

In other words, a township clerk in performing the duties of his office, receives no definite salary. In view of the foregoing opinion a township clerk, though limited to receiving \$250.00 in a year from the township treasury, may receive an aggregate compensation during such year in excess of that amount on account of the receipt of fees by virtue of his office, which fees are not paid from the township treasury. It is possible that he may receive a certain amount of money for his services as township clerk and yet be considered a "needy blind" person, within the meaning of section 2965, General Code, by the county commissioners. It being a question of fact to be decided by the county commissioners whether or not a person is by reason of loss of eyesight, unable to provide himself with the necessities of life and has not sufficient means of his own to maintain himself, and further, whether or not, unless relief be granted, as authorized by law, the person would become a charge upon the public or upon those not required by law to support him, it follows that the said commissioners must determine from the circumstances, whether or not the township clerk is receiving enough fees from his office to sufficiently maintain himself.

In specific answer to your second question, I am of the opinion that the blind clerk may retain his pension allowed him by the county commissioners, and serve as township clerk, if the said county commissioners in their discretion determine that he (the township clerk) is still a "needy blind" person within the meaning of section 2965, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2366.

SANITARY DISTRICT—CITY REQUIRED TO PAY ANNUAL ASSESSMENT TO PROVIDE FUNDS FOR BOND RETIREMENT AND INTEREST—UNPAID TAXES NOT JUSTIFICATION OF NON-PAYMENT—IF TAX LEVY INADEQUATE DEFICIENCY PAID HOW.

SYLLABUS:

1. *Where an annual assessment has been duly levied against a city by the board of directors of a sanitary district, of which such city is a part, for the purpose of providing funds for bond retirement and interest, and a proper levy has been made by such city therefor, the fact that, by reason of unpaid taxes, the proceeds of such levy are not sufficient to pay said assessment in full does not relieve the city of its obligation to pay the entire amount of such assessment.*
2. *In such case, it is the duty of the city to pay such deficiency from its general fund, provided there are unappropriated and unencumbered moneys in said fund, or it may appropriate and pay it from any unappropriated moneys of its water department.*
3. *In the event the city has no funds from which said deficiency can be paid, then it is its duty to set forth in its tax budget for the next year the amount of such deficiency, together with such portion of the next annual assessment as has not been paid from its water department funds.*

COLUMBUS, OHIO, March 13, 1934.

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

GENTLEMEN:—I acknowledge receipt of your communication, in which you submit certain questions which have been raised by the City of Youngstown and the Mahoning Valley Sanitary District concerning the payment by the city of assessments levied against it by the district.

The cities of Youngstown and Niles comprise the territory which was organized into the Mahoning Valley Sanitary District in accordance with the provisions of sections 6202-34, et seq., General Code. Assessments were levied against these cities by the board of directors of the district as provided by section 6602-77, General Code, and bonds of the district were issued and sold in anticipation of the collection of said assessments in accordance with section 6602-79, General Code. This section provides that such bonds "shall be payable out of money derived from the bond fund. A sufficient amount of the assessment shall be appropriated by the board of directors for the purpose of paying the principal and interest of bonds and the same shall, when collected, be set apart in a separate fund for that purpose and no other." This section also reads in part as follows:

"It shall be the duty of said board of directors in making the annual assessment levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provision in advance for the payment thereof. In case the proceeds of the original tax assessment made under the provisions of this act are not sufficient to pay the principal and interest of all bonds issued, then the board of directors shall make such additional levy or levies as are necessary for this purpose, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same."

These assessments, which are payable in twenty annual installments, are levied for the purpose of paying the interest and principal of such bonds. It also appears from the statement submitted to me that the city has paid in full the annual levies made against it by the district for previous years, although, in certain years, by reason of the insufficiency of the rate of the special levy made by the city and/or the delinquencies in tax collections, the amount of the annual levy exceeded the amount available from the proceeds of the city levy and from the City Water Department funds appropriated for said purpose, and that the city now proposes not only to limit the payment of the annual levy to the amount actually collected from the city levy plus such amounts as are to be paid from the City Water Department funds, but also to deduct therefrom the total amounts paid by it in previous years in excess of the water department payments and the proceeds of its levies for those years. Your inquiry is whether the city may so limit its payment, and if it can, whether it has the right to make the above mentioned deduction therefrom.

Section 6602-82, General Code, reads in part as follows:

"In the event of any failure or neglect of the board of directors of the district to determine and order an annual levy for the purpose of paying the interest and principal of any bonds pursuant to this act, it shall be the duty of the auditor of the county in which the lands sub-

ject to such assessments are situated, to make and complete a levy of the taxes or special assessments necessary for the said purpose against the lands in the said district, and each piece of property therein against which benefits shall have been appraised; any assessment so made and completed by the county auditor shall be made and completed by him in the manner hereinbefore provided for the making and completion of an assessment by the board of directors of the district, and shall have the same force and effect as a levy of assessments determined and ordered by the board of directors."

The sanitary district law provides that all sanitary district assessments and taxes, including a reasonable attorney fee in enforcing payment thereof, shall be a lien on all the property against which they are levied (section 6602-85, General Code), for the enforcement of their payment by an action similar to that provided for the enforcement of the lien for delinquent general taxes upon real estate, and that where the district fails or neglects to enforce their payment, such action may be brought by any holder of defaulted bonds issued in anticipation of such assessments (Section 6602-86, General Code). These provisions obviously apply only to assessments upon private property and do not apply to assessments made against political subdivisions. Provision for the payment of assessments by subdivisions is made in section 6602-87, et seq., General Code. Section 6602-87, General Code, reads in part as follows:

"Whenever under the provisions of this act (G. C. Sec. 6602-34 to 6602-106), an assessment is made or a tax levied against a county, city, village, or township, it shall be the duty of the governing or taxing body of such political subdivision, upon receipt of the order of the court which established the district, confirming the appraisal of benefits and the assessment based thereon, to receive and file the said order, **and** to immediately take all the legal and necessary steps to collect the same. It shall be the duty of the said governing or taxing body or persons to levy and assess a tax, by a uniform rate upon all the taxable property within the political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose duty it shall be to receive the same, certify the same for collection to the treasurer of the county, whose duty it shall be to collect the same for the benefit of the sanitary district, all of said officers above named being authorized and directed to take all the necessary steps for the levying, collection and distribution of such tax. * * * In the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in the office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county auditor and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purposes in any county, municipality or political subdivision in which such lands shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of the said bonds. Any holder of any bonds issued pursuant to the provisions of this act or any person or officer being a party in interest, may either at law or in equity by suit,

action or mandamus, enforce and compel performance of the duties required by this act of any of the officers or persons mentioned in this act."

In my Opinion No. 2161, addressed to the prosecuting attorney of Mahoning County, the following is stated:

"It is plainly the imperative duty of the directors of the district to levy sufficient assessments to take care of its bond and interest requirements, and when the assessment is levied upon a municipal corporation, it is equally mandatory that the taxing authorities of such corporation take the necessary steps to levy and collect a sufficient tax to pay the assessment. The legislature was very careful to make it plain that sufficient funds must be raised to pay the bonds that may be issued under this act."

Section 6602-87a, General Code, which provides that a political subdivision may appropriate funds of its water department for the purpose of paying a portion of the annual levies made against such subdivision, also provides that "the remaining portion of such annual levy not so paid shall become due from such political subdivision and shall be collected by the county treasurer at the time that the state and county taxes are due and collected."

The entire annual levy made by the district against the city is the amount which the city is obligated to pay for that year. If the city pays a portion of such levy from its water department funds, the remaining portion not so paid becomes due for which amount the city must levy a tax as required by section 6602-87, General Code, and if the proceeds of such levy are less than the unpaid portion of the district levy against the city because the tax levied by the city was not collected in full, the fact that the city levied a tax which would have been sufficient to pay the district levy had all such tax been collected would not discharge the city from its obligation to pay the entire amount of the annual assessment levied against it by the district. The fact that the legislature has provided that a tax must be levied by a subdivision to provide the funds to pay the annual assessment levied against it by a sanitary district to pay the bonded indebtedness of such district, does not, in my opinion, show an intention to relieve a subdivision from the obligation to pay such assessment in full in case the proceeds of the tax so levied are not sufficient therefor. A reading of these statutes shows that it was the legislative intent that these assessments be paid in full so that there will be sufficient funds to pay the interest on and retire the bonds of the district, and apparently a levy of a special tax was required as being the surest way of raising these funds. The same requirement as to the levy of a special tax is made in order to raise sufficient funds to pay bonds issued by a subdivision (Article XII, section 2, Ohio Constitution; sections 2293-26, 2293-36, 5625-3, 5625-23, General Code), and if a sufficient levy is made by such subdivision, certainly the fact that, by reason of unpaid taxes, enough is not realized from such levy to pay such bonds would not relieve the subdivision from paying its bonded indebtedness in full. The unpaid bonds would still remain the obligation of the bond issuing subdivision.

In the opinion above referred to, I said that these annual assessments made by the Mahoning Valley Sanitary District against the City of Youngstown are levies for a debt charge, and, in my opinion, it is just as much the duty of the city to provide sufficient funds to pay these assessments which are levied to pro-

vide part of the fund necessary to retire the bonded indebtedness of the district of which the city is a part, as it is the duty of the city to provide sufficient funds to pay its own bonded indebtedness. In the case of *Rabe vs. Board of Education*, 88 O. S. 403, the court held that "the payment of interest and the retirement of bonds are to be provided for first, and the current expenses become a secondary consideration." The principles announced in that case have been consistently adhered to. *State, ex rel., vs. Zangerle*, 94 O. S. 447; *State, ex rel., vs. Dean, Auditor*, 95 O. S. 108; *State, ex rel., vs. School District*, 112 O. S. 729; *State, ex rel., vs. Van Wert*, 126 O. S. 78; *State, ex rel., vs. Brooklyn*, 126 O. S. 459.

Of course, the City of Youngstown may not pay the deficiency out of funds which are already appropriated and encumbered, but if there are any unappropriated and unencumbered moneys in the general fund, the deficiency should be paid therefrom, unless it appropriates and pays it from unappropriated funds of the water department by virtue of section 6602-87a, General Code. In my Opinion No. 1815, addressed to you, I said:

"Of course, after tax money is received by a subdivision, it may by virtue of paragraph e of section 5625-13, General Code, transfer unappropriated and unencumbered moneys from the general fund to the bond retirement or sinking fund to meet a deficiency in either of the latter funds. In fact, it is the duty of the taxing authority so to do. In the case of *State, ex rel., vs. School District, supra*, the court ordered the Clinton Township Rural School District to set aside from the funds received by it from the collection and distribution of taxes a sufficient amount to take care of the principal and interest maturities of its bonds."

If the city has no funds out of which it can pay this deficiency, then it is the duty of the city to set forth in its tax budget for the next year the amount of such deficiency, together with such portion of the next annual assessment as has not been paid from its water department funds.

It follows from the foregoing that the City of Youngstown has no right to deduct from its present annual assessment the amounts paid by it in previous years in excess of its water department payments and the proceeds of its levies for the district assessments for those years.

Consequently, I am of the opinion that:

1. Where an annual assessment has been duly levied against a city by the board of directors of a sanitary district, of which such city is a part, for the purpose of providing funds for bond retirement and interest, and a proper levy has been made by such city therefor, the fact that, by reason of unpaid taxes, the proceeds of such levy are not sufficient to pay said assessment in full does not relieve the city of its obligation to pay the entire amount of such assessment.
2. In such case, it is the duty of the city to pay such deficiency from its general fund, provided there are unappropriated and unencumbered moneys in said fund, or it may appropriate and pay it from any unappropriated moneys of its water department.
3. In the event the city has no funds from which said deficiency can be paid, then it is its duty to set forth in its tax budget for the next year the amount of such deficiency, together with such portion of the next annual assessment as has not been paid from its water department funds.

Respectfully,

JOHN W. BRICKER,

Attorney General.