

The only authority to renew anticipatory notes is found in section 2293-29, General Code, which provides in part as follows:

"When bonds are authorized to pay notes issued in anticipation thereof and are so advertised and still remain unsold at private sale after a period of ten days, the taxing authority of the subdivision may with the consent of the holder or holders thereof, renew any or all of such notes with interest at not to exceed six per cent per annum, for not to exceed two years, or the holder or holders of such notes may exchange said notes with interest thereon for said bonds at not less than their par value and accrued interest. * * *"

This section authorizing the issuance of renewal notes, under the conditions set forth therein, does not limit the rate of interest which the renewal notes shall bear to that borne by the notes renewed, and, consequently, such renewal notes may bear a higher rate of interest than that borne by the original notes. This same conclusion was reached, as to refunding bonds, in Opinions of the Attorney General for 1932, Vol. I, page 139.

Answering your questions, therefore, I am of the opinion that:

1. Where a board of county commissioners has issued and sold notes in anticipation of a bond issue and fails to provide for the issuance of such bonds when the notes mature, such board has no authority to issue renewal notes or to extend the time of payment of the original notes by agreeing to pay a higher rate of interest than that specified in such notes. However, if such notes are not paid upon presentation at maturity, they continue to bear interest at the rate specified therein until they are paid.

2. Where such county commissioners have paid a higher rate of interest than that specified in such notes, either in the extension of the time of payment thereof or in the issuance of renewal notes bearing a higher rate of interest, such increase may be recovered from the persons to whom it was paid, upon a finding by the Bureau of Inspection and Supervision of Public Offices.

3. Where bonds are authorized to pay notes issued in anticipation thereof and are advertised for sale as required by law and still remain unsold at private sale after a period of ten days, and such notes are then renewed, the renewal notes may bear a higher rate of interest than that borne by the notes renewed, not, however, exceeding six per cent per annum.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2314.

CIGARETTE TAX—DISTRIBUTION OF PROCEEDS THEREOF TO
TAX COMMISSION—EQUALIZATION FUND—PUBLIC SCHOOL
FUND AND STATE WELFARE INSTITUTIONS.

COLUMBUS, OHIO, February 24, 1934.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

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

"Under Sec. 5894-2b as enacted by the 90th General Assembly of Ohio, July 1, 1933, all moneys received into the state treasury from the excise tax on the sale of cigarettes are appropriated to the public school fund.

"Said section is as follows:

'Sec. 4. All moneys received into the state treasury from the excise tax on sales of cigarettes during the period commencing on January 1, 1934, and ending on December 31, 1935, are hereby appropriated to the public school fund.'

"Under Sec. 2 of Senate Bill No. 25 passed by the 90th General Assembly of Ohio, August 29, 1933, and relative to the boards of education borrowing money and issuing notes, it is provided as follows:

'Sec. 2. The entire collection of tax levied under the authority of Section 5894-2 of the General Code for the year 1934 and credited to the "educational equalization fund" shall be the security for the redemption of all notes issued after July 1, 1933, under the authority of and subject to the provisions of Amended Senate Bill No. 412 together with the accrued interest on such obligation, provided, however, that any revenues remaining in said equalization fund from the collection of the tax levied under Section 5894-2 of the General Code for the year 1934 and credited to said fund after such notes have been paid shall become immediately available to defray the current costs of operating schools in those districts participating in the educational equalization fund.'

"Therefore, this department respectfully submits the question for your opinion as to the proper credit of such moneys received into the State Treasury from the excise tax on the sale of cigarettes whether such receipts shall be credited to the Public School Fund or to the Educational Equalization Fund."

Section 5894-2b, General Code, quoted in your letter, was enacted as Section 4 of House Bill No. 323 of the 90th General Assembly. This act was passed July 1, 1933 and became effective upon its approval by the Governor, on July 14, 1933.

In the same act, House Bill No. 323, Section 5894-2, General Code, was amended. This section had formerly provided for the levying and imposing of an excise tax on the sale of cigarettes during the years 1931, 1932 and 1933 "for the purposes of affording the advantages of a free education to all the youth of the state and providing an educational equalization fund therefor" and for the further purpose of "providing revenue for the building program of the state welfare institutions" (114 O. L. 805). As amended, the levying and imposing of the tax was extended to cover the years 1934 and 1935 and that part of the purpose of the tax which had formerly been limited to the providing of revenues for the "building program of the state welfare institutions" was changed to read "and of providing revenue for the state welfare institutions."

Section 5894-11, General Code, which was enacted in 1931 as a part of the original act levying and imposing an excise tax on cigarettes (114 O. L. 805) was not expressly repealed upon the enactment of said House Bill No. 323. Said Section 5894-11, General Code, reads as follows:

"The moneys received into the state treasury under the provisions of this act shall be credited to the cigarette tax fund. The general assembly may make appropriations therefrom for the purpose of paying the expenses of administering this act, for the purpose of administering the state educational equalization fund, for the purpose of affording the advantages of a free education to all the youth of the state and for the purpose of constructing, reconstructing and repairing buildings at the institutions administered by the department of welfare or acquiring land for such institutions; and said fund shall not be appropriated for any other purpose."

On the same day that said House Bill No. 323 was enacted, July 1, 1933, Amended Senate Bill No. 412 was enacted as an emergency measure (115 O. L. 540). It became effective upon the approval of the Governor, which approval took place on July 13, 1933. Sections 1, 2, 4 and 9 of this act, read as follows:

"Sec. 1. The director of education shall, within five days after this act goes into effect, calculate the amount which each school district is entitled to receive under the law from the state educational equalization fund and which amount has accrued to June 30, 1933, and is owing to such school district for personal service and maintenance items under the laws, regulations, formulae, and schedules provided in the General Code of Ohio for state aid districts. The director of education shall forthwith upon determining the amounts due to each state aid school district certify the same to the board of education."

"Sec. 2. In anticipation of the payment of the amount so certified, the board of education of any school district entitled to any part of such appropriation may borrow money not in excess of the amount so certified, and issue from time to time notes of the school district therefor."

"Sec. 4. Such notes shall be payable on or before July 1, 1934, shall bear interest from their date at a rate not exceeding five (5%) per cent per annum, interest to be payable when notes are paid, shall be signed by the president and clerk of the board of education, and shall recite on their face that they are issued in pursuance to this act and the resolution authorizing the same.

"Sec. 9. There is hereby appropriated out of any monies now or hereafter in the state educational equalization fund such sums as shall be necessary for the payment of the principal and interest of the notes herein authorized. Provided that the total amounts of payments of state aid out of the educational equalization fund under laws heretofore in effect shall be diminished to the extent of the payments out of the educational equalization fund made under the provisions of this act; and that there shall be no payments or transfers to the educational equalization fund from the general revenue fund for the purpose of providing the amounts of money paid under this act."

At the first special session of the 90th General Assembly, August 29, 1933, the legislature enacted Senate Bill No. 25 as an emergency measure

effective upon the approval of the Governor, September 5, 1933. By the terms of Section 1 of this act, Section 4 of Amended Senate Bill No. 412, *supra*, was amended to read as follows:

“Such notes shall be payable on or before January 1, 1935, shall bear interest at a rate not exceeding five (5%) per cent per annum, interest to be payable when notes are paid, shall be signed by the president and clerk of the board of education and shall recite on their face that they are issued in pursuance to this act and the resolution authorizing the same. This act shall apply to all notes issued, under the authority of Amended Senate Bill No. 412 on and after July 1, 1933, and the interest due and payable on each note shall be computed at the rate of five (5%) per cent from the date such note was issued and signed by the president and clerk of the board of education of the school district issuing such note until such time as said note is redeemed and paid provided that all notes so issued, together with the interest due, shall be redeemed prior to January 1, 1935.”

Section 2 of Senate Bill No. 25 provided as stated in your letter.

At the time of the enactment of the measures referred to above, a “state educational equalization fund” was provided for by Section 7595, General Code. This section had been in force for a number of years and still is in force, having been last amended in 1929 (113 O. L. 259). It reads as follows:

“There shall be a state educational equalization fund for the equalization of educational advantages throughout the state. To this fund shall be credited by the auditor of state any funds appropriated thereto by the General Assembly. The state educational equalization fund shall be administered by the director of education, subject to the restrictions of law.”

The “State Educational Equalization Fund” created by the terms of the above statute is the fund from which, as appropriations had been made from time to time for the purpose, the extension of what is commonly termed “state aid to weak school districts” had been afforded. Sections 7595-1, 7696, 7596-1 and 7596-2, General Code, contain more or less explicit directions as to how the fund should be administered by the Director of Education.

In the act of the 90th General Assembly, providing for partial appropriations for the biennium beginning January 1, 1933 (Amended House Bill No. 21, enacted January 19, 1933) there was appropriated to the “Department of Education—Educational Equalization and Rehabilitation” in addition to \$6,060.00 for personal service and \$2,200.00 for maintenance, the sum of \$1,445,500.00 for “H-8-Contributions.” It was the funds appropriated under this latter classification in former appropriation measures from which state aid to weak school districts had been extended. This item of appropriation did not specifically designate that the appropriation was made from the cigarette tax fund created and existing by virtue of Section 5894-2 and 5894-11, General Code, then in force. Section 1 of this partial appropriation bill provided, however, *inter alia*:

"Appropriations for departments, institutions, offices and other agencies and bodies, for the uses and purposes of which, or of any activity or function thereof, specific funds in the state treasury are provided by law, are hereby made from such funds, in so far as such specific funds are subject by law to appropriation and expenditure for the purpose herein mentioned, and to the extent that the moneys to the credit of such specific funds on the day when this act shall take effect, or which may be credited thereto during the period covered by this act, shall be sufficient to satisfy such appropriations. Unless otherwise provided by law, any sums necessary to supply the balance of such appropriations are hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund not otherwise appropriated."

Inasmuch as the funds of the state treasury, credited to the cigarette tax fund at the time of the enactment of the partial appropriation act and those which were credited to that fund during the life of the said act were "subject to appropriation and expenditure" for the purpose apparently contemplated to be within the purposes of the "Educational Equalization and Rehabilitation H-8-Contributions," this appropriation must be regarded as having been made from that fund in so far as it was available, and the balance of the appropriation must be regarded as having been made from the general revenue fund in so far as that fund was not otherwise appropriated.

There was no appropriation made in the partial appropriation bill for a building program of state welfare institutions. All the cigarette tax fund therefore that was in the treasury on January 19, 1933, and those taxes that came into the treasury during the life of this appropriation should have been credited to the appropriation after the appropriation therefrom made to the Tax Commission and hereinafter referred to, was satisfied.

On the same day that House Bill No. 323 and Amended Senate Bill No. 412 of the 90th General Assembly were enacted, July 1, 1933, a general appropriation bill (House Bill No. 699) was passed. It became effective upon approval of the Governor, July 7, 1933. In this act no appropriation was made to the "Department of Education—Division of Educational Equalization and Rehabilitation" except for administrative purposes. Under this head, classification "H-8-Contributions" the only provisions is "(See Executive Budget)." See page 111 of this appropriation act. Just what was meant by this is somewhat problematical. It at least did not amount to a specific appropriation of a specific sum of money. Section 1 of this General Appropriation Act contained a clause precisely like that in Section 1 of the partial appropriation act which is quoted above.

Section 11 of the General Appropriation Act provided as follows:

"Section 1 of the act passed and approved entitled 'An Act to make partial appropriations for the biennium beginning January 1, 1933, and ending December 31, 1934' is hereby repealed, such repeal to be effective as to each appropriation thereby made immediately upon the taking effect of any appropriation for the same purpose made in this act.

From and after the effective date of this act authority to expend all appropriations contained in the act named in this section for purposes for which no appropriation is made in this act shall cease; but

the repeal hereby made shall be subject to the payment of all liabilities lawfully incurred under authority of such appropriation and shall not take effect so as to lapse the same into the funds from which they were appropriated until all such liabilities are paid and discharged."

The section of the General Appropriation Act last quoted above, serves to save intact for the redemption of notes issued by authority of Amended Senate Bill No. 412, so much of the appropriation of \$1,445,500.00 made in the partial appropriation bill to "Educational Equalization and Rehabilitation—H-8-Contributions" as was not used and distributed for state aid purposes pursuant to Section 7595 et seq. of the General Code, if in fact any part of the appropriation had been so distributed.

Inasmuch as no appropriation was made in the partial appropriation bill for a "building program" for the Department of Public Welfare, all the revenues arising from the proceeds of the cigarette tax until the effective date of House Bill 323 should be credited to the appropriation to "Department of Education—Educational Equalization and Rehabilitation" as contained in said act, after an appropriation of \$53,980.00 to the "Department of Finance—Tax Commission—Division of Cigarette Tax" is satisfied. This latter appropriation was specifically made from the cigarette excise tax fund. See page 14 of the 1933 partial appropriation act. If these moneys were insufficient to meet the appropriation to the educational equalization and rehabilitation fund referred to above, the balance of the appropriation should be met from the general revenue fund not otherwise appropriated, as provided by the express terms of the act. It will be noted that the authority to issue the notes referred to in Senate Bill No. 25 of the first special session of the 90th General Assembly, is contained in Sections 1, 2 and 3 of Amended Senate Bill No. 412 of the regular session. These sections have not been amended and they contain the only authority for the issuance of the notes, so far as their redemption from the appropriation made in the partial appropriation act referred to above, is concerned, and until legislation relating to the same subject enacted at the third special session of the 90th General Assembly becomes effective. The said Senate Bill No. 25 in no wise extends the authority to issue such notes although it purports to deal with the security for the redemption of the notes and assumes that some of these notes will be issued after July 1, 1933.

The only notes that may be issued by a board of education by authority of said Amended Senate Bill No. 412 and paid from the appropriation referred to, are those for amounts which the Director of Education calculated the school district would have been entitled to under the provisions of Sections 7595 et seq. of the General Code, from the appropriation for educational equalization purposes prior to June 30, 1933, and for which funds had not then been available to meet the appropriation. The total amount of all notes so issued obviously can not exceed the amount of the appropriation. Section 2 of Senate Bill No. 25 does not serve to change this, as there are no funds arising from the proceeds of the cigarette tax credited to the educational equalization fund except those covered by the appropriation named. At least not until further legislation is had on the subject. It should be noted that no authority ever existed to credit the state educational equalization fund with any moneys except as they had been specifically appropriated to the fund. This is manifest from the provisions of Sections 5894-11 and 7595, General Code, which are quoted above.

After the effective date of Section 5894-2b, General Code, as enacted in said House Bill No. 323, the right to credit the proceeds of the cigarette tax which accrued prior to that date to an appropriation for state educational equalization purposes, even if such an appropriation were in existence, no longer prevailed, as this statute expressly appropriated all such funds to "the public school fund." "The public school fund" is a fund created by Section 5542-18, General Code, enacted in Amended Substitute Senate Bill No. 354 of the 90th General Assembly (115 O. L. 631). This act entitled "An Act providing for the levy and collection of a tax on the use, distribution or sale of liquid fuel within this state", was passed on the same day that Senate Bill No. 323 was passed, to wit, July 1, 1933. Said Section 5542-18, General Code, as enacted therein, after providing for a Rotary Fund of \$15,000.00 from the proceeds of the said tax, provided further: "The balance collected under the provisions of this act, after the credits to said Rotary Fund, shall be placed in 'The public school fund' hereby created."

There can be no question concerning the intent of the legislature in enacting Section 5894-2b, General Code, and thereby appropriating the proceeds of the cigarette taxes to the public school fund. The language of the statute is clear and unambiguous and regardless of any veiled intent that the legislature may have had, if any, or of what it meant to say, the only proper construction of the statute is that it means what its plain language imports. It is a settled rule of construction of statutes that the intention of the legislature, which of course is the guiding principle in all statutory construction, is to be gathered from what the legislature said and not from what it meant to say, and that where the language of a statute is plain and unambiguous no occasion for construction or interpretation arises. *Slinghuff vs. Weaver*, 66 O. S. 621; *State ex rel. Forney*, 108 O. S. 463, 466; *Stanton vs. Realty Company*, 117 O. S. 345, 349.

The "State Educational Equalization Fund" which is the security behind the notes issued by authority of Amended Senate Bill No. 412, and referred to in Senate Bill No. 25, of the first special session of the 90th General Assembly, and "The Public School Fund" created by Amended Senate Bill No. 354 of the regular session of the 90th General Assembly are two separate and distinct funds. Manifestly, the legislature knew that fact. The public school fund was created the same day that Section 5894-2b, General Code, was enacted, by the same legislature that passed both pieces of legislation. The mere fact that the act creating the Public School Fund did not become effective until a later date than the effective date of Section 5894-2b, General Code, makes no difference. It is well recognized that acts of the legislature become effective for some purposes immediately upon their passage although they may not go into full force until later. *State ex rel. vs. Moore*, 124 O. S. 256, 258; *Fosdick vs. Village of Perrysburg*, 14 O. S. 472. There can be no doubt but that the legislature made the provision in House Bill No. 323 appropriating the proceeds of the cigarette tax to the public school fund advisedly, having in mind the provisions of Amended Senate Bill No. 354 creating the said fund both of which acts were passed on the same day. There are a number of references to the public school fund in the General Appropriation Act, which was also passed on the same day that both House Bill No. 323 and Amended Substitute Senate Bill No. 354 were passed.

In any determination concerning the proper credit of the proceeds of the cigarette excise tax, consideration must be given to the fact that in the partial appropriation bill of the 90th General Assembly (Amended House Bill No. 21) effective January 19, 1933, there was appropriated from the cigarette

tax fund the sum of \$53,980.00 to the "Department of Finance—Tax Commission— Division of Cigarette Tax." Also to the fact that in the General Appropriation Act of the 90th General Assembly (House Bill No. 699) effective July 7, 1933, there was appropriated from the cigarette excise tax fund the sum of \$183,200.00 to the "Department of Finance—Tax Commission— Division of Cigarette Tax."

In the light of the foregoing discussion, I am of the opinion that:

(1) The proceeds of the excise tax on sales of cigarettes as levied and imposed by Section 5892, General Code, which accrued prior to July 7, 1933, the effective date of the General Appropriation Act of the 90th General Assembly (House Bill No. 699) should be credited first, to the extent of \$53,980.00 to the appropriation as contained in the partial appropriation bill of the 90th General Assembly (Amended House Bill No. 21) designated as "Department of Finance—Tax Commission—Division of Cigarette Tax," and the balance to the appropriation made in said partial appropriation bill designated as "Department of Education—Educational Equalization and Rehabilitation."

(2) The proceeds of the said excise tax on the sale of cigarettes which accrued after the effective date of the General Appropriation Bill, July 7, 1933 and prior to the effective date of Section 5894-2b, General Code, as enacted in House Bill No. 323 of the 90th General Assembly, should be credited first, to the extent of \$183,200.00 to the appropriation as contained in said General Appropriation Act designated "Department of Finance—Tax Commission—Division of Cigarette Tax" and the remainder, if any, to the appropriations as contained in the said act to the State Welfare Institutions.

(3) The proceeds of the said excise tax on the sale of cigarettes accruing after the effective date of Section 5894-2b, General Code, as contained in House Bill No. 323 of the 90th General Assembly, should be credited to the "Public School Fund" provided for in Substitute Senate Bill No. 354, of the 90th General Assembly, until such time as subsequent legislation may provide otherwise.

(4) The notes issued by a board of education by authority of Amended Senate Bill No. 412 of the 90th General Assembly, and referred to in Senate Bill No. 25 of the first special session of the 90th General Assembly, may be issued for such amounts only, within the limits of the appropriation made in the partial appropriation act of the 90th General Assembly (Amended Senate Bill No. 21) to the "Department of Education—Educational Rehabilitation—H-8-Contributions", that the Director of Education calculated the school district was entitled to receive from the educational equalization fund and which accrued prior to June 30, 1933.

(5) The aggregate amount of all such notes, together with any amounts distributed from the 1933 appropriation to school districts pursuant to Sections 7595 et seq. of the General Code, including all amounts for which encumbrance certificates had been issued whether actual payments had been made or not prior to July 7, 1933, the effective date of the 1933 General Appropriation Act (House Bill No. 699) may not exceed the sum of \$1,445,500.00, the amount appropriated in the 1933 partial appropriation act (Amended Senate Bill No. 21) to "Department of Education—Educational Rehabilitation—H-8-Contributions".

Respectfully,

JOHN W. BRICKER,

Attorney General.