

Note from the Attorney General's Office:

1966 Op. Att'y Gen. No. 66-170 was overruled by
1991 Op. Att'y Gen. No. 91-008.

intended to transfer funds from some other account to the salary appropriation.

"* * * the question is does the Soldiers' Relief Commission have authority to make a transfer from one fund to the other by merely writing a letter to the county auditor rather than requesting the County Commissioners to authorize such a transfer from one fund to the other.

"* * * * * * * *"

In essence you ask whether or not the soldiers' relief commission, on their own, may transfer amounts from one item of the fund appropriated for their operation and maintenance to another item in the same fund.

Section 5705.38, Revised Code, to which you refer provides in part:

"* * * Appropriation measures shall be classified so as to separately set forth the amounts appropriated for each office, department, and division, and within each, the amount appropriated for personal services; * * *"

This statute was discussed in Opinion No. 3435, Opinions of the Attorney General for 1948, page 348, to which you refer in your question. In the course of that opinion it was said:

"Your first question as to the form of the appropriation by the county commissioners, appears to be answered quite definitely by Section 5625-29, General Code, (Section 5705.38, Revised Code) from which you have quoted. Compliance with its provisions would require that in making the appropriation for the work of the Soldiers' Relief Commission, the amount appropriated should be divided as stated in the statute. This would appear to involve an item for relief proper, one for the compensation of the investigators and clerks, one for the compensation of the service director and his assistants, one for the compensation allowed the commissioners, and a further item for miscellaneous expenses."

The county commissioners' authority to itemize the funds allocated in an appropriation to the soldiers' relief commission is provided for in this section, and I find no authority in the Ohio Revised Code empowering the soldiers' relief commission, on their own initiative, to supplement, amend, or transfer funds from one itemized amount in an appropriation to another itemized amount in the same appropriation.

The procedure for such amending, supplementing, or transferring is set out in Section 5705.40, Revised Code. This section reads in part:

"Any appropriation ordinance or measure

may be amended or supplemented, provided that such amendment or supplement shall comply with all provisions of law governing the taxing authority in making an original appropriation, and provided that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation. Transfers may be made by resolution or ordinance from one appropriation item to another.* * *"

"Taxing authority" as defined by Section 5705.01, Revised Code, is as follows:

* * * * *

"(C) 'Taxing authority' or 'bond issuing authority' means, in the case of any county, the board of county commissioners; * * *

* * * * *

Thus by statute it is the county commissioners who are authorized to transfer funds from one item of an appropriation to another item of the same appropriation. This was emphasized in Opinion No. 1554, Opinions of the Attorney General for 1950, page 148, wherein the syllabus reads as follows:

"County commissioners, in their discretion, may transfer appropriated funds from one item of an appropriated fund to another item in the same fund if such transfer violates no laws which govern the taxing authority in making an original appropriation and does not reduce the item from which such transfer is made below an amount sufficient to cover all unliquidated contracts or obligations certified from or against such item."

It must be pointed out at this point that nothing prevents the soldiers' relief commission from setting the compensation of their authorized employees. The Ohio Revised Code expressly grants this power (see Sections 5901.06, 5901.07, Revised Code). The Ohio Revised Code further provides for the soldiers' relief commission to determine the amount required for its maintenance and operation, then to certify such to the county commissioners. The county commissioners are required by statute to appropriate the amount requested unless the total amount exceeds the limits set by the statute (Section 5901.11, Revised Code).

However, Section 5705.38, supra, requires the county commissioners to set forth the amounts appropriated for each office and division under the control of the soldiers' relief commission, and within each, the amount appropriated for personal service. It is clear that after the appropriation has been effected and the funds allocated, the disbursal of the funds within each itemized amount is completely within the discretion of the soldiers' relief commission, but there is no authority which would permit the soldiers' relief commission to effect transfers between itemized allocations in the fund appropriated for their operation and maintenance. Indeed, if such a practice was

sanctioned, nothing would prevent the soldiers' relief commission from transferring funds allocated by the county commissioners for the compensation of commission investigators and clerks to the itemized amount allocated for the compensation of the commission members themselves. Obviously such a procedure is not authorized by the Legislature. The soldiers' relief commission must establish compensation rates within the aggregate amount allocated and itemized by the county commissioners for such purposes.

In summary, therefore, it is my opinion and you are advised:

The soldiers' relief commission, on its own initiative, has no authority to transfer funds from one item of the fund appropriated for operation and maintenance of the commission to another item in the same appropriation.