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APPROPRIATION — COUNTY COMMISSIONERS — MAY TRANSFER APPROPRIATED FUNDS FROM ONE ITEM OF AN APPROPRIATED FUND TO ANOTHER — SAME FUND—PROVISO, TRANSFER VIOLATES NO LAWS WHICH GOVERN TAXING AUTHORITY IN MAKING ORIGINAL APPROPRIATION—ITEM FROM WHICH TRANSFER MADE MAY NOT BE REDUCED BELOW AMOUNT SUFFICIENT TO COVER ALL UNLIQUIDATED CONTRACTS OR OBLIGATIONS CERTIFIED FROM OR AGAINST ITEM—COUNTY ENGINEER—LABOR.

SYLLABUS:

County commissioners, in their discretion, may transfer appropriated funds from one item of an appropriated fund to another item in the same fund if such transfer violates no laws which govern the taxing authority in making an original appropriation and does not reduce the item from which such transfer is made below an amount sufficient to cover all unliquidated contracts or obligations certified from or against such item.

Columbus, Ohio, March 9, 1950

Hon. William H. Irwin, Prosecuting Attorney Belmont County,
St. Clairsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The County Commissioners of Belmont County at the beginning of the year appropriated a certain sum of money for the hiring of labor to perform work under the supervision of the County Engineer on county roads.

This appropriation has been reduced throughout the year by the County Commissioners by transfers for other uses (road purposes only.) The County Engineer now does not have sufficient funds to meet the payroll for the balance of the year.

Is the above action by the Board of County Commissioners legal?"

Section 2788-1 of the General Code reads as follows:

"The county surveyor shall designate one of his deputies as county maintenance engineer. Such deputy so designated shall be a person experienced in the maintenance and repair of roads and it shall be the duty of such maintenance engineer, acting under the general direction and supervision of the county surveyor, to have charge of all road maintenance and repair work carried forward under the supervision of the county surveyor.

The county surveyor, when authorized by the county commissioners, shall appoint a maintenance supervisor or supervisors to have charge of the maintenance of improved highways within a district or districts established by the commissioners and surveyor and containing not less than ten miles of improved county roads. Such maintenance supervisor shall act under the direction of the county surveyor, and the county surveyor, when authorized by the county commissioners, shall establish a patrol or gang system of maintenance under the direct charge of such supervisor. The compensation of such supervisor shall be fixed upon a per diem basis by the county commissioners and shall be paid out of the road repair or county road fund upon the approval of the county surveyor."

It is obvious that the employment of labor for the purpose stated in your letter and the expenditure of money for such purpose from the fund in question is authorized by the provisions of such section.

Your office has orally verified my conclusion that the fund in question is a fund for the general maintenance and repair of county roads and is appropriated from the general funds of the county. Therefore, I need not go into the various ramifications and problems involved in a consideration of such funds as special, bond retirement or other funds. The fund in question is made up of various items for such purposes as material, labor, power and so on, in connection with road work.

"Taxing authority" as defined by Section 5625-1(c) is as follows:

" 'Taxing authority' or 'bond issuing authority' shall mean in the case of any county, the county commissioners; * * *"

Section 5625-32 of the General Code reads as follows:

“Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation and provided further, that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Transfers may be made by resolution or ordinance from one appropriation item to another. At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations; provided, however, that funds unexpended at the end of such fiscal year and which had theretofore been appropriated for the payment or performance of obligations unliquidated and outstanding, shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year.

The annual appropriation measure or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure.”

(Emphasis added.)

The principal reason for the great zealously in regulating and protecting public funds is to prevent their dissipation and conversion from the purpose intended and to maintain the good faith and credit of government. It is very essential that when one assumes contractual obligations to the government he be assured of compensation for the services or completed project. The employment of labor by the supervisor is for no particular period of time and is generally on an hour to hour basis. Therefore, there is no obligation on the funds except for current employment. It is easy to visualize that the county commissioners from time to time during the year may decide that the appropriations they have made for labor is more than sufficient and that the moneys needed for other items are insufficient. So within their discretion, and operating under

sound business principles, they may appropriate funds from one item to another as long as it is done in compliance with the clear provisions of law. I know of no language which I can command that can assist me in stating more succinctly that which is stated in the above section. The language used there does not require, neither does it permit of interpretation.

I concur in former Attorney General's Opinion No. 192 for the year 1933, wherein the syllabus reads as follows:

"County commissioners may change the amount of any appropriation subject to two limitations:

1. That the change violates no laws which govern the taxing authority in making an original appropriation.

2. That it does not reduce the appropriation below an amount sufficient to cover all unliquidated contracts or obligations certified from or against said appropriation."

I wish to call your attention specifically to the second sentence in Section 5625-32, *supra*, which reads as follows:

"Transfers may be made by resolution or ordinance from one appropriation item to another."

This I interpret to mean from one item in a fund to another item in the same fund.

In view of the foregoing, and in specific answer to your question, it is my opinion that county commissioners, in their discretion, may transfer funds from one item of an appropriation for general road maintenance and repair to another item in the same appropriation fund if such transfer violates no laws which govern the taxing authority in making an original appropriation and does not reduce the item from which such transfer is made below an amount sufficient to cover all unliquidated contracts or obligations certified from or against such item.

Respectfully,

HERBERT S. DUFFY,
Attorney General.