

798.

COUNTY COMMISSIONERS—MAY NOT MAKE APPROPRIATION TO PAY FOR LABOR PERFORMED DURING PREVIOUS FISCAL YEAR—PAY ROLL.

SYLLABUS:

County Commissioners may not make an appropriation to pay for labor performed during the previous fiscal year.

COLUMBUS, OHIO, June 23, 1939.

HON. JEROME A. NEVIUS, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

"I have been requested by the Board of County Commissioners of Clark County, Ohio, to secure your opinion in the following matter:

During the year 1938, more than eighty men were employed by the County Engineering Department, and because of the fact that the appropriation for said Department had been exhausted, and because of lack of funds these men were not paid, and there is now owing to them for labor performed during the year 1938, the sum of \$7,272.80.

The question arises—Can the Board of County Commissioners of Clark County, Ohio, authorize the payment of the sum of \$7,272.80, incurred by the County Engineering Department during the year 1938, said sum of \$7,272.80 to be paid out of the Road and Bridge Fund for the year 1939?"

Section 5625-29 of the General Code, provides in part as follows:

"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 appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. * * * Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; * * *."

It will be noted that this section provides for the passage of an annual appropriation measure by the political subdivision, which measure shall set forth the amounts appropriated for each office, etc. and within each,

the amount appropriated for personal services. Section 2981 of the General Code, provides in part as follows :

“Such officers may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. * * *”

It will be seen from an examination of the above that it was intended by the Legislature that the annual appropriation measure should be for the fiscal year and that the compensation owing all employes of any county officer should not exceed in the aggregate the amount fixed by the commissioners for such office. In 1933, the then Attorney General ruled on a similar situation, his opinion being reported in 1933 Opinions of the Attorney General at page 893. In that situation the amount of money appropriated by the board of county commissioners of a certain county for the employes in the office of the county surveyor was exhausted on the 15th of December, 1932. The commissioners at that time refused to make any additional appropriation. The employes continued to serve for the last half of December, 1932. The Attorney General, as disclosed by the syllabus, ruled as follows :

“County commissioners are not authorized to make an appropriation in 1933 for the purpose of paying the employes of a county surveyor for services rendered in the last half of December, 1932 when there was no appropriation therefor at the time those services were rendered.”

It is stated in said opinion at page 895 :

“One of the main purposes of the budget act is to compel political subdivisions to live within their income. The appropriations for a year must not exceed the estimated receipts for that year, and all expenditures for that year must be within those appropriations. To allow an appropriation to be made in 1933 for payment of salaries for services rendered in 1932 when there was no appropriation therefor, would, in my opinion, violate both the spirit and letter of this act. To say that obligations can thus be incurred without any appropriation therefor, to be paid by appropriations in subsequent years, would be to permit a political subdivision to create indebtedness for current operating expenses in one year far in excess of its income for that year.”

In the opinions of the Attorney General for 1927 at page 104, a sim-

ilar question was ruled upon by the then Attorney General. In the first branch of the syllabus it is stated :

“County commissioners can not make appropriations to cover allowances made to county officers for the previous fiscal year.”

In this opinion at page 106, it is stated :

“It is true it is provided in Section 5649-3h that the appropriation measure may be amended from time to time within the limits of the budget, but I know of no way that the county commissioners could after the first day of January of any year make an appropriation that would be retroactive. That is, after the end of any fiscal year the appropriating board could not amend an appropriation measure for the previous fiscal year so as to make funds available for use in accordance with the attempted amendment, nor could such board include in the appropriation made in any fiscal year allowances for expenditures in the previous fiscal year because the statute says that at the beginning of each fiscal year they shall make appropriations for expenditures for such fiscal year. To hold otherwise, would have the effect of completely nullifying the sections in question.”

It should be mentioned in passing that the provisions of former Section 5649-3h, referred to in the above quotation, are now found in substantially the same form in Section 5625-32 of the General Code.

From an examination of the above, taking into consideration the provisions and purpose of the laws relating to the annual appropriations by political subdivisions, it appears that in the situation presented by you, these employes cannot be legally paid.

For the purpose of allowing for these unforeseen emergencies and conditions and providing for insufficient appropriations, the Legislature enacted Section 5625-32, General Code, (formerly Section 5649-3h, General Code), which section authorizes supplementary and amendatory appropriation measures. However, no additional appropriation was made by the commissioners in the instant situation to provide sufficient funds to meet the payroll.

In conclusion and in specific answer to your inquiry, I am of the opinion that a board of county commissioners may not in 1939 authorize the payment of wages for labor performed during the year 1938.

Respectfully,

THOMAS J. HERBERT,
Attorney General.