

Note from the Attorney General's Office:

1935 Op. Att'y Gen. No. 35-3897 was overruled
by 1991 Op. Att'y Gen. No. 91-008.

theory of the Workmen's Compensation Law. The compensation provided for by that law was intended to provide, in a limited degree, funds to take the place in part of wages which the man would have earned, and to provide him to a certain extent with the livelihood which he would otherwise obtain by his own efforts. It was not the intent of the Legislature that after these funds had been paid, the man should sequester them in a bank and fail to pay the obligations incurred by him for necessities.

It is, therefore, my opinion that compensation paid under the provisions of the Workmen's Compensation Law, after it has been received by an injured employee and placed in the bank by him, is subject to attachment or execution the same as any other funds so deposited by such injured workman.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3897.

SOLDIER'S RELIEF COMMISSION—GENERAL LEVY FOR SOLDIER'S RELIEF AS CERTIFIED BY SOLDIERS' RELIEF COMMISSION TO COUNTY COMMISSIONERS. (O. A. G.—1930, VOL. II, PAGE 1149 AFFIRMED.)

SYLLABUS:

Opinion reported in Opinions of Attorney General for 1930, Vol. II, page 1149, affirmed.

COLUMBUS, OHIO, February 1, 1935.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“A question arose in our county concerning the interpretation of General Code 2936, relative to the Soldier's Relief Commission, since the passage of O. G. C. Section 5625-6 and 5625-7.

General Code 2936 reads as follows:

‘On such last Monday in May the commission shall meet and determine from such list the probable amount necessary for the aid and relief of such indigent persons for the ensuing year, together with an amount sufficient in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief shall be established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the county commissioners, who, at their June session shall make the levy necessary to raise the required relief, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county hereinafter authorized.’

In 1930 the Attorney General's office rendered an opinion on this section, determining that if the Soldier's Relief Commission's budget did not exceed one-half mill, the County Budget Commission and the County Commissioners had no recourse but to allow the entire amount requested.

The passage of the Ten-Mill Levy Act in 1934 has so curtailed county income that the Budget Committee has had to pro-rate money available to all the different uses and offices in the county. In accordance with their general plan, they pro-rated the amount allowed to the Soldiers' Relief Commission on the same basis as other county relief.

The Soldiers' Relief Commission insists on their entire half mill allowance for their relief work. Since this half mill would be included in the ten mill levy, it seems to me that General Code 2936, making it mandatory to allow the Soldiers Relief Commission such an amount, would be entirely out of proportion and would be nullified by the later statutes.

Please consider this matter and forward us your opinion."

The opinion of this office upon which you desire my expression is reported in Opinions of the Attorney General for 1930, Vol. II, page 1149, the syllabus of which is as follows:

"1. The board of county commissioners is required, under the provisions of Section 5625-5, General Code, to include in the general levy, the amount which the soldiers' relief commission has, under Section 2936, General Code, certified to it as necessary for soldiers' relief, providing such amount does not require a levy in excess of one-half mill.

2. The budget commission may not reduce the amount certified to be necessary for soldiers' relief unless such amount should require a levy in excess of the one-half mill limitation set forth in Section 2936, General Code.

3. It is the mandatory duty of the county commissioners to appropriate the amount appearing in the budget for soldiers' relief."

Neither Section 5625-5 nor 2936, General Code, referred to in the above syllabus, has been amended since the rendition of this opinion. Sections 5625-6 and 5625-7 of the Uniform Tax Levy Law have, as indicated in your communication, been amended by the 90th General Assembly in the year 1934 for the purpose of harmonizing these sections with the amendment of Section 2, Article XII of the Constitution adopted at the 1933 election, reducing the constitutional fifteen mill limitation to ten mills as therein set forth. These last two mentioned sections of the General Code, however, are not directly germane to the determination of the subject matter of the 1930 opinion, supra,—in fact, neither one of them are mentioned in the consideration of that opinion.

You indicate in your communication that a different construction of Section 2936, General Code, may be authorized in view of the reduction of the limitation of fifteen mills on the taxation of real and tangible personal property to ten mills as now contained in Section 2, Article XII of the Constitution. It is observed that the 1930 opinion is not predicated solely upon the provision of Section 2936, General Code, that the soldiers' relief commission shall determine the amount necessary for the relief of indigent soldiers, sailors and marines and that after determining such probable amount, shall certify to the county commissioners, who at their June session shall make the levy necessary to raise the required amount not to exceed one-half of one mill. In fact, under the provisions of this section, this office in opinions rendered in 1912 and 1914, held that county commissioners were not required to levy the exact amount which the soldiers' relief commission found to be necessary, even though such an amount would require a levy of less than one half of one mill. These opinions were cited in the 1930 opinion, which turned upon the provisions of Section 5625-5 of the General Code, as enacted in the year 1927 in its present form.

Whatever might have been said as to the possible modification of these sections of the Code by the last amendment of Section 2, Article XII of the Constitution during the time that no provisions were made to supplant the loss of revenue available for the subdivisions for their general funds by virtue of this last constitutional amendment, it must be observed that the sales tax act, being House Bill No. 134 of the 90th General Assembly, second special session, now purports to supplant, to some extent at least, this loss of revenue. It should also be observed that since the adoption of the so-called constitutional ten-mill limitation by the electors, the 90th General Assembly was in session at its second and third special sessions, but did not see fit to amend the mandatory language of Section 5625-5, on which this 1930 opinion was predicated.

In view of the foregoing, it is my opinion that the position taken by this office in the 1930 opinion, *supra*, should be affirmed.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3898.

TAX AND TAXATION—REMISSION OF PENALTIES ON DELINQUENT PERSONAL AND CLASSIFIED TAXES UNDER AM. S. B. NO. 105, SECOND SPECIAL SESSION OF 90TH GENERAL ASSEMBLY.

SYLLABUS:

The provisions of Amended Senate Bill No. 105, second special session of the 90th General Assembly, with respect to the remission of penalties on delinquent personal and classified taxes, refer to penalties assessed for failure to pay such taxes when due and do not include penalties assessed under the provisions of section 5390, General Code, for failure to make return and list therein, all items of taxable property.

COLUMBUS, OHIO, February 2, 1935.

The Tax Commission of Ohio, Columbus, Ohio.

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

“Since the enactment of Amended Senate Bill No. 42 and Amended Senate Bill No. 23, considerable controversy has arisen as to the proper construction, operation and effect of these Acts. Up to the present time the construction of the said Acts has been left with the various county treasurers and county prosecutors with a resultant varied construction and application. Some county treasurers, upon the compliance of a particular taxpayer with the provisions of these bills, have remitted not only the 10 per cent penalty for failure to pay personal property taxes, but also the penalties assessed under Section 5390 et seq. of the General Code, for failure to list items of property in the personal property tax return or for failure to file a personal property tax return.

It has been our opinion that the two bills hereinabove referred to were only intended to provide for the remission of the 10 per cent penalty for failure to pay personal property taxes duly assessed and appearing on the delinquent duplicates and was not intended, and does not permit the remission of the