

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

* * * * *

The appropriation for the purchase of a new herd of cattle for the Knoop's Children's Home must be made by the county commissioners pursuant to the authority of Section 5625-26, General Code, which provides in part:

"On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure *and thereafter during the year may pass such supplemental measures as it finds necessary*, based on the revised tax budget and the official certificate of estimated resources or amendments thereof." (Italics ours).

In specific answer, therefore, to your question, I am of the opinion that money received by the Superintendent of a county children's home as compensation for the destruction of tubercular cattle must be paid into the county treasury in conformity with Section 5625-10, General Code.

Further answering your question, I am also of the opinion that in order to replace the destroyed herd, an appropriation for that purpose must be duly made by the county commissioners.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1238

MUNICIPAL BOARD SINKING FUND TRUSTEES—MAY NOT EXPEND PUBLIC FUNDS FOR AUDITS AND EXAMINATIONS—ACCOUNTS—DUTY TO EXAMINE IS ON BUREAU.

SYLLABUS:

A municipal board of sinking fund trustees has no authority to expend public funds for audits and examinations of their accounts and transactions by certified public accountants in the absence of charter

provision therefor, the duty to make such audits and examinations being imposed by general law upon the Bureau of Inspection and Supervision of Public Offices.

COLUMBUS, OHIO, September 27, 1937.

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

GENTLEMEN: Your letter of recent date is as follows:

"We are submitting herewith draft of a question prepared by our Cincinnati Examiner relative to the examination of accounts and funds under control of the Sinking Fund Trustees of that City.

"Section 276 G. C., requires that Examiners from this Bureau shall make regular examinations and reports of such accounts, and these examinations are now being conducted regularly.

"Question. Under these conditions, are the Trustees of the Sinking Fund authorized by the provisions of Section 4506 G. C., in the absence of Charter provision therefor, to contract with certified public accountants for an additional audit and examination, and pay for the cost of such additional examination from the funds under their control?"

It is provided that your Bureau shall inspect, supervise and audit the accounts of all public institutions and the offices of each taxing district or public institution in this state. Section 274, General Code, so provides in the following language:

"There shall be a bureau of inspection and supervision of public offices in the department of auditor of state which shall have power as hereinafter provided in sections two hundred seventy-five to two hundred eighty-nine, inclusive, to inspect and supervise the accounts and reports of all state offices, including every state educational, benevolent, penal and reformatory institution, public institution and the offices of each taxing district or public institution in the state of Ohio. * * *"

It is required that all municipal departments and offices shall be examined and audited at least once a year. See Section 284, General Code. There is no question but that the legislature has imposed the duty upon your Bureau so to examine and audit the accounts and funds

under the control of all municipal sinking funds at least once each year.

Sections 4506 et seq., General Code, to which you refer, set forth the powers and duties of municipal sinking fund trustees. There is no power or authority conferred in such sections upon such trustees to conduct any audits of their accounts through certified public accountants or otherwise. Section 4511, General Code, imposing upon the sinking fund trustees the duty to submit a financial statement to council once a year would seem to require that their accounts be audited that often and is in perfect harmony with the requirement as to the annual audit contained in Section 284, General Code. Such section reads as follows:

“Upon demand of the board, the auditor of the city or clerk of the village shall report to it a full and detailed statement of the outstanding indebtedness of the corporation for bonds issued, and the board shall take charge of and keep a full record, and report to council at least once a year a full detailed statement thereof, with the statement of their investments and general financial business of the city or village which shall be published in an annual report published by the corporation.”

The question here under consideration entailing the expenditure of public funds for a duplication of services which the General Assembly has otherwise provided for is not unlike that under consideration in an opinion appearing in Opinions of the Attorney General for 1931, Vol. I, page 129. The question before the then Attorney General involved, among other things, the authority of a board of county commissioners to expend public funds for a survey to be made to recommend new systems of accounting and to advise as to a new system of budget procedure to be adopted by county offices, a duty imposed by state law upon your Bureau. The syllabus of such opinion reads as follows:

“County commissioners, under existing laws relating to county government, are not authorized to contract for the employment of a bureau of governmental research to make a survey and study of county offices and institutions, which survey consists of recommending new systems of accounting, advising as to a new system of budget procedure, reporting on personnel, office lay-out, contract procedure, budgeting, etc. Action of State Bureau of Inspection and Supervision of Public Offices upheld.”

In the body of the opinion at page 131 it is said:

“The legislature has evidently conferred authority to establish accounting systems in the various counties of the state upon the Auditor of State—probably with the view to make county accounting systems uniform throughout the state in order to facilitate the work of the State Bureau of Accounting—a branch of the work of the State Auditor. The duty having been expressly conferred upon the State Auditor—no authority could be implied vesting its performance in the county commissioners.”

After the rendition of the foregoing opinion the question there under consideration was adjudicated, the court adopting the same position as adhered to by this office. See *Gorman vs. Heuck*, 41 O. S. App., 453.

In view of the Home Rule provisions of the Ohio Constitution applicable to municipalities and in view of the fact that at the time of the rendition of the 1931 opinion supra, so-called “County Home Rule” had not been incorporated in the Constitution, it becomes necessary to consider your question in the light of such Home Rule provisions as applicable to municipalities.

The case of *Niehaus vs. State, ex rel.*, 111 O. S. 47, is in principle collaterally pertinent. The syllabus is as follows:

“1. Section 1035, General Code, which requires the building inspection department of municipalities having a regularly organized building inspection department to approve the plans for the erection of a public school building, is a state police regulation, and the power of the General Assembly to enact such legislation is in no sense abridged by the provisions of Section 3, Article XVIII, of the Constitution of Ohio.

2. The General Assembly of the state having enacted a general law requiring the building inspection departments of municipalities having a regularly organized building inspection department to approve plans for the construction of public school buildings erected within such municipalities, a municipality is without power to thwart the operation of such general law by the enactment of an ordinance requiring the payment of a fee as a condition precedent to compliance therewith.”

In the case of *State, ex rel. vs. Semple*, 112 O. S. 559, the Supreme Court held that in the absence of charter provision therefor, a municipi-

pality could not expend public funds to contribute to the support of a so-called "Conference of Ohio Municipalities." In a Per Curiam opinion the court said as appearing on pages 560 and 561:

"It does not follow, from the broad powers of local self-government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by resolution of council, would not be required by a writ of mandamus. Without considering the validity of such a provision, it must be conceded that there is no express provision of the charter of the city of Cleveland relative to the contribution from the treasury of the city to a fund made up of contributions of various municipalities for the purposes enumerated in the Constitution of the "Conference of Ohio Municipalities," and no general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization with offices and officers entirely separate from those of the city, selected by representatives of various municipalities of the state, with salaries and expenses also fixed by them."

Following the *Semple* case this office held in an opinion appearing in Opinions of the Attorney General for 1929, Vol. I, page 157, as set forth in the syllabus:

"In view of the holding in the case of *State ex rel. vs. Semple*, 112 O. S. 559, a charter city may not legally expend its funds for services and periodicals of an association known as 'Conference of Ohio Municipalities' in the absence of specific charter provisions; whether or not such a charter provision could authorize such an expenditure is not decided."

In a later opinion appearing in Opinions of the Attorney General for 1930, Vol. I, page 122, this office held that the council of a charter city could not legally authorize expenditure of public funds for a subscription fee to the Bureau of Public Personnel Administration, Washington, D. C., or a fee for membership in the Civil Service Assembly of the United States and Canada, or sustaining membership dues in the National Municipal League of New York City, in the absence of a charter provision therefor. Again in 1935 in an

opinion appearing in Opinions of the Attorney General for that year, Vol. II, page 858, this office held a municipal corporation to be without authority to expend public funds for services rendered or information furnished on municipal affairs by an association of municipalities.

It is my judgment that the reasoning upon which the Niehaus and Semple cases supra, were decided and the principles upon which the foregoing opinions, in which I concur, were based, are dispositive of your question. Your inquiry is accordingly answered in the negative.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1239.

APPROVAL—BONDS OF CITY OF LIMA, ALLEN COUNTY,
OHIO, \$21,000.00.

COLUMBUS, OHIO, September 27, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of City of Lima, Allen County, Ohio,
\$21,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated December 1, 1935. The transcript relative to this issue was approved by this office in an opinion rendered to your commission under date of December 30, 1935, being Opinion No. 5061.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.