

objection whatever is seen to the execution of the new lease on the terms and conditions therein provided for. I am accordingly approving this lease form and am herewith returning the same to you for execution in the manner provided by law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

611.

POOR RELIEF BONDS—ALLOCATION OF FUNDS—PROVISION FOR RETIREMENT OF PRINCIPAL AND INTEREST—ENCUMBRANCE AND TRANSFER OF RELIEF FUNDS, WHEN.

SYLLABUS:

1. *Allocations received or to be received which have been pledged by the subdivision and upon which the Tax Commission of Ohio estimated and approved the issuance of bonds under authority of Amended Senate Bill No. 4 (114 O. L., Pt. 2, 17), or other Amending acts authorizing poor relief bonds, shall not be used for any other purpose until the poor relief bonds so authorized have been retired or a sum sufficient has been set aside for the retirement of both principal and interest of poor relief bonds.*

2. *The balances now existing in the "emergency poor relief fund" or the "county poor relief excise fund" which are the proceeds of the pledged allocations may not be transferred to the newly created "county relief fund" under Amended Substitute House Bill No. 65, for the reason that these moneys or funds are encumbered, and also all balances in the "county poor relief excise fund" and the "emergency poor relief fund" which are a part of the proceeds of the sale of the poor relief bonds not needed for poor relief may not be transferred to the newly created "county relief fund" for the reason that these proceeds were specifically required to be used for the retirement of poor relief bonds.*

3. *All allocations received after the effective date of Amended Substitute House Bill No. 65 shall be placed in the "county relief fund," subject, however, first to the retirement of the poor relief bonds, provided these allocations were the allocations pledged by the subdivision in the issuance of their poor relief bonds, and to give constitutional force and effect to this interpretation there must necessarily be set up a sep-*

arate special fund within the newly created "county relief fund" wherein the proceeds of pledged allocations shall be held in trust for the retirement of poor relief bonds.

COLUMBUS, OHIO, May 18, 1937.

HON. ALEXANDER L. HYZER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent request for my opinion, which reads as follows:

"May I have your opinion on the following statement of facts?

Sandusky County has issued relief bonds under Senate Bill No. 4, House Bill No. 7 and House Bill No. 501. The county has received sums of money from the State to retire these bonds, which money has been placed in a special fund of the county.

My understanding is that such money should be held in trust in a special fund of the county and applied solely to the payment of the principal of and the interest on the bonds issued under the various acts or if the money exceeds the amount required for such purpose, then the county may use the excess for poor relief purposes within the county.

How much of this money must be held in this special fund and can any of it be used for relief purposes?

It is my understanding that you have previously rendered an opinion on this question, but I do not have a copy in my office if you have. Please advise me at the earliest possible date, because if we cannot use this money, then it will be necessary for the county to issue bonds to care for poor relief."

Your question is of such state-wide importance at this time that I shall attempt to answer the same in such a broad opinion that further opinions on the subject will not be necessary.

To arrive at a definite understanding of the status of poor relief bonds, it will be well to start at the very beginning and make a study of each act authorizing the issuance of this type bond.

Amended Senate Bill No. 4, passed March 31, 1932, 114 O. L., Pt. 2, page 17, provides in Section 3 that whenever in the year of 1932 the county commissioners of any county find it necessary to issue bonds for poor relief within the county, they may adopt a resolution declaring such a necessity. This resolution then shall be submitted to the State Relief Commission and if the State Relief Commission finds that funds are

necessary for such relief, a sum shall be fixed by that Commission and if the Tax Commission of Ohio finds that no further means exist to provide such funds except by the issuing of bonds, then the county commissioners of such county may borrow money by the issuance of negotiable bonds or notes in the amount approved by the State Relief Commission and the Tax Commission. It is important to note that on the submission of such resolution to the Tax Commission that commission shall estimate the amount which will probably be allocated to such county under the provisions of Section 5 of this act and shall calculate the total amount of bonds, the principal of and interest on which can be paid out of such allocations and the Tax Commission shall not approve the issue of any amount of bonds of such county in excess of the total amount so calculated. Section 3 of this act further provides, among other recitals, that the maximum maturity of such bonds shall be on or before March 15, 1938, and that of the issuance, sale and characteristics of such bonds or notes shall conform to Article XII, Section 11 of the Constitution and to the provisions of the Uniform Bond Act governing the issuance, sale and characteristics of bonds or notes issued without a vote of the people except that such bonds shall mature in annual installments, the first maturity being in the year 1933 subsequent to February 15, 1933.

It is very important to note at this point that the language clearly states that the bond issue cannot exceed the estimated allocations calculated for the payment of principal of and interest on such issue. The language also clearly indicates that these estimated allocations are pledged for the primary purpose of retiring the issue.

Section 5 of this act then goes on to provide for allocation and the manner of allocation of the excise tax collection to the several counties.

Section 6, among other recitals, provides:

“Such moneys shall be held in trust in a special fund of the county and applied solely to the payment of the principal of and the interest on the bonds issued under Section 3 of this act, or if they exceed the amount required for such purposes to other poor relief purposes within the county as defined in this act, or if such moneys exceed the amount required for the aforesaid purposes the same shall be paid into the sinking fund of the county and used for the retirement of bonds of the county.”

This section further provides that the State Treasurer may, by resolution of the county commissioners, be appointed the paying agent of the county as to such bonds and in that case he shall retain such amount as may in his opinion be necessary to pay the principal of and

interest on the bonds of the county issued under Section 3 of this act, and then pay the balance, if any, to the treasurer of the respective county. This section, therefore, to my mind clearly sets forth three purposes for these estimated allocations when and as the same are forthcoming and I hereby set them forth in the order that they may be used:

First, in the payment of the principal of and the interest on the bonds issued under Section 3;

Second, any surplus to other poor relief purposes within the county as defined in this act; and

Third, any surplus not required for purposes one and two shall be paid into the sinking fund of the county and used for the retirement of bonds of the county.

A former Attorney General in 1932 in Opinions of the Attorney General for that year, Vol. II, page 784, ruled upon this question as held in the syllabus:

“1. Funds collected under the provisions of Section 4 of Amended Senate Bill No. 4, passed March 31, 1932, shall be allocated and paid to all the counties in the state in accordance with the method outlined in Section 5 of said act regardless of whether or not said counties have issued bonds for poor relief.

2. Moneys so paid to said counties shall be held in trust in a special fund of the county as provided in Section 6 of said act.

3. Money so allocated to a county which is not required for retirement of poor relief bonds may be used for the poor relief purposes as provided in Sections 2 and 9 of said act, and the balance, if any, shall be paid into the sinking fund of the county and used for the retirement of bonds of the county.”

I concur in this opinion although I believe that the question as to the amount of money needed to retire such relief bonds might be further elaborated upon for the sake of clarification. It is my opinion that when these allocations have been received—I mean the allocations upon which the authorization by the Tax Commission was estimated—that they must be held, first, for the retirement of the poor relief bonds. These funds may not be used for any other purpose until an amount has been secured and set aside that will be sufficient to retire the entire issue of poor relief bonds and interest thereon.

For the sake of example, let us suppose that in the year 1932 the county commissioners issued \$8,000 poor relief bonds under Section 3 of this act; that in the year 1934, \$1,000 of such bonds had been retired

and \$1,000 were maturing that year. If there were \$3,000 in this fund, of which only \$1,000 was needed for that year's retirement, a surplus of \$2,000 would be in existence. However, it is my opinion that no part of this \$2,000 could be used for any other purpose until this \$2,000 and additional allocations would be in a sum sufficient and set aside to retire the entire balance of the issue and the interest thereon or until every bond and interest thereon issued pledging these allocations had been paid in full. This reasoning is well founded in the act itself. These bonds were issued and the estimated allocations were pledged for their retirement and if an amount were received in any one year greater than the amount needed for that year's maturities and if this surplus or balance were allowed to be dissipated, it is reasonable to suppose that a condition might arise in some future year when the then forthcoming allocation might be insufficient to provide for the retirement of that year's maturities, so that in such an event a levy would be unjustly imposed upon the taxpayers. This levy might, for the sake of argument, be an increase of the subdivision's net indebtedness and might be in direct conflict and violation of the constitutional and statutory limitations.

Section 7 of this act further provides how additional bonds may be issued for poor relief purposes during the year 1932. It is interesting to note that these additional bonds issued under Section 7 of this act may be authorized by the county commissioners or council or other legislative body of any city. A limitation is placed on such issue to the extent that no bonds may be issued in excess of one-tenth of one per cent of the total tax list or duplicate of the subdivision and that the provisions and limitations of Sections 2293-14, relative to cities, and 2293-16, relative to counties, as modified by Section 2293-18, shall govern. The maximum maturity of such bonds shall be on or before September 15, 1940. In short, these additional bonds have all the characteristics and limitations of the usual unvoted bonds issued by counties or cities.

Senate Bill No. 63, passed February 14, 1933, 115 O. L. 29, amended Sections 3, 7, 8 and 9 of Amended Senate Bill No. 4 and for the purpose of our study relative to poor relief bonds, we may confine ourselves to merely Sections 3 and 7 of this act. Section 3 of this act, repealing Section 3 of Amended Senate Bill No. 4, did not alter the material provisions of the repealed section. The only outstanding amendment was that this new section extended the time during which said bonds could be issued from the year 1932 to the years 1933 and 1934, also the maximum maturity of such bonds was allowed to remain the same, March 15, 1938, with the exception that the first maturity was specified to be subsequent to February 15 in the year following that in which such bonds are issued. Section 7 of this act did not materially change Section 7 of Amended Senate Bill No. 4, except that it authorized the issu-

ance of these additional bonds in the years 1932, 1933 and 1934, and also set the maximum maturity of such bonds on or before September 15, 1942.

House Bill No. 7, passed August 23, 1933, 115 O. L., Pt. 2, page 30, amended Sections 1, 2, 5, and 7 of Amended Senate Bill No. 4 and Section 7 of Senate Bill No. 63. We will confine ourselves in the study of this act to Section 7 and the only material amendment made was a definition of the words "poor relief" in relation to a county and the definition of the words "poor relief" relative to a township and likewise a definition of the words "poor relief" relative to a municipal corporation. So that, at this point, Section 6 of Amended Senate Bill No. 4 still prevails and Section 3 of Senate Bill No. 63 still prevails and Section 7 of House Bill No. 7 are to be considered as the governing sections.

House Bill No. 7 further provides a tax to be levied on sales of cosmetics or toilet preparations and the purpose of this tax was to carry out the purposes and provisions of Amended Senate Bill No. 4. It likewise levied a tax on certain admission tickets to theaters, amusement parks, etc., and the other levies as set forth in Section 5544-2, General Code. The purpose for these additional levies was likewise to afford funds for carrying out the purposes and provisions of Amended Senate Bill No. 4.

House Bill No. 501, passed May 23, 1935, 116 O. L. 571, was a new act authorizing the issuance of poor relief bonds by counties and cities and the expenditure of public money for that purpose for the reason that the acts hereinabove cited did not extend in their authorization of bonds the year 1934.

Section 2 of this act is similar to Section 3 of Amended Senate Bill No. 4, inasmuch as it is the section that authorizes the issuance of poor relief bonds. This section provides that whenever in the years 1935 or 1936 the county commissioners may adopt a resolution finding it necessary to issue bonds for emergency poor relief in the county and if on submission to the Tax Commission of Ohio such commission finds that no further means exists to provide such funds except by the issuance of bonds, then the county commissioners may borrow money for such emergency poor relief purposes by the issuance of negotiable bonds in an amount approved by the Tax Commission of Ohio. The Tax Commission of Ohio, in consideration of the county commissioners' resolution, shall estimate the amount which will probably be allocated to such county from the public utility excise taxes and shall calculate the total amount of bonds the principal of and interest on which can be paid out of such estimated allocation. This section likewise provides that the Tax Commission's approval shall not exceed the total amount of the allocations so calculated. The maximum maturity of such bonds shall be on or

before March 1, 1944, and shall mature in annual installments. The maturities shall be fixed by the Tax Commission and shall be so arranged that the total amount of principal and interest payable at each maturity shall not exceed the amount of taxes anticipated by such bonds as are estimated to be allocated to such county and available for the payment of the principal and interest of such bonds at maturity; also that the issuance, sale and characteristics of said bonds or notes shall conform to Article XII, "Section 2" of the Constitution and to the provisions of the Uniform Bond Act relative to notes or bonds issued without a vote of the people. Here again is contained the limitation by the taxing authority to issue only an amount which will be retired by the estimated allocations and it is further noted that the maturities themselves must be so adjusted that the allocations received will be sufficient to retire each year's maturities.

Section 5 of this act provides in part that whenever in the years 1933 or 1936 the county commissioners find that the county has issued all the bonds which it is authorized to issue under the provisions of Section 2 of this act and the funds derived therefrom have been expended for poor relief indefinitely allocated for necessary poor relief expenditures, that additional bonds may be issued by the county commissioners of any county or the council or other legislative body of any city in an amount not exceeding in the aggregate one-fifth of one per cent of the general tax list and duplicate of such county or city. This indebtedness shall be subject to the provisions and limitations of Section 2293-14 as to cities, Section 2293-16, as to counties, as modified by Section 2293-18. The maximum maturity of such bonds shall be on or before October 1, 1945, and shall have all the characteristics and conform to the provisions of the Uniform Bond Act governing the characteristics of bonds issued without a vote of the people.

It is important to note under Section 6 of this act that any unencumbered balance resulting from the sale of such bonds, not needed for the purpose for which such fund is established, shall be transferred to the special fund for the retirement of any outstanding bonds or notes authorized under the provisions of this act and the same shall apply to cities as well as to counties.

Section 11 of this act further authorizes any county or other political subdivision, if it finds that it is unable to issue bonds under either Section 2 or 5 of this act by reason of the limitations imposed by Article XII, Section 2, of the Constitution, to submit the question for the issuance of such bonds to the electors of the subdivision either at a regular or special election.

It is therefore my opinion, briefly, that this act authorizes three separate procedures whereby poor relief bonds may be issued—first, by

issuing bonds specifically pledging and with the approval of the Tax Commission, the estimated allocations to be received from the public utility excise tax; second, when this first procedure has been exhausted, to issue bonds to the extent of one-fifth of one per cent of the total tax list and duplicate; and, third, when the first two procedures have been exhausted, to submit the question of issuing poor relief bonds to the electors of said subdivision so that a levy may be made outside the statutory and constitutional limitations.

Amended Senate Bill No. 377, passed December 5, 1935, 116 O. L. Pt. 2, 31, amended Section 4 of House Bill 501 and merely provided for a division of funds under the system of allocation, so that for our study of poor relief bonds this act is not material.

Amended Senate Bill 13, passed January 28, 1937, and approved by the Governor February 2, 1937, amended Sections 2, 5, 6, 7 and 9 of House Bill No. 501 in the following respects:

That it extended the time of authorization to issue bonds under Sections 2 and 5 from the years 1935 and 1936, to the years 1935, 1936 and 1937. Section 6 of the Amended Senate Bill No. 13 provided that the unencumbered balance resulting from the sale of such bonds, not needed for the purpose for which such fund is established, shall be transferred to the special fund for the retirement of any outstanding bonds or notes authorized under the provisions of this act.

At this point, it is my opinion that under the provisions of the hereinbefore cited acts, the allocations received and to be received upon which the Tax Commission of Ohio calculated the amount of bonds allowed to be issued, must be used, first, for the retirement of the outstanding bonds and interest thereon. This is not contrary to the intent or language of the various acts for the reason that the proceeds of the bonds were first used for relief purposes, and the allocations pledged to retire these bonds merely paid back or equalized the money expended for poor relief purposes. It is likewise my opinion that if there is a surplus left from the proceeds of the bonds themselves not needed for relief purposes, this surplus must be used for the retirement of the bonds and the interest thereon.

Amended Substitute House Bill No. 65, passed February 10, 1937, approved February 11, 1937, by the Governor, as an emergency measure, provided in Section 4 of said act:

“In order to qualify for, and be permitted to receive any advances, distributions or allocations herein provided, each county shall, upon the effective date of this act, transfer the *unexpended or unencumbered balance* of any moneys in its ‘emergency poor relief fund’ and in its ‘county poor relief ex-

cise fund,' to the within created 'county relief fund,' and, thereafter, all such moneys shall be used for poor relief according to the provisions of this act and not otherwise."

This paragraph, to my mind, means that the balance now on hand in the "emergency poor relief fund" or the "county poor relief excise fund" need not be transferred to this newly created "county relief fund," provided these moneys or funds *are the proceeds of the allocations upon which the Tax Commission of Ohio authorized the subdivision to issue the bonds and are the proceeds of the allocations pledged by the subdivision to retire the bonds.* I also feel that if there are any moneys or funds in the "emergency poor relief fund" or in the "county poor relief excise fund" that they need not be transferred to the newly created "county relief fund" provided that these moneys or funds *are the proceeds from the sale of such bonds not needed for poor relief,* for the reason that these proceeds from the sale of bonds not needed for poor relief purposes were, under Section 6 of House Bill No. 501, specifically required to be used for the retirement of the bonds and interest.

It is well to insert at this point that under Section 6 of Amended Senate Bill No. 4 and under Section 10 of House Bill No. 501, proceeds of pledged allocations or moneys to be used for bond retirement should have been held *in trust* in a *special fund* and these funds may not at any time be transferred to the newly created "county relief fund." In the event this procedure has not been carried out and some of these pledged allocations or moneys to be used for bond retirement have been carried or are now remaining in the "county poor relief excise fund" or the "emergency poor relief fund," then the disposition of these balances have been previously discussed.

The proceeds of bonds or notes issued under House Bill No. 501 subsequent to the enactment of Amended Substitute House Bill No. 65 must be placed in the "county relief fund" and also all allocations received from the distributive share of said excise tax in accordance with Section 4 of House Bill No. 501. This authorization is in accordance with the second paragraph of Section 4 of Amended Substitute House Bill No. 65:

"Such counties as hereafter issue bonds or notes under the provisions of Section 2 of House Bill No. 501, or which shall hereafter receive their annual distributive share of said excise tax in accordance with Section 4 of House Bill 501, passed May 23, 1935, and approved June 5, 1935, as amended by Amended Senate Bill No. 377, passed December 5, 1935, and shall, upon receipt of the moneys from the sale of such bonds or notes or

from the said tax, pay said moneys to the within created and defined 'county relief fund,' and the same shall be used according to the provisions of this act and not otherwise."

To summarize, it is therefore my opinion that the money now held in the "emergency poor relief fund" or in the "county poor relief excise fund," which money is pledged by reason that the allocations upon which the Tax Commission of Ohio authorized the subdivisions to issue poor relief bonds, is encumbered and may not be transferred to the newly created "county relief fund" and also that part of the proceeds from the sale of bonds authorized under House Bill No. 501 which were not needed for poor relief purposes is likewise encumbered by reason that Section 6 of House Bill No. 501 provided that these surplus proceeds should be applied to the retirement of the bonds. It is all reasonable to suppose that in the very near future these moneys will be used completely for the retirement of the poor relief bonds and that these two specified funds shall cease to exist. All allocations received after the effective date of Amended Substitute House Bill No. 65 shall be placed in the newly created "county relief fund," subject, however, first to the retirement of the principal and interest of poor relief bonds, provided these allocations are the allocations upon which the Tax Commission of Ohio estimated and authorized the subdivision to issue the bonds and are the allocations which were pledged by the subdivision for the retirement of the bonds.

If the language of the second paragraph of Section 4 of Amended Substitute House Bill No. 65 is interpreted to mean that the special fund for bond retirement is to be abolished and closed to future pledged allocations, then to give force and effect to such interpretation so that the same may be in line with the provisions of Section 6 of Amended Senate Bill No. 4 and Section 10 of House Bill No. 501 and the provisions of the Uniform Bond Act, there must necessarily be set up a separate special fund within the newly created "county relief fund" wherein the proceeds of pledged allocations shall be held in trust for the retirement of poor relief bonds.

Appropriations for relief purposes made by the State of Ohio and the proceeds of poor relief bonds after the effective date of Amended Substitute House Bill No. 65 are not material and pertinent to the question herein discussed.

It is therefore my opinion in answer to your specific question that the balance of allocations received and future allocations to be received which were pledged for the retirement of poor relief bonds cannot be used for any other purpose or purposes until the poor relief bonds have been paid in full or a sum sufficient has been secured and set aside for the

retirement of both principal and interest of said poor relief bonds. If your county is unable to carry on poor relief because these allocations are encumbered or that sufficient state appropriations have not been received, it will therefore be necessary to issue additional bonds under the provisions of Section 5 of Amended Senate Bill No. 13 or Section 11 of House Bill No. 501.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

612.

APPROVAL—BONDS OF PERRY TOWNSHIP RURAL SCHOOL
DISTRICT, SHELBY COUNTY, OHIO, \$25,000.00.

COLUMBUS, OHIO, May 18, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Perry Township Rural School Dist., Shelby
County, Ohio, \$25,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of school building bonds in the aggregate amount of \$35,000, dated December 14, 1921, bearing interest at the rate of 6% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.