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THE COUNTY AUDITOR WITH THE APPROVAL OF THE TAX APPEAL BOARD EMPLOY SUCH EMPLOYEES AS DEEMED NECESSARY AND ENTER INTO A CONTRACT WITH AN APPRAISED FIRM—THE COUNTY AUDITOR MAY NOT WRITE WARRANTS ON THE REAL ESTATE ASSESSMENT FUND “WITHOUT FIRST BEING APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS—§§5713.01, R.C., 1.02, R.C., 325.21, R.C., 5713.01, R.C.

SYLLABUS:

1. Under the provisions of Section 5713.01, Revised Code, the county auditor, with the approval of the board of tax appeals, may employ such employees as he deems necessary to the performance of his duties as assessor, and he may also enter into a contract with an appraisal firm to do part of the work, provided the duties of such employees and such appraisal firm do not overlap.

2. The county auditor may not write warrants on the “real estate assessment fund” provided for in Section 325.31, Revised Code, without such fund first being appropriated by the board of county commissioners.

Columbus, Ohio, June 29, 1962

Hon. Walter P. Davidson, Prosecuting Attorney
Washington County
512 Third Street, Marietta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would appreciate your opinion relative to the expenditure of county funds that are placed in the ‘real estate assessment fund’ under authority of Section 325.31, Revised Code.

“Our County Commissioners established the ‘real estate assessment fund’ under the provisions of the above mentioned section. The county has entered into a contract with an appraisal firm to reappraise all of the real estate in the county and this work is presently being performed. The contract called for installment payments to the firm and the county commissioners appropriated from the fund sufficient money to meet the payments. However, there is additional money in the fund which has not been appropriated but is being accumulated in order to pay the next six year reappraisal.

“The county auditor has employed additional clerical personnel whom he feels are needed to expedite the changes in the tax records brought about by the reappraisal. This personnel was not provided for in the auditor’s budget and in order to meet the additional expense the auditor desires to pay their salaries out of that portion of the ‘real estate assessment fund’ which has not been appropriated by the county commissioners.

“The salaries to be paid to the Auditor’s additional clerical help have not been approved by the County Commissioners as required by section 5713.01, Revised Code.

“The questions I would like your opinion on are:

- “1. Is the employment of additional clerical personnel to speed up the changes in tax records resulting from the six year reappraisal an expense contemplated by Section 5713.01 Revised Code when an appraisal firm has been employed to perform the reappraisal?
- “2. May the county auditor write warrants on the ‘real estate assessment fund’ for any purpose without it first being appropriated by the county commissioners?”

Section 5713.01, Revised Code, reads, in part, as follows:

“The auditor, with the approval of the board of tax appeals, may appoint and employ such experts, deputies, clerks, or other employees as he deems necessary to the performance of his duties as assessor; *or he may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work*; the amount to be expended in the payment of the compensation of such employees shall be fixed by the board of county commissioners. If in the opinion of the auditor, the board of county commissioners fails to provide a sufficient amount for the compensation of such employees, he may apply to the board of tax appeals for an additional allowance, and the additional amount of compensation allowed by such board shall be certified to the board of county commissioners, and the same shall be final. *The salaries and compensation of such experts, deputies, clerks and em-*

ployees shall be paid upon the warrant of the auditor out of the general fund of the county; and if the salaries and compensation are, in whole or in part fixed by the board of tax appeals they shall constitute a charge against the county regardless of the amount of money in the county treasury levied or appropriated for such purposes. (Emphasis added)

The language, "or he may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work"; was added to Section 5713.01, *supra*, by an amendment in 1957. 127, Ohio Laws, 65. By this amendment did the legislature intend that the auditor could, either employ additional clerical personnel or, in the alternative, contract with an appraisal firm, but that he could not do both of these things?

Obviously, it would be a duplication of effort and a waste of the taxpayers' money to employ additional clerical personnel and contract with an appraisal firm to do exactly the same work. You will note, however, that an appraisal firm may be engaged to perform "all or any part of the work." According to your request, an appraisal firm has been engaged to reappraise all of the real estate in the county. The act of physically reappraising the real estate, however, is only part of the auditor's duties as assessor. He must necessarily change the tax records brought about by the reappraisal which, according to your request, he has employed additional clerical personnel to do. The change of the tax records resulting from such reappraisal is, in my view, also part of the auditor's duties as assessor.

If the legislature had intended that the auditor should either employ additional personnel or contract with an appraisal firm but not do both, then it could have so provided in positive language. By providing that the auditor may contract with an appraisal firm to perform part of the work, it is at least implied that the auditor may employ additional personnel to perform the remaining part of the work. Furthermore, the legislature did not use positive language stating that both methods may be used. The only pertinent word used in the 1957 amendment is "or." In this regard, Section 1.02, Revised Code, provides:

"As used in the Revised Code, unless the context otherwise requires:

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"(H) 'And' may be read 'or,' and 'or' may be read 'and' if the sense requires it."

In answer to your first question, therefore, it is my opinion that the employment of additional clerical personnel to speed up the changes in the tax records resulting from the six year reappraisal is an expense contemplated by Section 5713.01, *supra*, when an appraisal firm has been engaged to perform the reappraisal, provided that the services of the appraisal firm are not required to change such tax records as part of the contractual duties of such firm to reappraise the real estate.

In regard to your second question, Section 325.31, Revised Code, provides as follows:

“On the first business day of each month, and at the end of his term of office, each officer named in section 325.27 of the Revised Code, shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances, and perquisites collected by his office during the preceding month or part thereof for official services, *except fifty per cent of the fees allowed the county auditor by division (A) of section 319.54, of the Revised Code, which shall be paid into the county treasury to the credit of the ‘real estate assessment fund’ hereby created. Moneys to the credit of the ‘real estate assessment fund’ may be expended upon appropriation by the board of county commissioners, only for the purpose of defraying the cost incurred by the county auditor in assessing real estate pursuant to the provisions of Chapter 5713 of the Revised Code.* None of such officers shall collect any fees from the county. Each of such officers shall, at the end of each calendar year, make and file a sworn statement with the board of county commissions of all such fees, costs, penalties, percentages, allowances, and perquisites which have been due in his office and unpaid for more than one year prior to the date such statement is required to be made.” (Emphasis added)

The language emphasized in Section 325.31, *supra*, was added by an amendment in 1959. 128 Ohio Laws, 542. This language clearly states that the real estate assessment fund may be expended “upon appropriation by the board of county commissioners.” Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. 50 Ohio Jurisprudence 2d, 149, Statutes, Section 174.

In answer to your second question, therefore, the county auditor may not write warrants on the “real estate assessment fund” without it first being appropriated by the board of county commissioners.

There is another reason, however, why the county auditor may not write warrants on the "real estate assessment fund" to pay the salaries of additional clerical personnel.

Section 5713.01, *supra*, provides as follows:

"* * * The salaries and compensation of such experts, deputies, clerks and employees *shall be paid* upon the warrant of the auditor *out of the general fund* of the county; * * *"

(Emphasis added)

There is no similar provision in Section 5713.01, *supra*, regarding the payment of an appraisal firm. Such a firm, therefore, may be paid out of the "real estate assessment fund," but additional clerical personnel must be paid out of the general fund. Payment of such personnel out of the general fund may be either pursuant to an appropriation by the board of county commissioners or pursuant to an order of the Board of Tax Appeals. See Opinion No. 584, Opinions of the Attorney General for 1937, Volume I, page 1005.

It is my opinion, therefore, and you are accordingly advised:

1. Under the provisions of Section 5713.01, Revised Code, the county auditor, with the approval of the board of tax appeals, may employ such employees as he deems necessary to the performance of his duties as assessor, and he may also enter into a contract with an appraisal firm to do part of the work, provided the duties of such employees and such appraisal firm do not overlap.

2. The county auditor may not write warrants on the "real estate assessment fund" provided for in Section 325.31, Revised Code, without such fund first being appropriated by the board of county commissioners.

Respectfully,

MARK McELROY

Attorney General