

1351.

FIREMEN'S PENSION FUND—PENSIONS PROVIDED BY BOARD OF TRUSTEES FOR FIREMEN'S DEPENDENTS PAYABLE FROM TAX LEVY UNDER SECTION 4605, GENERAL CODE.

SYLLABUS:

When the board of trustees of a firemen's pension fund has by rule provided for the payment of pensions to the widows, minor children, or other dependents of deceased members of the fire department, said pensions may be legally paid from the proceeds of the tax levy authorized under Section 4605, General Code.

COLUMBUS, OHIO, December 31, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication which reads:

"The pertinent part of Sec. 4605 G. C., as amended 113 O. L., page 63 reads:

'In each municipality availing itself of these provisions, to maintain the firemen's pension fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, shall levy tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in such municipality, but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to firemen under existing laws.'

Section 4612 G. C., as amended 113 O. L., page 64, reads:

'Such trustees shall make all rules and regulations for the distribution of the fund, including the qualifications of those to whom any portion of it shall be paid and the amount thereof, but no rules or regulations shall be in force until approved by a majority of the board of trustees.'

Question 1. When the board of trustees of the Firemen's Pension Fund have, by a rule, provided for the payment of pensions to the widows and minor children of deceased members of the Fire Department, may such pensions be legally paid from the proceeds of the tax levy authorized by Section 4605 G. C.?

Question 2. When the trustees of the Firemen's Pension Fund have provided for the payment of pensions to the dependents of deceased members of the Fire Department, may such pensions legally be paid from the proceeds of the tax levy authorized by Section 4605 G. C.?"

Section 4605, General Code, quoted in your communication, as amended by the 88th General Assembly, expressly requires the council to levy in addition to all other levies but not to exceed three-tenths of a mill, etc., to provide funds for the payment of all pensions granted to firemen under existing laws.

Section 4612, General Code, which you quote, as amended by the 88th General Assembly, expressly authorizes the trustees to make rules and regulations for the disbursement of the fund and to prescribe the qualifications of those to whom any portion of it shall be paid, etc.

The question your inquiry presents is, of course, whether the term "fund" referred to in Section 4612 has reference to the fund which is provided for by the levy authorized in Section 4605.

Sections 4605 and 4612, to which you refer, were amended by the 88th General

Assembly, but the only changes were that the new act makes the levy required by Section 4605 mandatory, whereas, before amendment, it apparently was a discretionary matter and the amendment to Section 4612 provides that the rules and regulations for the distribution of the fund shall be approved by a majority of the board of trustees whereas the section before amendment provided that the rules and regulations should be approved by the Director of Public Safety or the fire chief of the municipality.

It therefore clearly appears that, in so far as your question is concerned, the constructions placed upon the former sections will have application.

In an opinion of the Attorney General, found in the Reports of the Attorney General for the year 1914, page 919, it was held, as disclosed by the syllabus, that:

“The trustees of the firemen’s pension fund may adopt a resolution which will make it possible for the widow of one who has been a beneficiary of the fund to participate as a beneficiary on the ground that under Section 4612, General Code, the trustees are authorized to make rules and regulations for the distribution of the fund, including the qualifications of those to whom any portion of it shall be paid, and the amount thereof.”

In said opinion the Attorney General considered Sections 4600, 4603, 4605, 4608, 4609 and 4612, General Code.

If the Attorney General was correct in his conclusion, it is believed that the same is dispositive of your inquiries for the reason that the amendments to said sections have in no wise changed the rule insofar as your questions are concerned.

Upon consideration I concur in the conclusion of my predecessor and you are accordingly advised that when the board of trustees of a firemen’s pension fund has by rule provided for the payment of pensions to the widows, minor children, or other dependents of deceased members of the fire department, said pensions may be legally paid from the proceeds of the tax levy authorized under Section 4605, General Code.

It is believed that the foregoing is dispositive of both inquiries submitted.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1352.

DISAPPROVAL, BONDS OF ROME TOWNSHIP RURAL SCHOOL DISTRICT, LAWRENCE COUNTY—\$1,500.00.

COLUMBUS, OHIO, December 31, 1929.

Re: Bonds of Rome Township Rural School Dist., Lawrence County, Ohio—\$1,500.00.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—The transcript relative to the above issue of bonds discloses that these bonds are being issued for the construction of a non-fireproof school building and for the purpose of furnishing this building. The bonds appear to have been authorized by resolution of the board of education at the time of the authorization of notes on November 13, 1928, without a vote of the people. The certificate of the clerk of the board as to the financial status of the district states that the value of all real and personal property of the district set out on the tax duplicate thereof for the