

Upon examination of this lease, I find that the same has been properly executed by you as Commissioner of the Division of Conservation and Natural Resources and by said lessee. I further find, upon consideration of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with Section 471, General Code, under the authority of which this lease is executed, and with other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1269.

RELIEF—COUNTY AUDITOR—MAY NOT DEDUCT FROM UNDIVIDED “LOCAL GOVERNMENT FUND,” PAID INTO TREASURY UNDER SECTIONS 5546-18, 5546-19, G. C., AN AMOUNT SUFFICIENT TO PAY PRINCIPAL AND INTEREST OF NOTES ISSUED UNDER AMENDED SENATE BILL 486, 117 O. L., 855, BEFORE MAKING DISTRIBUTION TO LOCAL SUBDIVISIONS UNDER SECTION 5546-19, G. C.

SYLLABUS:

The county auditor of a county which has issued notes pursuant to the authority of Amended Senate Bill No. 486, appearing in 117 O. L., 855, may not deduct from the undivided local government fund, paid into the county treasury pursuant to the authority of Sections 5546-18 and 5546-19, General Code, an amount sufficient to pay the principal and interest of such notes before making distribution of such moneys to the local subdivisions under authority of Section 5546-19, General Code.

COLUMBUS, OHIO, October 4, 1939.

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

GENTLEMEN: Your recent request for my opinion reads:

“Amended Senate Bill No. 486 passed by the Ninety-second General Assembly of Ohio at the third special session and found in O. L. 117, page 855, appropriated to the controlling board for poor relief in the year 1938, the sum of one million, five hundred thousand dollars to be paid out of the revenues derived in 1939. Such amount to be allocated and

distributed to the various political subdivisions of the state in accordance with the relief load of the several political subdivisions.

This act further authorized the issuance of notes by political subdivisions in anticipation of the collection and distribution of the appropriation.

Section 5546-18, G. C., creates the 'local government fund' and provides for the allocation and distribution of the sums appropriated to such fund. Section 5546-20 G. C. relates to the duties of the budget commission and other county officials regarding the apportionment and distribution of such funds received into the treasury of the county.

May we respectfully request your opinion on the following question:

'In a county which has issued notes under the provision of Senate Bill No. 486, which notes were to be retired from the appropriations of such act, does the county auditor have authority to deduct from fund, accruing to the county treasury under Section 5546-18 G. C., before distribution by the budget commission, an amount sufficient to pay the principal and interest of such notes?'

Section 5546-18, General Code, as amended in 117 O. L., 855, after having provided for the crediting of \$4,000,000 from "sales tax" proceeds to the county poor relief excise fund during the year 1937 and \$2,750,000 plus such further amounts as may be appropriated thereto for the year 1938 and making certain appropriations for poor relief and the state public school fund, contained the following provision:

"In addition to all of the foregoing, there is hereby appropriated to the controlling board for poor relief in the year 1938 the sum of one million five hundred thousand dollars to be paid out of the revenues derived in the year 1939. The controlling board shall allocate and distribute such moneys herein appropriated to the various political subdivisions of the state in accordance with the relief load of the several political subdivisions respectively based upon the comparative need as evidenced by the records on file in the office of the auditor of state for the first five months of the year 1938."

Such Act (117 O. L., 855) then in Section 2 authorized the subdivisions to anticipate the moneys, by the use of the following language:

"In anticipation of the collection and distribution of the appropriation of one million five hundred thousand dollars for poor

relief purposes in 1939, the board of county commissioners of any county or the council or other legislative body of any municipality or the trustees of any township may borrow money not in excess of ninety per centum of such anticipated revenues as determined by the tax commission of Ohio and may from time to time during the year 1938 issue notes of the county, municipality or township therefor.

Such notes shall be issued on forms prescribed by the tax commission of the state of Ohio, pursuant to a resolution of such county commissioners, municipal council or township trustees, setting forth the amount of notes to be issued, the denomination thereof, the rate of interest to be paid, which shall not exceed four per centum per annum, and that such notes are to be issued pursuant to this act. Such notes shall be payable on or before two years after date and interest shall be payable when the notes are paid.

Such notes shall be signed as provided in the uniform bond act of Ohio and shall recite on their face that they are issued pursuant to this act and the resolution authorizing such notes.

The proceeds of such notes shall be placed in a fund in such county, municipality or township for poor relief. The principal of and interest on such notes shall be paid from the proceeds of the appropriation herein made and distributed to the county, municipality or township under the provisions of this act, and such amounts shall be deemed appropriated for the payment of such notes at maturity. The notes may be sold at not less than par and accrued interest.

Any monies allocated to any of the political subdivisions of the state from the amount of one million five hundred thousand dollars of the 1939 sales tax specified in this act shall be deducted from the appropriations to the same respective subdivisions from the sales tax revenues in the year 1939.

Any and all provisions of the General Code in conflict with this act are hereby suspended for and during the effective period of this act, including section 2293-4 of the General Code."

The term "subdivision" is defined by the Act as follows:

"As used in this act 'subdivision' shall mean any county, municipal corporation, park district or township in this state, and the term 'essential local governmental purposes' includes all functions which any subdivision is required by general law to exercise or discharge, including like functions which are exercised under a charter adopted pursuant to the constitution of this state."

From a reading of Section 5546-18, General Code, as amended in 117 O. L., 855, the legislature, after making allotments of "sales tax" moneys to subdivisions for poor relief purposes, making an allotment to the general revenue fund of the State for the purpose of defraying the expenses of the Act and making an allotment of moneys to the state public school fund, provided the following:

"All the residue of said funds existing after the foregoing deductions shall constitute a fund, hereby created, which shall be known as the 'local government fund', the revenue accruing to which during the years 1937 and 1938 are hereby appropriated to be allocated and distributed to and among the treasuries of the counties of this state in the manner provided herein for the purpose of supplementing the local revenues from taxes on property according to value and from other taxes and income available for essential local governmental purposes."

Such Section 5546-18, General Code, was amended by Senate Bill No. 41 of the recent legislature to read as follows:

"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, twelve million dollars in the year 1939 and twelve million dollars in the year 1940, less such amounts as, on the effective date of this act or thereafter during the years 1939 and 1940, may be in or may be paid into the 'local government fund' under the provisions of House Bill No. 134 (115 v. Pt. II, 306) entitled 'An act providing for the levy and collection of a tax upon sales of tangible personal property at retail, for the purposes of emergency poor relief, of affording the advantages of a free education to all the youth of the state, of the general revenues of the state, and of affording revenues, in addition to those from general property taxes permitted under constitutional limitations, for the support of local governmental activities; amending sections 6214-49a and 6212-49b of the General Code, relating to the excise tax on the sale of bottled beverages so as to limit the same to the sale of bottled beer for the year 1935; suspending for the year 1935 sections 5543-1 to 5543-20, both inclusive, of the General Code, relating to the excise tax on cosmetics or toilet preparations,' passed by the 90th General Assembly in second special session on the 7th day of December, 1934, and the amendments thereof effective prior to the effective date of this act. All moneys received in the state treasury and credited to the 'local

government fund' under the provisions of said House Bill No. 134 (115 v. Pt. II, 306) and the amendments thereof effective prior to the effective date of this act, together with 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 years 1939 and 1940 exceed an amount equal approximately to one-twelfth of twelve million dollars. The provisions of this paragraph requiring moneys received in the state treasury under the provisions of this act to be credited to the 'local government fund' shall be construed to require the crediting in each calendar month during the years 1939 and 1940 of such an amount which, when added to the amount which may be in the 'local government fund' under the provisions of said House Bill No. 134 and the amendments thereof effective prior to the effective date of this act, will enable the allocation and distribution to the local subdivisions of the state of one-twelfth of twelve million dollars.

All the residue of said moneys shall be credited to the general revenue fund of the state.

As used in this act 'subdivision' shall mean any county, municipal corporation, park district or township in this state, and the term 'essential local governmental purposes' includes all functions which any sub-division is required by general law to exercise or discharge, including like functions which are exercised under a charter adopted pursuant to the constitution of this state."

Section 5546-19, General Code, provides, in substance, that the Auditor of State shall on the first business day of each month draw his warrants on the State Treasurer in favor of the respective counties for the entire amount of the "local government fund," the amount of each warrant to be determined by dividing the average of the amount of all real, tangible and public utility duplicates of all the municipal corporations within the county for the preceding five years by the like average value of all such property on the duplicates of all municipal corporations within the State. Such section further provides that the county treasurer shall distribute the proceeds paid into the county treasury as the result of such warrants as follows :

"Moneys received into the treasury of a county from the local government fund in the state treasury shall be credited to

the undivided local government fund in the treasury of the county. 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."

From the language of Section 2 of Amended Senate Bill No. 486 (117 O. L., 857), quoted above, it is self evident that when the board of county commissioners was the subdivision which issued the notes mentioned in your letter, such notes so issued could not possibly be the obligation of the municipality or township, which, by authority of such section, were authorized to issue similar notes. Such section makes such notes the direct obligation of the county and authorizes the county to pledge the county's anticipated receipt of a share of the \$1,500,000 appropriated to the Controlling Board by Section 5546-18, General Code, as amended by such Act, for the payment of such notes. At no place in such Amended Senate Bill No. 486 is any authority granted to the board of county commissioners to pay such notes from any money directed to be placed in the "undivided local government fund." In fact, in Section 5546-20, General Code, the legislature has specifically provided that:

"All moneys received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and *used for the current operating expenses of the subdivision.*"

Section 5546-20, General Code, makes direct provision that immediately upon receipt of the Tax Commission's estimate of the amount of the local government fund to be allocated to a county, the Budget Commission shall be convened and "shall determine the amount needed by each subdivision for current operating expenses * * * in order to enable each to maintain its respective essential local governmental purposes as defined in this act * * *." Such section further provides:

"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 percent 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 1939 and 1940, pursuant to this act."

As I have above pointed out, when the money is received by the county treasury from the local government fund in the State Treasury the statute is specific in its provisions as to its use and disbursement that "it shall be credited to the undivided local government fund of the county." The statute is further specific as to its division and disbursement after being lodged in the "undivided local government fund" in the county treasury, in providing that on the tenth day of each month "the county treasurer shall distribute and pay" such moneys, not a portion thereof, "to the subdivisions therein in the respective amounts allowed by the budget commission." The statute makes specific provision concerning the allocation, by the Budget Commission, among the various subdivisions, and further provides that the funds may be used by the subdivisions only for "current operating expenses of the subdivision."

There are certain well established rules of law to the effect that public officials, with respect to the financial affairs of the political subdivision, are limited in their powers to those only which are granted by statute and that the authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is to be resolved against the exercise of the power. See *State, ex rel. Locher, v. Menning*, 95 O. S., 97; *Jones v. Commissioners*, 57 O. S., 189; *Peter v. Parkinson*, 83 O. S., 36. Similarly, it is a well established rule that where the statute prescribes the manner for the performance of an act by a public official, such grant of authority is a negation of a grant to perform the act in any other manner.

Frisbee Company v. East Cleveland, 98 O. S., 266;
Anderson v. P. W. Madsen Investment Company, 72 Fed.
(2d), 768;
McCloud and Geigle v. Columbus, 54 O. S., 439.

In view of such specific definition of the authority to disburse and use such funds paid into the "undivided local government fund of the county," I am unable to form the opinion that the fund may be disbursed in any other manner. I must, therefore, answer your inquiry in the negative.

Specifically answering your inquiry, it is my opinion that the county auditor of a county which has issued notes pursuant to the authority of Amended Senate Bill No. 486, appearing in 117 O. L., 855, may not deduct from the undivided local government fund, paid into the county treasury pursuant to the authority of Sections 5546-18 and 5546-19, General Code, an amount sufficient to pay the principal and interest of such

notes before making distribution of such moneys to the local subdivisions under authority of Section 5546-19, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1270.

DENTIST, GRADUATE—MAY NOT PRACTICE DENTISTRY AS INTERNE IN HOSPITAL OR PUBLIC INSTITUTION IN OHIO—WITHOUT LICENSE FROM OHIO STATE DENTAL BOARD.

SYLLABUS:

A graduate dentist may not engage in the practice of dentistry as an interne in a hospital or public institution in this state unless he first obtains a dental license from the Ohio State Dental Board.

COLUMBUS, OHIO, October 5, 1939.

MORTON H. JONES, D. D. S., *Secretary, Ohio State Dental Board, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion on the following:

“As Secretary of the Ohio State Dental Board, I am instructed to communicate with you and request your formal written opinion on the following question:

There are in the State of Ohio some hospitals and State institutions that employ resident dentists or dental internes, whose duty it is to care for the dental needs of those in the In and/or Out Patient Department of the Hospital, and inmates of the State institutions.

In most cases the dental interne is technically under the supervision of a licensed dentist who is a member of the hospital staff, although quite often the dental interne will perform dental operations without a staff dentist being present. The work of such internes will consist of extractions, examinations, diagnoses, treatments, oral surgery, and, in some instances, restorative and prosthetic operations. By way of remuneration some dental internes receive maintenance only. Others receive a small salary and maintenance. In some instances the dental interne has not been licensed by the Ohio State Dental Board.