

Whatever may be the power of the General Assembly to prescribe rules and regulations regarding the public works of the state, and for work for which its funds are to be expended, there is neither expressed nor implied in the act in question any legislative intention to amend or modify the statutes dealing with legal advertising, under which the publication of such advertisements, required by law, is allowed as a part of the costs in the case or proceeding.

In view of the foregoing, and specifically answering your questions, I am of the opinion that:

1. The sheriff is an officer such as is contemplated in House Bill No. 102 of the second special session of the 90th General Assembly, under the paragraph defining "public agency."

2. A sheriff may lawfully contract with a newspaper for legal advertising, such as foreclosure sales, even though that particular newspaper may not be able to furnish the affidavits provided for by section 2 of House Bill No. 102, as enacted by the 90th General Assembly, second special session.

3. A contract for legal advertising in a newspaper does not come under the contemplation of such statute defining "public contracts."

Respectfully,

JOHN W. BRICKER,

Attorney General.

4043.

BUDGET—TAXING AUTHORITY MAY NOT FILE AMENDED OR SUPPLEMENTARY BUDGET WITH COUNTY AUDITOR—BUDGET COMMISSION UNAUTHORIZED TO LEVY TAX IN EXCESS OF REQUEST BY TAXING AUTHORITY.

SYLLABUS:

1. *No authority exists for the taxing authority of a subdivision or other taxing unit, after adopting a budget as provided for by Section 5625-20, General Code, and submitting the same to the county auditor in pursuance of Section 5625-22, General Code, to file an amended or supplementary budget so far as the current needs of the subdivision or taxing unit for expenditures during the ensuing fiscal year are concerned, so as to affect tax levies to be made to meet those needs, and it is not within the power of a county budget commission or the Tax Commission of Ohio on appeal, to consider any needs of the subdivision or other taxing unit in fixing or adjusting tax levies for the subdivision or other taxing unit other than those set out in the original budget as it was filed with the auditor in pursuance of Section 5625-22, General Code.*

2. *The tax levying authority of a subdivision or other taxing unit is not authorized by law to levy taxes at a rate greater than is necessary to provide the necessary funds for the estimated needs of the subdivision or taxing unit during the ensuing fiscal year and it is the duty of a county budget commission and a county auditor in performing their duties as prescribed by Section 5625-24 and Section 5625-25, General Code to take this lack of authority into consideration.*

3. *It is the duty of the fiscal officer in each subdivision or other taxing unit to certify to the county auditor of the proper county on or before the first day of each fiscal year, the total amount from all sources available for expenditure from each fund set up in the tax budget of the subdivision or taxing unit, so that the actual balances*

that exist in each fund at the end of the preceding year will appear for the purpose of the making and certification of an amended certificate of estimated resources provided for by Section 5625-27, General Code, if in fact the actual balances and receipts in any such funds exceed the estimate originally certified by authority of Section 5625-26, General Code.

4. Where any fund of a subdivision or other taxing unit is overdrawn under such circumstances that a legal obligation of the subdivision or taxing unit is created for which a judgment might be procured, and that circumstance exists, or it is reasonably certain that it will exist at the end of the current fiscal year, at the time of the adoption and the submission to the county auditor of the subdivision or other taxing unit of a tax budget as provided for by Sections 5625-20 and 5625-22, General Code, the said so-called overdraft if noted in the budget may be taken into consideration in the fixing and adjustment of tax levies for the subdivision or taxing unit.

5. A contractual obligation owing to a subdivision or other taxing unit, the existence of which on the first day of a fiscal year is reasonably certain to result in bringing the funds into the treasury of the subdivision or taxing unit during the fiscal year, may be taken into consideration for the purpose of the making and certification of an amended certificate of estimated resources authorized by Section 5625-27, General Code, and if the said obligation exists prior to or at the time of the making and certification of an original certificate of estimated resources as authorized by Section 5625-26, General Code, it may be taken into consideration for that purpose.

COLUMBUS, OHIO, March 14, 1935.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

1. Can the taxing authority file an amended or revised budget with the county auditor supplementing the original budget adopted in compliance with the provisions of Section 5625-20?

2. Does the budget commission have authority to levy a tax rate in excess of the levy requested by the taxing authority when the proceeds of the levy, added to the estimated receipts from all other sources, would produce revenues in excess of the amount requested or the expenditures for the next fiscal year as shown in the budget?

3. Can the taxing authority, through the fiscal officer of the subdivision, change the amounts set up on the budget from all other available sources except balances that may exist at the end of the preceding year (Section 5625-27)?

4. Should the budget commission add overdrafts, either anticipated or existing as of January first, to the amounts requested for the operation of the subdivision for the next fiscal year in determining and fixing tax rates?

5. Section 5625-27 provides that 'in the event that the subdivision collects revenue available for the purposes of such fiscal year from a new source which is not included in an official certificate or that the actual balances and receipts in any fund exceed the certified estimate, then forthwith upon the certification by the fiscal officer of the subdivision of the amount of said additional or excess balances and receipts, the budget commission shall certify an amended official certificate including the same.' Can moneys in the process of collection, as a result of a contractual obligation entered into by the subdivision, be con-

sidered as revenue available during the fiscal year and the certificate be issued by the budget commission authorizing the subdivision to amend their appropriation resolution before the time the funds are actually in the possession of the subdivision?"

By the term "budget," as applied to public corporate financing other than state financing, is understood the annual financial statement submitted by the taxing authorities of political subdivisions and other taxing units, to the county auditor of the proper county for the information of the county budget commission in adjusting tax levies to conform to the limitations of law, and for the additional purpose of fixing the limitations of appropriations and expenditures by the political subdivisions and other taxing units during the ensuing fiscal year.

In order that a budget may serve this two fold purpose, it is necessary that it include not only a statement of the financial needs of the political subdivision or taxing unit submitting the same, for all purposes during the ensuing fiscal year, but as well a statement of the resources from which such needs may be met. A statement of both these matters was required in the budget provided for by the former law as well as the present law commonly called the "Budget Law" (§§5625-1 to 5625-39, G. C.,) which superseded the former law pertaining to budgetary procedure.

Section 3639-3d, General Code, provided inter alia, with respect to this matter:

"* * 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. * *"

Corresponding provisions of the present law are incorporated in Section 5625-21, General Code. It is there provided that the budget shall present certain information set forth therein. The information so required among other things includes not only a statement of the necessary expenditures of the subdivision during the ensuing fiscal year for debt charges, for operating expenses, for permanent improvements, for the payment of final judgments and for purposes for which a special levy is authorized but also:

"2. (a) Estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current year, and the funds to which such estimated receipts are credited.

(b) Estimated amount required from the general property tax in each fund, which shall be the difference between the contemplated expenditures therefrom and the estimated receipts, as herein provided. The section of the General Code under which the tax is authorized shall be set forth."

Section 5625-20, General Code, directs the taxing authority of each subdivision or other taxing unit to adopt a tax budget for the ensuing fiscal year on or before July 15th of each year.

Section 5625-21, General Code, provides what the budget shall contain.

Section 5625-22, General Code, provides for a public hearing thereon after due

notice thereof and provides further that the budget so adopted shall be filed with the county auditor on or before July 20th or at such later time as may be fixed by the Tax Commission of Ohio.

Section 5625-23, General Code, provides that the auditor shall lay the said budget so filed with him before the county budget commission, which shall examine the same and approve necessary tax levies for debt charges and certain other authorized levies without modification.

Section 5625-24, General Code, provides that the budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by the budget, so as to bring the tax levies required therefor within the limitations fixed by law. Authority is also extended to the budget commission to revise and adjust the estimate of balances and receipts from all sources for each fund and to determine the total appropriations that may be made therefrom.

Section 5625-25, General Code, provides that when the budget commission has completed its work, it shall forthwith certify its action to the taxing authority of each such subdivision or other taxing unit in the county. It shall also certify an estimate by the county auditor of the rate of tax necessary to be levied by each taxing authority within the county, whereupon, each taxing authority is directed to authorize by ordinance or resolution the necessary tax levies and certify its action with respect thereto to the county auditor on or before the first day of October or at such later date as may be approved by the Tax Commission of Ohio. Further provision is made in this section for a reconsideration and revision by the budget commission of any budget that might be affected by reason of extra levies that might be approved at the November election.

Section 5625-26, General Code, provides that the certification of a budget commission spoken of in the preceding section shall show the various funds of such subdivisions or taxing units, the estimated unencumbered balances and receipts for each such fund and if a tax is to be levied for such fund, the rate of this levy and what portion thereof is to be within or without the ten mill limitation. Attached to such certificate shall be a summary which shall be known as the "official certificate of estimated resources" for the taxing unit or subdivision. This "certificate" shall state the total estimated resources of each fund other than funds to be created by transfer. This section further provides:

"Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

Section 5625-27, General Code, provides:

"On or about the first day of each fiscal year, the fiscal officer of each subdivision and other taxing units shall certify to the county auditor the total amount from all sources available for expenditures from each fund set up in the tax budget, with any balances that may exist at the end of the preceding year. The budget commission taking into consideration balances, revenues to be derived from taxation, and from other sources, shall revise its estimate of the amounts that will be credited to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certifi-

cate of estimated resources. In the event that the subdivision collects revenue available for the purposes of such fiscal year from a new source which is not included in an official certificate or that the actual balances and receipts in any fund exceed the certified estimate, then forthwith upon the certification by the fiscal officer of the subdivision of the amount of said additional or excess balances and receipts, the budget commission shall certify an amended official certificate including the same. The total of appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof certified prior to the making of the appropriation or supplemental appropriation."

Section 5625-28, General Code, provides for an appeal to the Tax Commission of Ohio by the taxing authority of any subdivision which is dissatisfied with any action of the budget commission with respect to its budget.

Budgetary procedure, the fixing and making of tax levies and the appropriation of public funds for public purposes are purely statutory. A complete scheme for the accomplishment of these ends, so far as political subdivisions and other taxing units of the state are concerned, is set up in the so-called Budget Law, and should be followed. In fact, no authority exists for the accomplishment of the purposes for which the budget law was enacted except the law itself. If the procedure therein outlined is not followed orderly government fails and legislative control of taxation and public corporate financing as the law contemplates, becomes a farce.

It is clear from both the letter and the spirit of the law that when the taxing authority of a subdivision or other taxing unit adopts a budget on July 15th as directed by Section 5625-20, General Code, and submits the same to the county auditor in accordance with Section 5625-22, General Code, there is no power left in the taxing authority to afterwards change the budget so far as necessary contemplated expenditures for any purpose are concerned. The letter of the law is clear on this point, from the fact that nowhere in the law is such power extended, and the spirit of the law to the same effect is manifested from the fact that provision is made for public inspection and a public hearing on the budget before filing it with the county auditor (Sec. 5625-22, G. C.), so that the taxpayers who must foot the bill may have an opportunity to know what expenditures are contemplated, and protest if not satisfied. No other or later public hearing or public inspection of the budget is provided for. It would be an idle and useless ceremony to have such a public hearing if the schedule of contemplated expenditures might later be changed by the taxing authorities which had submitted it, at least if the change involved increases in contemplated expenditures. The taxing authority which submits a budget is in practically all cases the public agency empowered to make expenditures based on this budget in the next fiscal year.

With these schedules of contemplated necessary expenditures and resources of the several taxing subdivisions or other taxing units in a county as set out in their budgets, to be filed with the county auditor as provided by Section 5625-20, General Code, before it, it becomes the duty of the budget commission to examine the same and so adjust the estimated amounts required from the general property tax from each fund as shown by such budgets so as to bring the tax levies required therefor within the limitations of law. The budget commission is not authorized to consider any other contemplated expenditures than those set out in the budget as it was filed with the auditor and, clearly, would have no authority to authorize a levy which would produce more when added to contemplated receipts from other sources and estimated balances at the end of the year than would be necessary to meet these contemplated expenditures. The

intent of the law is clear in this respect if for no other reason than that a public inspection of the budget and a public hearing thereon are provided for, so that the interested taxpayers may know what they are paying for. See Opinions of the Attorney General for 1933, page 1880. As a matter of fact, it oftentimes becomes necessary in adjusting levies, to reduce contemplated expenditures, and when this is done, the taxing authority in each subdivision is expressly authorized and directed by Section 5625-26, General Code, to revise its budget so that the total contemplated expenditures from any fund during the ensuing year will not exceed the total appropriations that may be made from such fund. The revision spoken of in Section 5625-26, General Code, has nothing whatever to do with the fixing of tax levies. This revision is not to be made until after the budget commission has completed its work and certified the same to the several taxing authorities together with an estimate of the county auditor of the rate of each tax necessary, whereupon it becomes the duty of the several taxing authorities to levy the taxes at the estimated rates as fixed by the auditor. (Section 5625-25, G. C.) The certification to the taxing authority by the budget commission of the auditor's estimate of necessary tax levies and the certification of the "official certificate of estimated resources" upon which the revision of the budget spoken of in Section 5625-26, General Code, is based, are contemporaneous acts.

Another and further revision of a budget is provided for by Section 5625-27, General Code, but this has nothing whatever to do with the fixing of tax levies or the changing of contemplated necessary expenditures for tax levying purposes. This revision spoken of in Section 5625-27, General Code, to be made on the basis of an "amended certificate of estimated resources" is not to be made until "on or before the first day of each fiscal year," whereas rates of levies are concluded theoretically at least, on the first day of October, or as soon thereafter as may be possible in the judgment of the Tax Commission.

It is apparent that the taxing authorities of the several subdivisions and other taxing districts lose entire control over the budget so far as contemplated expenditures during the ensuing fiscal year are concerned, as soon as the budget is adopted and certified to the county auditor in pursuance of Section 5625-21, General Code, which the legislature has fixed as the first step looking to the fixing of tax levies and which should be done on or about July 15th or at least before the budget commission can complete its work and make the certification provided for by Section 5625-22, General Code. It is equally clear that the budget commission, the auditor and the taxing authorities lose entire control over the budget for rate making purposes when the certification directed to be made by Section 5625-22, General Code is effected, except as levies authorized by a vote at the November election may affect the matter. Any further proceedings with respect to the budget authorized by Section 5625-26 and 5625-27, General Code, have to do with the fixing and the changing of the basis of the annual appropriation measure, to be passed in the next ensuing fiscal year.

Of course the Tax Commission on appeal, may modify any action of the budget commission but in doing so it may only consider "matter or matters presented to the budget commission;" it cannot consider additional contemplated expenditures to those set up in the original budget as adopted on or about July 15th any more than could the budget commission. Nowhere in the law relating to budgetary procedure is there any provision found which directly or indirectly or by implication authorizes or permits a taxing authority to file with the county auditor or county budget commission or the Tax Commission of Ohio an amended, supplementary or revised budget so far as contemplated needs or expenditures are concerned supplementing the original budget adopted and certified in pursuance of Section 5625-25, General Code, nor is there any power reposed in a budget commission or the Tax Commission, to consider any matter

with respect to the contemplated needs or expenditures of a taxing subdivision or other taxing unit for tax rate making purposes, other than what is contained in the budget adopted and certified by the taxing authority of a subdivision or other taxing unit in pursuance of Section 5625-20, General Code.

Upon consideration of the terms of Section 5625-27, General Code, it appears that a change with respect to estimated resources as set up in the budget of a subdivision or other taxing unit may be effected on or about the first day of a fiscal year, so far as the basis of appropriations that may be made during the fiscal year are concerned, when new sources of revenue were found which were not included in the original budgetary estimate or the official certificate of estimated resources made by authority of Section 5625-26, General Code. Any such change of course, will be reflected in the balances which exist in the fund or funds affected thereby. Strictly speaking, however, no authority exists by virtue of this statute, for changing anything except the balances that may exist at the end of the preceding year.

With respect to your fourth question, it may be stated that a great deal of confusion exists in the use of the term "overdrafts" as applied to the funds of a subdivision or other taxing unit. There are certain so-called "overdrafts" that exist in some funds that because of the manner in which they are brought about, are legal obligations of the subdivision or taxing unit for which a judgment may be obtained. If any such obligations exist they should be taken into consideration in the making of a "certificate of estimated resources" as authorized by Section 5625-26, General Code, or an "amended certificate of estimated resources" made by authority of Section 5625-27, General Code, which certificates constitute the basis of appropriation measures to be passed later. If such obligations exist or are known with reasonable certainty at the time of making the original budget and the filing of the same with the auditor as directed by Sections 5625-20 and 5625-22, General Code, there could be no objection to their being noted therein and to their being considered for rate making purposes. Section 5625-21, General Code, expressly directs that the amounts required for the payment of final judgments should be included in a budget, and certainly it would not be wrong to consider a claim which it is reasonably certain might be reduced to a judgment, as one of the items of expenditure for which revenues should be made available.

This matter of so-called "overdrafts" was considered at considerable length in an opinion of this office which will be found in the Opinions of the Attorney General for 1933, at page 938, and I do not regard it to be necessary to go into the subject further at this time. Strictly speaking, of course, there should be no "overdrafts" of any kind involved in the fiscal affairs of a taxing subdivision or other public corporation as the law contemplates that they live within their income, but as a matter of fact, "overdrafts" of the character noted in the above opinion do sometimes exist and it is necessary that provision be made to take care of them. Where the revenues of the general fund or other funds of a subdivision are used to supplement the revenues of a sinking fund or bond retirement fund for the purpose of paying bonded indebtedness or interest on the same, an "overdraft" in the fund from which these funds are taken is not necessarily created. If there are sufficient revenues still available from the fund after its depletion for sinking fund or bond retirement purposes to meet the expenditures normally payable from the fund during the fiscal year, no overdraft will exist with respect to the fund at the end of the year and the amounts so used should not be taken into consideration in making tax levies or in estimating resources and balances. Neither the budget commission nor the Tax Commission on appeal, has any power to consider anything for rate making purposes or for making the certificate or amended certificate of estimated resources other than the estimated current needs for

the ensuing fiscal year and estimated balances at the end of the current year. Of course, both are necessarily estimates, and cannot be fixed with mathematical certainty.

I come now to a consideration of your fifth question which is whether or not funds which will become available during a fiscal year from a contractual obligation owing to a subdivision or taxing unit may be considered as being a process of collection, and included as a resource in the making of a certificate of estimated resources provided for by Section 5625-26, General Code, or an amended certificate of estimated resources by authority of Section 5625-27, General Code. As a matter of fact, many of the estimated available resources of a subdivision or taxing unit for an ensuing fiscal year are not actually in cash in the treasury of the subdivision or taxing unit at the end of the current year in which the estimate is made.

All the law requires as a basis for an estimate of available resources is that it is reasonably certain in the natural course of events that the resources as estimated will be available. This is true of taxes that are levied, as well as any other estimated resources. It is not necessary that the actual cash be on hand, to warrant a budget commission in certifying that resources are available for appropriation purposes, if it is reasonably certain that the resources as estimated will become available during the year.

In my opinion, a contractual obligation owing to a taxing subdivision or other taxing unit may be regarded as a "resource" for the purpose of making a certification or amended certification of available resources for the subdivision or taxing unit, if it is reasonably certain that the obligation will be met and funds arising therefrom will become available for use by the subdivision or taxing unit during the fiscal year for which the estimate is made.

In specific answer to your questions I am of the opinion:

1. No authority exists for the taxing authority of a subdivision or other taxing unit after adopting a budget as provided for by Section 5625-20, General Code, and submitting the same to the county auditor in pursuance of Section 5625-22, General Code, to file an amended or supplementary budget so far as the current needs of the subdivision or taxing unit for expenditures during the ensuing fiscal year are concerned so as to affect tax levies to be made to meet those needs, and it is not within the power of a county budget commission or the Tax Commission of Ohio on appeal, to consider any needs of the subdivision or other taxing unit in fixing or adjusting tax levies for the subdivision or other taxing unit other than those set out in the original budget as it was filed with the auditor in pursuance of Section 5625-22, General Code.

2. The tax levying authority of a subdivision or other taxing unit is not authorized by law to levy taxes at a rate greater than is necessary to provide the necessary funds for the estimated needs of the subdivision or taxing unit during an ensuing fiscal year and it is the duty of a county budget commission and a county auditor in performing their duties as prescribed by Section 5625-24 and Section 5625-25, General Code, to take this lack of authority into consideration.

3. It is the duty of the fiscal officer in each subdivision or other taxing unit to certify to the county auditor of the proper county on or before the first day of each fiscal year, the total amount from all sources available for expenditure from each fund set up in the tax budget of the subdivision or taxing unit, so that the actual balances that exist in each fund at the end of the preceding year will appear for the purpose of the making and certification of an amended certificate of estimated resources provided for by Section 5625-27, General Code, if in fact the actual balances and receipts in any such funds exceed the estimate originally certified by authority of Section 5625-26, General Code.

4. Where any fund of a subdivision or other taxing unit is overdrawn under such

circumstances that a legal obligation of the subdivision or taxing unit is created for which a judgment might be procured, and that circumstance exists, or it is reasonably certain that it will exist at the end of the current fiscal year, at the time of the adoption and the submission to the county auditor of the subdivision or other taxing unit of a tax budget as provided for by Sections 5625-20 and 5625-22, General Code, the said so-called overdraft if noted in the budget may be taken into consideration in the fixing and adjustment of tax levies for the subdivision or taxing unit.

5. A contractual obligation owing to a subdivision or other taxing unit, the existence of which on the first day of a fiscal year is reasonably certain to result in bringing the funds into the treasury of the subdivision or taxing unit during the fiscal year, may be taken into consideration for the purpose of the making and certification of an amended certificate of estimated resources authorized by Section 5625-27, General Code, and if the said obligation exists prior to or at the time of the making and certification of an original certificate of estimated resources as authorized by Section 5625-26, General Code, it may be taken into consideration for that purpose.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4044.

ROAD—CLASSIFICATION OF COUNTY AND TOWNSHIP ROADS BY COUNTY COMMISSIONERS MUST BE REASONABLE—QUESTION OF FACT.

SYLLABUS:

1. *The only limitation on the county commissioners in making a classification of improved county and township roads and all other improved roads within the county, except inter-county highways or main market roads which have been constructed and maintained by the state, under authority of Section 7249-2, General Code, is that such classification must be a reasonable one, which is a question of fact, and that such classification must be based on the nature of the road-bed, construction and other proper factors which are material, and that the lowest end of such scale of classification must not be less than five (5) tons for the weight of vehicle and load.*

2. *Assuming a reasonable classification has been made by the county commissioners relative to the weight of the motor vehicle and load on improved county and township roads and all other improved roads in the county except inter-county highways and main market roads which have been constructed and maintained by the state, a reasonable reduction in such classification may be made as provided in Section 7250, General Code, not to exceed fifty per cent, "as the condition of the road or highway would justify" when thaws or excessive moisture render the highways or any sections thereof insufficient to bear the traffic thereon or when such highways or any sections of them would be damaged or destroyed by heavy traffic during such period.*

3. *The authority to make a reasonable classification as provided in Section 7249, General Code, and to make a reasonable reduction, not to exceed fifty per cent, "as the condition of the road or highways would justify" when thaws or excessive moisture render the highways or any sections of them insufficient to bear the traffic or when the highways or any sections of them would be damaged or destroyed by heavy traffic*