

3525

TOWNSHIP CLERK—COMPENSATION—BUDGET OF TOWNSHIP FIVE THOUSAND DOLLARS OR MORE—TOTAL EXPENDITURES INCLUDE ALL MONIES REQUIRED BY LAW TO BE WITHHELD BY COUNTY AUDITOR TO BE PAID TO VARIOUS PUBLIC AGENCIES IN DISCHARGE OF TOWNSHIP'S OBLIGATIONS—SECTION 507.09 (C) RC.

## SYLLABUS:

Under the provisions of paragraph (C) of Section 507.09, Revised Code, relating to the compensation of the township clerk in townships having a budget of five thousand dollars or more, the "total expenditures" of such township upon which the compensation of the township clerk is to be calculated, include all monies required by law to be withheld by the county auditor from the amounts due the township from tax collections and to be paid by said auditor to the various public agencies in the discharge of the township's obligations.

Columbus, Ohio, February 26, 1954

Hon. C. Watson Hover, Prosecuting Attorney  
Hamilton County, Cincinnati, Ohio

Dear Sir:

I have before me your communication, in which you request my opinion, your letter reading as follows:

"Your opinion is respectfully requested with reference to the following question:

"Are monies due a township and required by Sections 3501.17, 3709.28, 4123.41, 117.16 and 5721.04 R. C., to be withheld from the township and paid directly by the county auditor, part of the total expenditures' of a township upon which the compensation of a township clerk is computed under Section 507.09 (C) R. C.?"

Section 507.09, Revised Code, relating to the compensation of a township clerk, first provides for certain fees to be paid by the parties requiring various services. The statute then proceeds with the following:

"(B) In those townships having a budget less than five thousand dollars, the board shall determine the salary of the

clerk, which, in no event shall exceed three hundred fifty dollars per year ;

“(C) In townships having a budget of five thousand dollars or over, the clerk shall receive two per cent of the total expenditures of such township in excess of five thousand dollars in addition to the amount provided under division (B) of this section.”

It is obvious that the amount of the compensation of the township clerk is governed in large part by the volume of the financial transactions of the township based on its annual tax budget. We may therefore refer to the requirements of the statute as to the preparation of the annual budget of the various taxing subdivisions, including a township.

Sections 5705.28 and 5705.29 of the Revised Code relate to the preparation of this budget. The first of these sections provides that on or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year ; and that to assist in its preparation the head of each department, board, commission and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority an estimate of contemplated revenue and expenditures for the ensuing year.

Section 5705.29, Revised Code, relates to the contents of this budget and provides that it shall furnish in such detail as is prescribed by the Bureau of Inspection and Supervision of Public Offices (a) a statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses and the fund from which such expenditures are to be made ; (b) a statement of the expenditures for the coming fiscal year, the amount required for the payment of final judgments, the amounts provided by any special levies, comparative statements of corresponding items of expenditure for the current year and the two preceding years ; and a long list of other items and comparative statements, which it is unnecessary to enumerate.

It is manifest that the preparation of this budget is a matter that must require a considerable amount of time and some skill, and since the clerk is the only executive officer of the board of township trustees it is evident that the work of preparing this budget falls mainly, if not entirely, upon him. It may be noted, too, that the office of township treasurer has been

abolished, and that the duties of that officer have been placed upon the clerk, 110 Ohio Laws, 30.

The several statutes to which you refer in your letter relate to matters which are the legitimate subjects of township expenditure and which expenditures should be included in the annual budget and for which taxes must be levied.

Section 3501.17, Revised Code, relates to the expenses of the county board of elections and provides in effect that the expenses of such board "shall be paid from the county treasury in pursuance of appropriations by the board of county commissioners." The section further provides in part, as follows :

"Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, and the amount chargeable to each subdivision shall be withheld by the auditor from the moneys payable thereto at the time of the next tax settlement. At the time of submitting budget estimates in each year, the board of elections shall submit to the taxing authority of each subdivision an estimate of the amount to be withheld therefrom during the next fiscal year. \* \* \*."

It is further provided that the compensation of judges and clerks of elections and the cost of printing and other expenses of conducting primaries in odd numbered years are to be charged to the subdivisions in and for which such primaries are held. It is further provided that the cost of all special elections shall be charged against the subdivision in and for which they are held.

Obviously, these expenses are such as the township must anticipate in preparing its annual budget and whether paid directly out of the township treasury, or paid in its behalf by the county auditor, are clearly expenditures of the township which go to help make up the "total expenditures" of the township for a given year.

Turning to Section 3709.28, Revised Code, we find provisions for the payment of the share of the various subdivisions, of the expenses of the board of health of a general health district. There, again, the county auditor, when making his semi-annual apportionment of taxes, is required to retain one-half of the amount apportioned to each township and municipal corporation for the expenses of the board of health, and to pay the amounts so retained, to the general health district.

Referring to Section 4123.41, Revised Code, we find a similar provision whereby the county auditor is required to retain from the distribution to the various subdivisions the apportionment of the expense payable by each subdivision of the maintenance and operation of the state industrial commission, and to pay the same to the Treasurer of State to the credit of the public insurance fund.

Section 117.16, Revised Code, contains a similar provision in regard to the expenses chargeable to the various subdivisions, of the operation of the Bureau of Inspection and Supervision of Public Offices, and Section 5721.04, Revised Code, contains a like provision in regard to the expense chargeable to the various subdivisions of the cost of advertising the list of delinquent taxes.

In all of these cases it seems obvious that these expenses, which are constant in character although variable in amount from year to year, must be taken into consideration when making up the annual budget of the township. They would certainly enter into the determination as to whether the total tax rate of a subdivision falls within the ten mill limitation. It further appears to me that when an obligation imposed by law on a township or other subdivision is to be paid on its behalf by the county auditor, out of funds which belong to it, these are expenditures of the subdivision and under any process of accounting would be considered as monies received and paid by the subdivision, just as completely as though they actually passed through the hands of the clerk or treasurer of the subdivision.

I can see no difference between this transaction as affecting the total income and total expenditures of the subdivision and the situation which arises when employers generally, pursuant to the requirement of the federal law, take out of their employees' salary or wages a certain portion thereof, and pay it on their behalf to the United States treasurer, on account of their income tax liability. Certainly, any person from whom such deduction is made, in keeping an accurate account of his income and expenses, would count his whole salary as having been received, and credit himself with the payments which he has made either directly or indirectly on account of his income tax.

A similar illustration may be found in the provisions of the statutes relating to the public employes retirement system. Here, it is provided in Section 145.47, Revised Code, that each member must contribute six per cent of his salary, and this is immediately followed by a provision that

every employing subdivision must take from the salary or wages of its employes that percentage, and pay it in to the hands of the secretary of the retirement system. The amount so deducted, certainly remains a part of the salary of the individual and his contribution, although paid indirectly, would be a proper credit in any statement of personal accounting.

Accordingly, I am led to the conclusion that moneys taken from the income of a township pursuant to the statutes which you mention, and paid directly to the several agencies entitled to them, enter into the determination of the "total expenditures" of the township upon which the compensation of the township clerk is to be computed. It should be noted that the statute does not say that he is to be paid the stated percentage based upon expenditures which are made by him, but rather upon the "total expenditures of the township."

Accordingly, it is my opinion and you are advised that under the provisions of paragraph (C) of Section 507.09, Revised Code, relating to the compensation of the township clerk in townships having a budget of five thousand dollars or more, the "total expenditures" of such township upon which the compensation of the township clerk is to be calculated, include all monies required by law to be withheld by the county auditor from the amounts due the township from tax collections and to be paid by said auditor to the various public agencies in the discharge of the township's obligations.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General