

made for the same. Of course, if it should appear that the commissioners in any sense have a discretionary power then, of course, it will follow that mandamus cannot control discretion, but it is believed that the commissioners while having certain duties that are discretionary, have other duties to perform which are of a ministerial nature. In the present case it would be absurd to hold that the commissioners could arbitrarily defeat the intention of the legislature, to aid such projects as the clubs which are referred to, by refusing to certify as to the existence of a certain fact.

Based upon the authorities hereinbefore cited, it is my opinion that when as a matter of fact it definitely appears that a county or independent society receiving state aid has expended a definite and certain sum of money, not less than one hundred dollars, in the furtherance of carrying on junior club work in the county, it is the mandatory duty of the county commissioners to certify such fact to the county auditor.

Respectfully,
C. C. CRABBE,
Attorney General.

2471.

EFFECTIVE DATE OF AMENDED SUBSTITUTE SENATE BILL NO. 94.

SYLLABUS:

The bureau should prepare forms under the provisions of Amended Substitute Senate Bill No. 94 for the use of the various budget making bodies, to be filed with the county auditor as soon as this act goes into effect, complying with the provisions of this act relating to preparation and hearings thereunder held after advertisement.

Such budgets should be prepared for the fiscal year beginning January 1, 1926.

COLUMBUS, OHIO, May 11, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“We respectfully request you to furnish this department your written opinion upon the following questions:

“Amended Substitute Senate Bill No. 94 was passed notwithstanding the governor’s veto on April 17th and we assume will become effective ninety days thereafter. Section 3 of this act provides for the preparation of annual budgets by the various taxing authorities in the state in the form prescribed by this bureau. The act repeals the present law relating to the filing of budgets and the form thereof.

“Question 1: Should the bureau prepare forms under the provisions of this act for the use of the various budget making bodies for this year to be filed with the county auditor on or before July 20th, 1925?

“Question 2: Should the various budgets be prepared, hearing held thereon after advertisement, adopted and filed with the county auditor at the times specified in this act?

"Question 3: Should such budgets be for the fiscal year beginning January 1st, 1926, or for the various years designated in the present law?"

Amended Substitute Senate Bill No. 94 is an act to provide for a balanced budget system for all taxing districts and public subdivisions of the state, and to establish a uniform fiscal year for the state and its subdivisions, and to make certain administrative readjustments.

This act was passed by the legislature and submitted to the governor and by him returned to the general assembly with his objections. This act was re-enacted by the legislature on April 17th, notwithstanding the objections of the governor, and filed in the office of the secretary of state on the 21st day of April, 1925.

Section 16 of article II of the constitution, in part provides:

"Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also consider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution in its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law, unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing in the office of the secretary of state."

Under the above section the question naturally arises as to when this act is effective.

Section 1c of article II of the constitution in part provides:

"No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided."

It will be noted that the above section provides that the law shall not go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state. In the case of laws passed by the general assembly, notwithstanding the objections of the governor, the same are not submitted to the governor, but are sent direct from the house of the general assembly last enacting them to the office of the secretary of state.

In the case of state vs. Lathrop, 93 O. S., page 79, on page 82 of the opinion the court says:

"The executive has, under our constitution, no part to play in the legislative field except through the veto. It is not necessary to give effect to the

act of the general assembly, that he even sign a bill; it will become a law just as effectually without his approval as with it. The ten day period fixed by the constitution for the consideration by the governor of such measures as the general assembly may enact, is not so much for the purpose of gaining his approval as for the determination of whether or not he shall disapprove it."

"Section 1 of article II of the constitution of Ohio provides that the legislative power of the state shall be vested in a general assembly consisting of a senate and a house of representatives, the people reserving to themselves the power to propose laws to the general assembly and to adopt or reject them by referendum, and the further power of adopting or rejecting any law passed by the general assembly. If the governor, by mere order of the time of approval of measures passed by the general assembly, can make or unmake laws, then, contrary to the express terms of the constitution, he becomes the law-making power and his intention, rather than that of the legislature, governs."

If, under section 1c of article II, the general assembly must submit to the governor bills passed, notwithstanding his objection so that he may file them with the secretary of state, he may, inasmuch as he has no duty to perform regarding said bills, withhold the same from the office of the secretary of state, and thereby prevent them from becoming a law.

On page 86 of the opinion of *State vs. Lathrop*, supra, the court says:

"We can give effect to both sections by holding, as we do, that laws providing for tax levies, appropriations for current expenses of the state government and state institutions and emergency laws, as defined in section 1d of article II, go into immediate effect when approved by the governor, and that all other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor."

In arriving at the date when this act goes into effect, it will be necessary to consider that part of section 1c of article II of the constitution which provides that no laws shall go into effect until ninety days after they have been filed by the governor and filed in the office of the secretary of state as controlling only insofar as it applies to the date effective after filing with the secretary of state and, therefore, this act would become effective ninety days after date of filing, which, in this instance, is April 21, 1925.

Section 1 of Amended Substitute Senate Bill No. 94 provides as follows:

"Beginning with January 1, 1926, the fiscal year of the state and beginning with January 1, 1926, the fiscal year of every county, municipal corporation, including charter municipalities, school district, township or other political subdivision or taxing district, and of every officer, department, commission, board or institution thereof, shall begin at the opening of the first day of January of each calendar year and end at the close of the succeeding thirty-first day of December. All provisions of law heretofore or hereafter enacted and relating to the levying of taxes, the collection, appropriation or expenditure of revenues or the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined, except that reports required by title V, chapter 5, part second, of the General Code, shall be for the school year

as defined in section 7689 of the General Code. Taxes or other revenues collected in or on hand in any fiscal year for the purposes of the next or any subsequent fiscal year shall not be appropriated or expended prior to such next or subsequent year. Budgets shall be designated and known by the fiscal year for the purposes of which they are made."

It will be noted that this section provides that the fiscal year of every county, municipal corporation, school district, or other political subdivision or taxing district and of every officer, department, commission, board or institution there shall begin on the opening on the first day of January of each calendar year and end at the close of the succeeding 31st of December, beginning the 1st of January, 1926. It further provides that all provisions of law heretofore or hereafter enacted relating to the levy of tax or collection or appropriation or expenditure of revenues or the making of financial reports for the fiscal year or other year shall be construed to refer and apply to the fiscal year herein defined, with certain exceptions.

Section 3 of the above act provides :

"On or before the fifteenth day of July in each year, the county commissioners of each county, the board of education of each school district, the council or other legislative authority of each municipality, including charter municipalities, the trustees of each township, and any other public body authorized by law to levy taxes, shall adopt a budget for the next succeeding fiscal year; provided, however, that this requirement shall not be construed to modify the provisions of law or charter relating to the procedure of preparations of the annual budget or to transfer to council or other legislative authority the preparatory steps which by law or charter are entrusted to the mayor or other executive or administrative official or board. Such budget shall include detailed estimates of all balances that will be available at the beginning of the said fiscal year for the purposes of such year, and of all revenues to be received for such fiscal year, including all general and special taxes, fees, costs, percentages, penalties, allowances, perquisites and all other types or classes of revenue; also estimates of all expenditures or charges in or for the purposes of such fiscal year to be paid or met from the said revenues and balances. Such budget shall be so segregated as to give effect to the requirement of law relating to the respective purposes to which said revenues and balances are applicable, to the end that no expenditures shall be authorized or made for any purpose in excess of the money lawfully available therefor. Such budget shall also include or be accompanied by such further information or statements, and shall be in such form and be so itemized and classified as shall be prescribed by the bureau of inspection and supervision of public offices. Any information requested by the county budget commission shall also be included. Before final adoption, every such budget, in the tentative form in which it is introduced into the budget-making board or body, shall be made conveniently available to public inspection for at least ten (10) days by having at least two copies thereof on file in the office of the chief clerk or similar official of such board or body; and such board or body shall hold at least one public hearing thereon, of which public notice shall be given by at least one publication not less than ten (10) days previous to the date of hearing, in the official publication of such board or body or a newspaper having general circulation in the county, school district, municipality, township or other subdivision or district, as the case may be. The budget, after adoption, shall be submitted to the appropriate county auditor on or before the twentieth

day of July or at such later time as may be prescribed by the tax commission of Ohio. The county auditor shall provide and furnish the necessary blank forms and instructions for making up the budgets; and it shall be his duty, when requested by the county commissioners, to prepare the tentative county budget for the fiscal year next succeeding the date of such request."

This act provides that on or before the 15th day of July in each year, the legislative authority of the various subdivisions shall adopt a budget for the next succeeding fiscal year. This section further provides that a budget shall include the detailed estimates of all balances that will be available at the beginning of the said fiscal year for the purposes of such year and of all revenues to be received for such fiscal year; also estimates of all expenditures of such fiscal year to be met from said revenues and balances. Said section further provides that before final adoption every budget in tentative form shall be available for public inspection for at least ten days, by having two copies on file in the office of the chief clerk or similar official and such budget making body shall hold at least one public hearing thereon of which public notice shall be given by at least one publication not less than ten days previous to the date of hearing, in the official publication of such board or body, or a newspaper having general circulation in the subdivision. The act further provides that the budget, after adoption, shall be submitted to the county auditor on or before the 20th day of July, or at such later time as may be prescribed by the tax commission of Ohio.

Section 3-a provides as follows:

"A board of education may include in its budget estimate of expenditures an item to be known as a "reserve balance" which shall not be greater than ten per cent of the total estimated expenditures included in such budget. The full amount of the reserve balance, as allowed by the county budget commission, shall be retained by the county auditor and treasurer out of the second semi-annual settlement of taxes until the beginning of the next succeeding fiscal year, and thereupon with the depository interest apportioned thereto shall be forthwith turned over to the board of education to be used for the purposes of such fiscal year.

"In estimating the balance that will be available on January 1, 1926, a board of education may deduct therefrom an amount not greater than 15 per cent of the total salaries of educational employees for the twelve months ending June 30, 1925."

This section makes provision for a "reserve balance" of not more than ten per cent of the total estimated expenditures, which reserve balance is held by the county auditor until the next succeeding fiscal year, when it is turned over to the board of education for the purposes of such fiscal year. It further provides that in estimating the balance that will be available on January 1, 1926, the board of education may deduct from such estimate an amount not greater than fifteen per cent of the total salaries of educational employes for the twelve months ending July 30, 1925.

Section 4 of the above act provides:

"In addition to its other duties, the county budget commission of each county shall, from the information furnished by the budgets and accompanying data and from other sources of information available to it, determine with respect to its county and to each political subdivision and taxing district within the county the probable amounts of the free and unencum-

bered balances at the beginning of the succeeding fiscal year, and of the revenues from each and every source which will be respectively available for the use of the county and of each such political or taxing subdivision or district for and during such fiscal year, after making the adjustments amongst the county and the subdivisions and districts authorized by the laws relating to tax limitations. Not later than the fifteenth day of October, the budget commission shall certify said determinations respectively to the appropriate taxing and appropriating authorities of the county and said subdivisions and districts, each of which certifications shall be the official estimate of balances and revenues for such fiscal year and govern the aggregates of appropriations in and for such fiscal year. In the event that the electors of any such county, subdivision or district shall, as provided by law, provide for additional tax levies, not included in the budget or certification, to be available during and for such fiscal year, then forthwith upon the certification of such fact to the budget commission by the county or such subdivision or district, the budget commission shall certify an amended estimate based upon such additional levy. In the event that the county or any subdivision or district collects revenues, available for the purposes of such fiscal year, from a new source or sources of revenue which had not been included in the budget or certification, or in the event that, by reason of under-estimate of balances, increased tax valuation or any other cause the actual balances and receipts available for the purposes of such fiscal year exceed the amount which had been certified by the budget commission, then forthwith upon the certification by the fiscal officer of the county, district or subdivision of the fact and amount of said additional or excess balances and receipts, the budget commission shall certify an amended estimate including such additional or excess balances, revenues or receipts.

"On or about the first day of each fiscal year, each such fiscal officer shall certify the amount of the actual free and unencumbered balances to the county budget commission; and if such amount in the case of any county, district, or sub-division be less than the amount which had been included in the aforesaid official estimate, the budget commission may certify an amended estimate based upon such actual balances. Any such amended estimate shall thereupon be deemed the appropriate official estimate of revenues and balances. Any political subdivision or taxing district which is dissatisfied with any such official estimate of revenues and balances may, through its auditor or other chief fiscal officer, appeal to the tax commission of Ohio, which commission shall thereupon have power to modify the estimate, and such modified estimate shall be deemed the appropriate official estimate of revenues and balances."

This section provides, in addition to other duties of the county budget commission, the duty of determining with respect to each political subdivision the unencumbered balances at the beginning of each succeeding fiscal year and all the revenues from every source which will be available during such fiscal year. It further provides that the budget commission, not later than the 15th day of October, shall certify their determination to appropriate taxing and appropriating authorities of said subdivision.

Section 5 of the above act provides:

"At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council of or other legislative authority of every

municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district. The appropriation measure or measures of any county or political subdivision or taxing district shall include provision for the full amount of interest, principal and sinking fund charges maturing on obligations of such county, subdivision or district during such year, excepting interest, principal or sinking fund charges the payment of which shall have been lawfully authorized and directed from the proceeds of bond issues, and may include an emergency or contingent item to provide for unanticipated emergencies or contingencies. The aggregate of all appropriations of or from the funds of any county, political subdivision or taxing district for any fiscal year shall not exceed the amount of the official estimate of revenues and balances of such county, subdivision or district as made by the budget commission, or, in case of appeal, by the tax commission of Ohio. No appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the appropriation, taken together with all other outstanding appropriations, does not exceed said official estimate and in every case which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure."

This section replaces section 5649-3d and section 3797 of the General Code, and relates to the manner of making appropriations for the fiscal year of all subdivisions. This section in particular provides that no appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate for the appropriation taken together with all other outstanding appropriations, does not exceed said official estimate and in any case in which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure.

It will be noted that section 3 of this act provides for the legislative authority of the subdivision to adopt the budget for the succeeding fiscal year on or before the 15th day of July. For the year 1925 it will be impossible for the legislative authority to comply with this section for the reason that the act will not become a law until the 21st day of July, and not at that time if a referendum is taken on said act.

Section 5649-3a of the General Code, found in 109 O. L., page 146, provides in part as follows:

"On or before the first Monday in June, each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education and all other boards or officers authorized by law to levy taxes, within the county, except taxes levied by the state or for state purposes, shall submit or cause to be submitted to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year, and for each month thereof."

By this section which will remain in effect until section 3 of senate bill 94 becomes effective, provides for the filing of the budgets on or before the first Mon-

day in June. It is believed, however, that the date as to which the budget shall be filed is merely directory and not mandatory. If the data for filing of the budgets under section 5649-3a is mandatory, the legislative authority of political subdivisions could defeat the collection of taxes by refusing to certify upon the date required by statute the proper budget. The duty of making and filing such budget is mandatory upon the legislative authority of a subdivision.

In the case of state ex rel. Alcorn vs. Mittendorf, 102 O. S.-7, page 229-232, the court say:

“There are a great many statutes in which the time is fixed for doing stipulated things, and in which time is of the essence of the matter, and in such event the statute must be considered to be mandatory and the act cannot be performed at any other time. On the other hand, there are a very great many statutes commanding public officials to perform acts at certain fixed times where time is not of the essence of the matter, and in such instances the provisions are directory merely.”

In following provisions of section 5649-3a it cannot be maintained that time is of the essence of the provision for filing of budgets. As a general principle the budgets of all subdivisions are filed at a much later date than the first Monday in June of each year.

For the same reason, the time specified in section 2 of the amendatory act “15th of July” for the adoption of a budget cannot be construed as mandatory. If such date of filing of the budget is not mandatory, the budget may be filed at any reasonable time subsequent, which would be subsequent to the going into effect of the amendatory act. The date fixed in the amendatory act of the 20th day of July for the filing of such budget with the budget commission may be changed by the tax commission to any date later which would enable the budget making body to comply with the part of the section providing for inspection of the tentative budget and for the publication of the time of the hearing thereon.

To say that the provisions of Section 5649-3a must be followed in preparing the budget for the fiscal year of 1926 for the reason that at the time specified in said section the act is still in effect, might, in some instances, work a hardship upon the political subdivisions and might conflict with the provisions of the amendatory act when such act goes into effect.

Section 5 of the amendatory act provides that no appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the appropriation, taken together with all other outstanding appropriations, does not exceed said official estimate provided for in section 4 of this act.

Section 7 provides that no expenditure except from the proceeds of bonds shall be made unless authorized by appropriation, both as regards purpose and amounts. This section further provides that no contract, agreement or other obligation calling for or requiring expenditure of public funds shall be made or assumed by any authority, officer, or employe of any political subdivision, nor shall any order for the payment or expenditure of money be approved by any board, officer, or employe unless the fiscal officer first certifies that the money required to meet such contract, agreement, or obligation or to make such payment of expenditure has been lawfully appropriated or authorized or directed for such purpose, and is in the treasury or in process of collection to the credit of the appropriate fund, which certificate shall be filed with such authority, body or board or the chief clerk thereof.

When this act is effective no appropriation can be made until the county auditor has certified that the appropriations do not exceed the official estimate of balances

and revenues. If the budget and estimate has not been made under the provisions of the amendatory act, it would be impossible for the county auditor to make such certificate. As the act provides that no obligation may be entered into and no expenditures made until the certificate of the fiscal officer is filed certifying that an appropriation has been made for such purpose, if this act does not go into effect, in its entirety, with reference to the fiscal year of 1926, the various subdivisions will find themselves in the position, if the preparation of the budget is made under 5649-3a, as it now stands, of having taxes and revenues levied and will be unable to enter into any obligation or to expend any of the money which is in its hands for that fiscal year.

Section 4 of this act provides that the county budget commission, in addition to its other duties, shall determine the probable amount of free and unencumbered balances at the beginning of each succeeding fiscal year. It further provides that the budget commission certifies such determination to the appropriate taxing and appropriating authorities of the county and said subdivisions, each of which certifications shall be the official estimate of such balances and revenues for such fiscal year and govern the aggregates of appropriations in and for such fiscal year.

Section 1 of this act provides:

"All provisions of law heretofore or hereafter enacted and relating to the levy of taxes, the collection, appropriation or expenditure of revenues, or the making of financial reports or statements for the fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined. * * * Budgets shall be designated and known by the fiscal year for the purposes of which they are made."

At the time of the going into effect of this act all budgets must necessarily be construed by the budget commissioners as applying to the fiscal year as herein defined. All taxes levied by the taxing authorities must be levied with the purpose of providing revenue for the fiscal year herein defined. Under the present laws the budgets of the various political subdivisions are for periods radically different from the fiscal year as defined by this act.

If the budgets are prepared for the years designated by the present legislature, the budget commission can only act on them to the extent that the budget would apply to the fiscal year provided by this act. Under those circumstances, it would only confuse the budget commission and make necessary an additional amount of labor to make the budgets as submitted conform to the law as it is amended. As all appropriations under the amended act can only be made for the fiscal year as defined in this act, it would be useless to prepare a budget covering a period differing from the fiscal year.

In answer to your first and second question, you are advised that the bureau should prepare forms under the provisions of this act for the use of the various budget making bodies, to be filed with the county auditor as soon as this act goes into effect, complying with the provisions of this act relating to preparation and hearings thereunder held after advertisement.

In answer to your third question, such budgets should be prepared for the fiscal year beginning January 1, 1926.

Respectfully,
C. C. CRABBE,
Attorney General.