

4133.

APPROVAL, TWO GAME REFUGE LEASES EXECUTED BY JOHN H. MEYER AND MRS. MADGE THIEL THOMPSON, TO LAND IN GREEN TOWNSHIP, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, APRIL 8, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication under date of April 5, 1935, enclosing therewith, in duplicate, game refuge leases Numbers 2268 and 2269.

These leases which are executed by Mr. John H. Meyer and Mrs. Madge Thiel Thompson, respectively, of Green Township, Hamilton County, Ohio, and which demise to the state of Ohio through the Conservation Commissioner, for terms of five years each, tracts of land containing 21.85 acres and 197.86 acres respectively, in said township for game refuge purposes, have been taken by you as Conservation Commissioner acting for the Conservation Council under the authority conferred upon you for the purpose by section 1435-1, General Code. This section of the General Code, provides, among other things, that the Conservation Council shall be empowered to acquire by gift, lease or purchase suitable lands or surface rights upon suitable lands, for the purpose of establishing thereon public hunting grounds and shall be empowered to set aside any portion of said public hunting grounds as a state game refuge. In this connection, it is noted that with respect to each of these leases and lands thereby demised, the Conservation Council, acting through you as Conservation Commissioner, has made an order under the authority of said section, setting aside the lands demised as a state game and bird refuge.

Upon examination of these leases, I find that they have been executed and acknowledged in the manner required by law and the same are accordingly hereby approved by me as to form, as is evidenced by my approval endorsed upon said leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

4134.

COUNTY COMMISSIONERS—DISCRETIONARY POWER TO APPROPRIATE TO SOLDIERS RELIEF COMMISSION IN EXCESS OF CERTIFIED REQUEST—APPROPRIATION FROM COUNTY GENERAL FUND FOR SUCH PURPOSE WHEN.

*SYLLABUS:*

1. *In the event of the failure of a county soldiers' relief commission to certify to the county commissioners any amount necessary for the uses of such commission for the ensuing year as required by Section 2936, General Code, with the result that no tax levy is made for such purpose and no provision made for such a levy in the annual tax budget, the county commissioners may appropriate from the general fund to the soldiers' relief commission any available moneys therein in such amount as in the discretion of*

*the board of county commissioners shall be necessary for the purposes of soldiers relief, providing the aggregate amount so appropriated in any year does not exceed an amount equal to the proceeds of a levy of five-tenths of a mill.*

2. *Subject to the statutory limitation of five-tenths of a mill set forth in Section 2936, General Code, the board of county commissioners has discretionary power to appropriate to the soldiers' relief commission an amount in excess of that certified as necessary for the needs of that commission as provided by Section 2936, General Code.*

COLUMBUS, OHIO, APRIL 9, 1935.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 2936, General Code, provides that on the last Monday in May the Soldiers' Relief Commission shall meet and determine the proper amount necessary for aid and relief to indigent soldiers for the ensuing year, together with an amount sufficient, in the judgment of the commission, to furnish relief to any indigent person not named in the lists, whose right to relief shall be established to the satisfaction of the commission, and that after determining the probable amount sufficient for such purposes, the commission shall certify to the county commissioners such amount, and the county commissioners shall, at their June session, make a levy necessary to raise the required amount not to exceed .5 mills per hundred dollars of the assessed value of the property of the county.

QUESTION 1: In event of the failure of the soldiers' Relief Commission to certify the amount necessary to meet the provisions of this section and no levy is therefore made, may the county commissioners make an appropriation from their general funds for the amount necessary for such relief, and would such appropriation be required to equal an amount which would be raised upon the tax duplicate of the county by a levy of .5 mills?

QUESTION 2: In event the certificate of the Soldiers' Relief Commission did not prove to be sufficient for the purpose of furnishing relief, may the county commissioners make an appropriation from their general fund to meet the additional requirements?”

This office has held, in an opinion appearing in Opinions of the Attorney General for 1930, Vol. II, page 1149, which opinion was affirmed in my Opinion No. 3897, that the special levy authorized by Section 2936, General Code, for the purposes of the soldiers' relief commission should be included as an item in the general levy for current expenses since the enactment of Section 5625-5, General Code, in 1927 as a part of the so-called Budget Law. In this 1930 opinion, the then Attorney General, after quoting the provisions of this last mentioned section, said at page 1151:

“It is no longer provided that ‘the board of county commissioners of each county shall levy \* \* a tax not exceeding five-tenths of one mill per dollar \* \* for the purpose of creating a fund for the relief of the honorably discharged soldiers, \* \*.’ Under the provisions of Section 5625-5, supra, as now in force and effect, the county commissioners shall include in the general levy ‘the

amount certified to be necessary' for soldiers' relief. While these moneys are no longer required to be placed in a special fund as heretofore, the legislature has placed the amount certified to be necessary for soldiers' relief in the same category as the amount certified to be necessary for the payment of final judgments, the county's share of the compensation to be paid judges, etc."

This item within the general fund is, however, a segregated item from which appropriations are made, and hence must appear in the revised tax budget and the official certificate of estimated resources or amendments thereof. At page 1154 of the foregoing opinion, it is said:

"While it is true that these moneys are no longer required to be credited to a special fund, I think the legislature clearly intended where there is a mandatory requirement to include a specific item in the general fund for a specific purpose, moneys raised by taxation for that purpose must be appropriated therefor."

Section 5625-20, General Code, requiring the taxing authority of each subdivision to adopt a tax budget for the next succeeding fiscal year on or before the 15th day of July in each year, provides that each board or commission entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority before the first of June in each year an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision or by the Bureau of Inspection and Supervision of Public Offices. Section 5625-21, General Code, provides in so far as pertinent as follows:

"Such budget shall present the following information which shall be presented in such detail as may be prescribed by the bureau:

\* \* \* \*

\* \* \* \*

\* \* \* \*

(d) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized and the fund from which such expenditures are to be made.

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\* \* \* \*."

Section 5625-29, General Code, requires that the annual appropriation measure and any supplemental appropriation measures adopted by the county commissioners shall be based on the revised tax budget and the official certificate of estimated resources or amendments thereof.

It is pertinent, I believe, in the consideration of the question you raise to refer to my Opinion No. 132, appearing in Opinions of the Attorney General for 1933, Vol. I, page 149, the syllabus of which reads as follows:

"A county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities."

At page 152 of the foregoing volume, the following language is used:

"Sections 5625-23, 5625-24 and 5625-25 relate to the revision of the annual tax budget of each subdivision by the budget commission and the authorization by each subdivision of the necessary tax levies and their certification to the county auditor. Section 5625-26, General Code, provides for the official certificates of estimated resources and further provides that the annual tax budget after revision shall be the basis of the annual appropriation measure. This annual appropriation measure passed on or about the first day of each year, as well as any supplemental measures thereafter passed, must be 'based on the revised tax budget and the official certificate of estimated resources or amendments thereof.' Section 5625-29, General Code.

The board of health of a general health district has obviously no authority to appropriate any money for the district health fund when no provisions therefore have been previously made in the tax budgets of the subdivisions within the general health district. It appears to me that the appropriation of Six Thousand Dollars would be of no effect and wholly invalid since under the circumstances which you present there are no moneys to appropriate. I find no authority whereby, under the law as now in force and effect, a district authority may appropriate or receive any part of the proceeds of taxation when no provision has been made for such funds under Sections 5625-20, et seq., of the General Code."

The question here is distinguishable from that under consideration in the foregoing opinion. Section 1261-40, General Code, quoted in the opinion, expressly provides that the proceeds of tax moneys raised for health administration be placed in a separate fund known as the district health fund. In the instant case, proceeds of the levy for soldiers' relief are not placed in a separate fund but in the general fund, as hereinabove pointed out. Under the provisions of Section 5625-30, General Code, appropriations may be made from each fund only for the purposes for which such fund is established. Since money for soldiers' relief should be set up as an item in the general fund, the purpose of soldiers' relief is obviously a purpose for which the general fund is established. Section 5625-32, General Code, apparently contemplates the transfer of moneys from one item to another in the same fund, wherein it is provided that "Transfers may be made by resolution or ordinance from one appropriation item to another."

The conclusion that the taxing authority has discretionary power to transfer available moneys from one item to another within the same fund finds support when consideration is given to the broad powers with respect to transfers of moneys from one fund to another as set forth in Sections 5625-13, et seq., General Code. Under the provisions of Sections 5625-13a, et seq., General Code, as contained in House Bill No. 492 of the 90th General Assembly, passed as an emergency measure June 2, 1933, the taxing authority of political subdivisions may transfer any public funds under their supervision from one fund to another except the proceeds or balances of loans, bond issues or special levies for the payment thereof, after securing the approval of the Tax Commission and the approval of the Common Pleas Court as therein provided.

There are two phases to your first question. You ask whether or not the commissioners may make an appropriation to the soldiers' relief commission in the event of the failure of that commission to certify any amount necessary for their purposes as required by Section 2936, General Code, and you also ask whether or not such appropriation would be required to equal the amount which would be raised by a levy of five-tenths of a mill. I have indicated that the county commissioners have discretionary power to appropriate unencumbered and available moneys in the general fund for the purposes of the soldiers' relief commission, notwithstanding the fact that that commis-

sion may have failed to certify to the county commissioners its requirements as provided by Section 2936, General Code, and notwithstanding the absence of provision for a special levy within the statutory limitation to raise the moneys so certified. The 1930 opinion, *supra*, which was affirmed in my Opinion No. 3897, held that it was the mandatory duty of the board of county commissioners to provide for the amount certified by the soldiers' relief commission as necessary for their needs so long as such amount did not require a levy in excess of five-tenths of a mill and to appropriate the proceeds of such levy to the soldiers' relief commission. However, in the event of the soldiers' relief commission failing to certify to the county commissioners their needs under the provisions of Section 2936, General Code, there appears no statute or provision to the effect that the county commissioners shall have any mandatory duty whatsoever to appropriate any funds to the soldiers' relief commission. The power to transfer moneys from one item to another within the general fund is purely discretionary and in the event of the failure of the soldiers' relief commission to comply with the provisions of Section 2936, General Code, the amount of money, if any, which may be made available for the purpose of the soldiers' relief commission within the limitation of five-tenths of a mill is purely discretionary with the board of county commissioners.

In your second question you inquire as to whether or not the county commissioners may make an appropriation from the general fund to meet additional requirements of the soldiers' relief commission in the event the amount certified by that commission under the provisions of Section 2936 should prove insufficient for the purpose of furnishing soldiers' relief. An application of the principles discussed in the consideration of your first question impels the conclusion that such additional appropriation may be made within the discretion of the board of county commissioners from available moneys in the general fund, providing, however, that the statutory limitation as to an amount which may be expended for soldiers' relief represented by the proceeds of a five-tenths mill levy is not thereby exceeded.

Summarizing and in specific answer to your questions, it is my opinion that:

1. In the event of the failure of a county soldiers' relief commission to certify to the county commissioners any amount necessary for the uses of such commission for the ensuing year as required by Section 2936, General Code, with the result that no tax levy is made for such purpose and no provision made for such a levy in the annual tax budget, the county commissioners may appropriate from the general fund to the soldiers' relief commission any available moneys therein in such amount as in the discretion of the board of county commissioners shall be necessary for the purposes of soldiers' relief, providing the aggregate amount so appropriated in any year does not exceed an amount equal to the proceeds of a levy of five-tenths of a mill.

2. Subject to the statutory limitation of five-tenths of a mill set forth in Section 2936, General Code, the board of county commissioners has discretionary power to appropriate to the soldiers' relief commission an amount in excess of that certified as necessary for the needs of that commission as provided by Section 2936, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*