the law is retroactive in terms which clearly show such legislative intention as to permit, by no possibility, of any other construction. When the intention of the legislature is to give a statute a retroactive effect, such intention must not be left to inference or construction, but must be manifested by express and unequivocal expression. If it is doubtful whether it was intended that the act should operate retrospectively, the doubt should be resolved against such operation. * * *”

In the instant case, the General Assembly, in designating the moneys to be apportioned to the local subdivisions, uses the terms “local government fund to be allocated to the county in the year 1946” and “amounts to be distributed in the year 1946”. Obviously, the portion of the fund to be allocated and the amounts to be distributed in the year 1946 are only those which have not been allocated and distributed under the law now in force and which remain undistributed at the time the bill becomes effective. To ascribe such intention to the General Assembly certainly does no violence to the language used by it.

In connection with the distribution to the local subdivisions, attention should be directed to Section 5546-18 of the General Code in its proposed amended form, wherein it is provided:

“* * * All moneys received in the state treasury and credited to the ‘local government fund’ under the provisions of this act, shall be allocated and distributed to and among the local subdivisions of the state in accordance with the provisions of section 5546-19 of the General Code, provided, however, that the total amount allocated and distributed to the local subdivisions of the state in accordance with the provisions of said section 5546-19 of the General Code shall not, * * * in any calendar month during the year 1946 exceed an amount equal approximately to one-twelfth of twenty-one million dollars, provided, however, that for the period of time between January 1, 1946 and the effective date of this act, the amount that would have been distributed hereunder shall be distributed monthly pro rata during the balance of the year 1946. * * *”

Under the above provisions the total amount to be distributed to the local subdivisions in the year 1946 is to be distributed in two equal monthly installments on or before the tenth day of each of the remaining months of the year.

In view of the above discussion, you are, therefore, advised that in my opinion :

1. Amended Senate Bill No. 362 of the 96th General Assembly, if enacted into law, will operate prospectively after its effective date and, consequently, will have no application to apportionments and distribution of the local government fund made to the local subdivisions of the various counties under the authority of and pursuant to Sections 5546-18, 5546-19 and 5546-20 of the General Code as they now exist.

2. If Amended Senate Bill No. 362 of the 96th General Assembly becomes effective as law, the balance of the \$16,000,000 allocated to the local government fund under Section 5546-18 of the General Code, as it now exists, which is remaining in the state treasury on the effective date of said bill, together with the \$5,000,000 added to such fund by the terms of said bill, should be allocated to the various counties and distributed to the local subdivisions within the respective counties in two equal installments on or before the tenth of each of the months of November and December of 1946 in accordance with the terms of said bill.

Respectfully,

HUGH S. JENKINS
Attorney General