

136.

POOR RELIEF — MONEYS COLLECTED AND DISTRIBUTED
BY STATE — SPECIAL COUNTY FUND — ALLOCATION —
WHERE NOT ENCUMBERED OR EXPENDED PRIOR TO
END OF YEAR—COUNTY GENERAL FUND—APPROPRIA-
TION.

SYLLABUS:

1. *Moneys allocated and distributed by the State to the counties for poor relief purposes pursuant to Section 5546-18, General Code, as amended by Amended Substitute House Bill No. 744 and Amended Senate Bill No. 486, which are not expended or encumbered for such purposes prior to the end of the year 1938 should be placed in a special county fund established pursuant to paragraph (f) of Section 5625-9, General Code. Such moneys may be expended for poor relief purposes and may be allocated by the board of county commissioners to subdivisions in the county in direct proportion to the number of relief persons handled by each to be used for poor relief purposes.*

2. *Money allocated and distributed by the State to the counties for poor relief purposes pursuant to Sections 5544-17, 5545-2, 6212-49b, General Code and Sections 1 and 2 of Amended House Bill No. 741 as amended by Amended Senate Bill No. 462, which were not needed for poor relief purposes prior to the end of the year 1938 must, by resolution of the board of county commissioners, be paid into the county general fund, and may thereafter be appropriated for poor relief purposes and may be transferred to subdivisions in the county for poor relief purposes.*

COLUMBUS, OHIO, February 14, 1939.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date as follows:

“A question has arisen as to the disposition of the unexpended and unencumbered balances to the credit of 75 county poor relief funds for the year 1938, such balances being derived from the proceeds of the distribution of state funds under

A. H. B. No. 741, A. S. H. B. No. 744, A. S. B. No. 462 and A. S. B. No. 486.

Under the provisions of the above-named acts, the responsibility for the allocations and distributions of these funds is provided for under the administration bill, known as A. S. B. No. 465. As this act is still in effect and places a definite responsibility upon the board of county commissioners for the distribution and administration of these funds, some counties have questioned the right to use these funds for poor relief purposes in the year 1939 and have not considered the unencumbered balances as available for poor relief, and have permitted such balances to accrue to the general funds of the county for general operating purposes.

Therefore, the specific question asked by this office is: May the board of county commissioners transfer, by resolution of the board authorizing the county auditor to make such transfer, the unexpended and unencumbered balances in the 1938 county relief fund on December 31st to the newly created 1939 county relief fund, and appropriate such balances for poor relief purposes for the year 1939, and thereafter either expend same for such purposes in 1939 or allocate to the subdivisions their respective shares monthly on a basis of the number of persons on the direct relief rolls during the month previous to the month of distribution?"

In answering your question I shall first discuss the effect of Amended Substitute House Bill No. 744, as amended by Amended Senate Bill No. 486. Section 5542-18, General Code, as amended by these two acts, made certain appropriations for poor relief during the years 1937 and 1938 from moneys received into the State Treasury from the sales tax to be expended in said years according to law, and allocated same to each county on a basis in said section prescribed. A further appropriation was made by said section to the controlling board for poor relief in the year 1938 and it was provided that the controlling board should allocate and distribute the moneys so appropriated to it to the various political subdivisions in accordance with their respective relief loads to be determined as in the section prescribed. Certain other appropriations were made in the section but they are not germane to your question.

Section 2 of Amended Substitute House Bill No. 744, which was Section 5514-18a, General Code, was as follows:

"All moneys received from the public utility taxes, the admission tax, the malt and wort tax, the beverage tax and the sales tax, and allocated to the respective counties for poor relief pur-

poses and not expended, required or encumbered for such purposes shall be paid into the county general revenue fund.”

The above section was repealed on the 11th day of July, 1938, by section 7 of Amended Senate Bill No. 462. Since the repeal of this section there has been no legislative action with respect to the disposition of moneys allocated and distributed by the state from the sales tax revenue to the counties for poor relief purposes. In view of the fact that the Legislature has repealed the provision requiring such moneys to be paid into the county general revenue fund and has made no other disposition of such moneys, same should remain in a special fund which should have been established pursuant to paragraph (f) of Section 5625-9, General Code, and may be continued to be used for poor relief purposes.

Amended House Bill No. 741, as amended by Amended Senate Bill No. 462, levied an additional excise tax upon the gross receipts of certain public service corporations and amended Sections 5544-17, 5545-2 and 6212-49b, General Code, which are respectively parts of the admissions tax act, the wort and malt tax act and the beverage tax act. It was further provided in said act as amended that the moneys derived from these various taxes should be allocated and distributed to each county for poor relief purposes on the basis in the act prescribed.

Section 5 of Amended House Bill No. 741, as amended by Amended Senate Bill No. 462, is as follows:

“All revenues accruing under this act from the date this act takes effect by law distributable to the counties are hereby appropriated for that purpose to be distributed to and expended by such counties in accordance with law; all funds allocated and distributed to the respective counties under this act for poor relief purposes shall be held in trust in a special fund of the county and applied solely to the payment of the principal of and the interest on bonds or notes issued under the provisions of this act or if the moneys exceed the amount required for such purposes, said excess may be expended for poor relief purposes. If all or any portion of the state moneys distributed under this act are not needed in any county for poor relief purposes in the year 1938 or for deficits and obligations incurred in 1937 for poor relief purposes, then such amount in any county not needed for poor relief purposes shall, by resolution of the board of county commissioners, be used for the sole purpose of reducing the amount of taxes levied upon the real and personal property tax list and duplicate of such county for the fiscal year following that year in which the board of county commissioners shall take such action. A copy of such resolution shall be certified to the budget commission with the county’s annual budget and the county tax rate shall

be reduced accordingly and the millage released by such action shall not be allocated to any other subdivision under paragraph (d) of section 5625-23 of the General Code. Said moneys shall thereupon be paid into the general fund of the county and the county shall be released from the matching requirements of section 2 of House Bill No. 741 passed January 20, 1938, approved January 26, 1938, and filed in the office of the secretary of state January 26, 1938, as amended in this act, to the extent of the moneys so transferred."

This section requires that all moneys allocated and distributed to the respective counties under the act for poor relief purposes shall be held in trust in a special fund to be used solely for the purpose of paying principal and interest on bonds or notes issued for poor relief purposes under the provisions of the act, and provides further that any excess not needed to pay bonds and notes as aforesaid, might be expended for poor relief purposes. It is then provided that any of the state moneys distributed under the act which are not needed for poor relief purposes in the year 1938 or for poor relief deficits and obligations incurred in 1937 for poor relief purposes shall, by resolution of the board of county commissioners, be paid into the county general fund and be used for the sole purpose of reducing taxes levied upon real and personal property. This language is mandatory and the board of county commissioners have no discretion and must order the moneys not needed for poor relief purposes to be paid into the county general fund.

The question then arises as to whether state moneys distributed to the various counties pursuant to Amended House Bill No. 741, as amended by Amended Senate Bill No. 462, and transferred to the county general fund as aforesaid, can be appropriated by the board of county commissioners for poor relief purposes in the year 1939, and be expended for such purposes by the county or distributed to subdivisions of the county for such purposes.

The answer to this question requires a consideration of several sections of the General Code. Section 5625-5, General Code, provides, *inter alia*, that the general levy may be used by a county "for the relief and support of the poor." Section 5625-9, General Code, is as follows:

"Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.

- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.
- (h) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

Since Section 5625-5, supra, provides that the general levy may be used by a county "for the relief and support of the poor" and since no fund appropriate for poor relief, other than the general fund, is required to be established by Section 5625-9, supra, the Legislature must have intended that the general fund be used for the relief and support of the poor.

Section 3476, General Code, is as follows:

"Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city."

Undoubtedly, the board of county commissioners may make appropriations out of the general fund for the poor relief which the county is required by said section to furnish.

Your letter raises the further question of the right of the board of county commissioners to transfer funds to subdivisions of the county for relief purposes. In this connection Section 5625-13(h), General Code, is pertinent. This section reads as follows:

"In addition to the provisions of sections 5625-13 and 5625-13a, and any other sections of the General Code relating to the

transfer of funds within or between subdivisions, the board of county commissioners of any county, the council or other legislative authority of any municipal corporation, and the trustees of any township not furnishing poor relief, upon a vote of two-thirds of the members of the board of county commissioners of any county, the council of any municipal corporation or the board of trustees of any township may transfer poor relief funds or any other funds not otherwise appropriated, to the county, municipal corporation, or townships furnishing poor relief; provided, however, that transfers by the board of county commissioners shall be to municipal corporations or townships located within the county, transfers by township trustees shall be to the county in which the township is located or to municipal corporations located wholly or in part within the township, and transfers by municipal corporations shall be to the county or counties or the townships in which such municipal corporations are located in whole or in part. Immediately upon receipt of notice of the action of the legislative authority transferring funds, the officer of the political subdivision making such transfer, who is charged with the duty of distributing the funds thereof, shall make distribution in accordance therewith.

Funds received pursuant to any transfer under this section shall be credited to the poor relief fund of the transferee subdivision and shall be expended solely for the purposes of poor relief.

Nothing in this act shall be construed to mean that any subdivision is authorized to transfer to any other subdivisions funds for relief purposes that the transferring subdivision is not authorized to expend in its own subdivision for purposes of relief."

Since the board of county commissioners may make appropriations from the general fund for poor relief, such board may, under authority of this section, transfer moneys in the county general fund to subdivisions in the county to be used for poor relief purposes. No definite basis as to the amount of such transfer is prescribed and the county commissioners could exercise their discretion in this respect.

However, moneys allocated to the counties by the state from the sales tax revenue are not required to be paid into the general fund. Any transfer made by the commissioners of such moneys to townships and municipalities is governed by Section 6 of Amended Senate Bill No. 486 which requires the county commissioners to allocate said moneys in direct proportion to the number of relief cases handled.

In view of the foregoing, I am of the opinion that: (1) Moneys allocated and distributed by the State to the counties for poor relief pur-

poses pursuant to Section 5546-18, General Code, as amended by Amended Substitute House Bill No. 744 and Amended Senate Bill No. 486, which are not expended or encumbered for such purposes prior to the end of the year 1938 should be placed in a special county fund established pursuant to paragraph (f) of Section 5625-9, General Code. Such moneys may be expended for poor relief purposes and may be allocated by the board of county commissioners to subdivisions in the county in direct proportion to the number of relief persons handled by each to be used for poor relief purposes; (2) Money allocated and distributed by the State to the counties for poor relief purposes pursuant to Sections 5544-17, 5545-2, 6212-49b, General Code and Sections 1 and 2 of Amended House Bill No. 741 as amended by Amended Senate Bill No. 462, which were not needed for poor relief purposes prior to the end of the year 1938 must, by resolution of the board of county commissioners, be paid into the county general fund, and may thereafter be appropriated for poor relief purposes and may be transferred to subdivisions in the county for poor relief purposes.

Respectfully,

THOMAS J. HERBERT,
Attorney General.