

165.

COUNTY COMMISSIONERS—APPROPRIATION OF MONEY FOR
MOTHERS' PENSIONS.

SYLLABUS:

County commissioners have no authority under the law to appropriate money, out of the general fund to make up the difference between the amount of money produced by a levy in accordance with Section 1683-9 of the General Code and the amount of allowances made by the court for mothers' pensions, even though the levy was less than the one-fifth of a mill limitation set out in said section.

COLUMBUS, OHIO, March 10, 1927.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter of recent date reading as follows:

"Cuyahoga County Commissioners authorized a levy for mother's pension purposes for the year 1926 under the provisions of Section 1683-9 of the General Code.

It has been found that this levy will not provide all the funds necessary for that purpose. The county commissioners have appropriated additional money out of the general fund to the mother's pension fund. Have they authority under the law to this?"

From later correspondence it develops that the amount of the levy for mothers' pension purposes in your county for the year 1926 was .0982 of a mill. Your question therefore resolves itself into the following:

Where the levy for mothers' pension purposes authorized by Section 1683-9 of the General Code is less than the limit fixed by said section, and where such levy does not produce an amount sufficient to cover the requirements of the allowance made by the court for said purposes, may the county commissioners appropriate out of the general fund an amount sufficient to make up the difference between such allowance and the amount produced by such levy?

Section 1683-9 of the General Code provides:

"It is hereby made the duty of the county commissioners to provide out of the money in the county treasury such sum each year thereafter as will meet the requirements of the court in these proceedings. To provide the same they shall levy a tax not to exceed one-fifth of a mill on the dollar valuation of the taxable property of the county. Such levy shall be subject to all the limitations provided by law upon the aggregate amount, rate, maximum rate and combined maximum rate of taxation. The county auditor shall issue a warrant upon the county treasurer for the payment of such allowance as may be ordered by the juvenile judge."

While this section makes it the duty of the county commissioners to provide a fund for mothers' pension purposes out of the money in the county treasury, it also specifically sets out that to provide such fund they shall levy a tax not to exceed one-fifth of a mill on the dollar valuation of the taxable property of the county. In other words, the existence of the mothers' pension fund depends directly upon the levying of a tax to provide such fund.

This is made clear by the fact that at its extraordinary session following the original enactment of Section 1683-9 of the General Code (103 O. L., 864) the legislature recognizing the fact that the proceeds of the levy provided in said section would not be available for some time, passed Section 1683-10 G. C. (104 O. L., 199), which reads in part as follows:

“For the purpose of providing a sum which will meet the requirements of the juvenile court until the proceeds of the tax required to be levied under the provisions of Section 1683-9 of the General Code shall become available, any board of county commissioners may transfer from any surplus moneys in the county treasury to the credit of any fund therein to a fund for the use of the juvenile court under the provisions of Sections 1683-2 to 1683-9, inclusive, of the General Code, the creation of which for such purpose is hereby authorized. * * * ”

This was purely a temporary provision and was designed to make possible the payment of mothers' pensions prior to the time that a levy could be made, and its force ended when such a levy was made.

Had the legislature intended to provide the mothers' pension fund out of the county general fund and still limit the size of such fund, it might very well have provided that the appropriation therefor should not exceed an amount equal to one-fifth of a mill on the dollar valuation of the taxable property of the county. It might also have said:

“To provide the same they *may* levy a tax not to exceed one-fifth of a mill on the dollar valuation of the taxable property of the county.”

Your attention is also directed to the language used in an opinion of a former Attorney General appearing in 1913 Opinions of the Attorney General, Vol. II, page 1275, with which language I agree. After discussing the various sections pertaining to the Mothers' Pension Law it is said on page 1276:

“Therefore, the provisions of Section 1683-9 are, in the last analysis, controlling. This section is not entirely clear. The first sentence would indicate that the county commissioners may provide the sum necessary to meet the requirements of the court from any moneys in the county treasury. If the sentence stood alone then it would be competent for the commissioners, whether they had made a specific levy for this purpose or not to allow at the beginning of the fiscal year by way of appropriation for the succeeding fiscal year a sum which in their judgment would be necessary for the support of the juvenile court in this particular.

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It is unnecessary to discuss further the possible separate effect of the first sentence of Section 1683-9 because this sentence does not stand alone. It is immediately followed in the context by the requirement that the commissioners “to provide the same” shall levy a special tax. I am of the opinion that this provision is controlling for two reasons:

In the first place it qualifies the sentence which immediately precedes, and is to be regarded as indicating the only way in which the county commissioners may “provide out of the money in the county treasury” the sum necessary to meet the requirements of the court. This would be the primary and logical grammatical construction of the two sentences, where the commissioners are directed to provide something and the manner in which they

shall provide that thing is pointed out. The provision is a grant of power and the maxim *expressio unius est exclusio alterius* applies and leads to the conclusion that there is no other legal way of "providing" the fund.

In the second place the fact that the general assembly has at least granted *authority* to the commissioners to make a special levy indicates very clearly that the purpose for which the levy is to be made is a special purpose and not a general purpose, which might be met out of the general funds of the county. It is here that Section 5649-3d again comes into play. If the purposes of the "mothers' pension" act were to be regarded as general purposes of the county, then if the commissioners had made the levy in 1913 for the general county fund it would be proper, despite the provisions of the section just cited, to make an appropriation out of that fund for the purpose of the juvenile court under this act; but inasmuch as the legislature has at least declared the purpose of the "mothers' pension" fund to be a special purpose, it by that declaration negated the possible contention that such purposes are purposes properly to be met by an appropriation out of a levy for the general fund of the county."

It is therefore my opinion that county commissioners have no authority under the law to appropriate money out of the general fund to make up the difference between the amount of money produced by a levy in accordance with Section 1683-9 of the General Code and the amount of allowances made by the court for mothers' pensions, even though the levy was less than the one-fifth of a mill limitation set out in said section.

Respectfully,
EDWARD C. TURNER,
Attorney General.

166.

DISAPPROVAL, BONDS OF WEST UNITY VILLAGE SCHOOL DISTRICT,
WILLIAMS COUNTY, \$13,000.00.

COLUMBUS, OHIO, March 10, 1927.

Re: Bonds of West Unity Village School District, Williams county, \$13,000.00.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Upon examination of the transcript for the above bond issue I note that the publication of the notice of sale of the bonds commenced on November 29, 1926, and continued for three weeks.

The sale was advertised to take place on December 19th. It thus appears that while three publications were made, the full twenty-one days from the date of the first publication did not expire on the date of sale.

In the case of State of Ohio vs. Kuhner and King, 107 O. S., 406, the Supreme Court of Ohio has held that statutory requirements as to notice must be complied with strictly and that where publication is required for a given number of weeks, a full week must elapse between the date of the last publication and the date of the act