

1138

UNDIVIDED CLASSIFIED PROPERTY TAXES—BUDGET COMMISSION OF ANY COUNTY—MAY ALLOCATE RESIDUE OF UNDIVIDED CLASSIFIED PROPERTY TAXES COLLECTED BY COUNTY TREASURER IN 1949—SECTION 5639 G. C.—AMENDED HOUSE BILL 26, 98 GENERAL ASSEMBLY, EFFECTIVE SEPTEMBER 26, 1949.

SYLLABUS:

The budget commission of any county, prior to the October settlement date, may allocate the residue of the undivided classified property taxes, collected by the county treasurer in 1949, in accordance with the provisions of Section 5639, General Code, as amended by Amended House Bill No. 26, 98th General Assembly, effective September 26, 1949.

Columbus, Ohio, October 24, 1949

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"Your consideration and opinion are respectfully requested on a matter submitted by the Auditor of Cuyahoga County as follows :

'Section 5639 G. C. as amended, effective September 26, 1949, provides as follows :

"* * * The residue of the undivided classified property tax fund shall be distributed to any board of public library trustees and the school districts of the county. The budget commission shall have authority to determine the amount to be distributed to each participant from the residue, except that any amount allowed to school districts shall constitute the county school tax fund, and be distributed among all the school districts in the county (excepting the county school district) in the manner provided by law."

'The question has been presented to the Budget Commission whether the distribution of the residue of the intangible tax for the year 1949 comes under the above provision of this section as amended.

'Specifically, the question is: Does the Budget Commission have authority to allocate any residue of the intangible tax collected and distributed in the year 1949 under the provisions of the new law, effective September 26, 1949, or does any such residue have to be distributed to the school districts under the previous law? (This section previously provided that the residue shall be distributed to school districts only.)'

"It seems that the first half of the intangible taxes collected for the year 1949 has been distributed under the provisions of the law previously in effect. The new law becomes effective September 26, 1949, and the question presented by the Auditor is concerned with the residue of such intangible taxes collected in the year 1949."

For the purposes of clarification I shall rephrase your question to read :

"Must all undivided classified property taxes, collected by the county treasurer in 1949, be distributed in accordance with Section 5639, General Code, as it existed prior to September 26, 1949, or may any part of the residue of such intangible tax, collected in 1949, be allocated in accordance with the provisions of said section as amended by Amended House Bill No. 26, effective on the 26th day of September, 1949?"

The only change in said section of the General Code which was made by the recent amendment is contained in the last paragraph of said section which now reads as you have set it forth in your letter. Prior to the amendment this paragraph read as follows:

"The residue of the undivided classified property tax fund, together with the amount distributed to the county under Section 5414-22 of the General Code, shall constitute the county school tax fund, and be distributed among all the school districts in the county (excepting the county school district) in the manner provided by law."

In discussing the question which you have submitted I believe it would be of assistance to trace the steps which are taken in the levy, collection and distribution of these taxes for a given year. Section 5625-20, General Code, provides that on or before the fifteenth of July in each year, the taxing authority of each subdivision or taxing unit shall adopt a tax budget for the next succeeding fiscal year. The several budgets after adoption are then submitted to the county auditor who in turn lays them before the budget commission. The budget commission then acts upon the several budgets as provided in Section 5625-24, which reads in part as follows:

"The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom. The budget commission shall also have authority to fix the amount of proceeds of classified property taxes, collected within the county, to be distributed to each board of public library trustees which shall have qualified or be qualified as provided in section 5625-20 of the General Code for participation in the

proceeds of such taxes, the amount of proceeds of such taxes, collected within the county, to be distributed to each board of township park commissioners, the amount of proceeds of such taxes originating outside the limits of municipal corporations, to be distributed to the county, and the amount of proceeds of taxes originating within each municipal corporation, to be distributed to each municipal corporation and shall separately set forth the amount so fixed and determined in the 'official certificate of estimated resources,' as provided in section 5625-26 of the General Code, and separately certify such amount to the county auditor who shall be guided thereby in the distribution of the undivided classified property tax fund for and during the fiscal year. In determining such amounts the budget commission shall be guided by the estimate of the county auditor under section 5625-23 of the General Code as to the total amount of such undivided classified property taxes to be collected in the county during such fiscal year; and as to the shares thereof distributable to municipal corporations and to the county, pursuant to section 5639 of the General Code, as the case may require."

This work of the budget commission must be completed and its action certified to the taxing authority of each subdivision in order that the taxing authorities may, by resolution or ordinance, authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, unless a later date is approved by the Department of Taxation of Ohio. The annual levy of the tax on the classified property lists is made by operation of Section 5638-1, General Code. The taxes thus levied are paid to the county treasurer and by him distributed in accordance with Section 5639, General Code, on two separate settlement dates during the year.

It appears reasonably clear from the provisions of Section 5639 that in distributing the proceeds of the undivided classified property taxes, one-fourth of one percent thereof is paid to the State of Ohio; that out of the remainder such amounts as are included in the annual budget and allowed by the budget commission as receipts from such source and included in its "official certificate of estimated resources" certified to the county auditor, as provided in Sections 5625-24 and 5625-26, are paid to each board of library trustees in the county qualified to participate in such fund, boards of township park commissioners of township park districts, the boundaries of which are co-extensive with or contained in municipal corporations and municipal corporations, boards

of township park commissioners of township park districts, the boundaries of which are not co-extensive with or contained in municipal corporations and the county, in the order named and to the extent of such funds; that the residue, if any, after the foregoing is distributed, in accordance with the above quoted last paragraph of said section. It further becomes apparent that the portions of such funds paid to the State of Ohio and those remaining to be distributed in accordance with the last paragraph of said section are at no time included in the budget computations or the aforesaid "official certificate of estimated resources." Consequently, said residue funds are not appropriated to any particular fund or included in any budget of a taxing authority prior to their collection or distribution and are not restricted by the laws governing budgetary and appropriation procedures. Such residue, like the amount directed to be distributed to the State of Ohio, is appropriated by operation of law.

The question arises whether taxes collected under laws in force at the time of the levy may be distributed under an amendment to such law which effects a change in the purpose of such levy. In the case of *City of Cleveland v. Zangerle*, 127 O. S. 91, the Supreme Court had before it a question of amendment of "an act providing a levy on intangible property at classified rates and for the assessment of tangible personal property for taxation" which changed the distributive provisions of the act subsequent to the levy of the tax and prior to its distribution. In that case the court stated, in a per curiam opinion, at pages 92 and 93, as follows:

"No governmental subdivision of the state has any vested right, at least until distribution is made, in any taxes levied and in the process of collection. Until such distribution is made the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist. So far as any political subdivision of the state is concerned there can be no vested right, although a case might arise where private interests might intervene and be so affected as to give rise to a vested interest. The provisions of Am. Sub. Senate Bill No. 239, so far as they relate to the future distribution of the proceeds of the taxes, are not retroactive, but prospective, in character, and are not violative of Section 28 of Article II of the Constitution; nor can it be said that the city has any contractual obligation with the state which was impaired by the passage of Am. Sub. Senate Bill No. 239.

"We are of the opinion that the provisions of Am. Sub. Senate Bill No. 239 are not violative of Article XII, Section 5 of the state constitution. In other states having similar constitutional provisions, their courts, with substantial unanimity, have held that such a constitutional provision pertains to the levying and distribution of general taxes for state purposes and not to taxes levied and distributed for local purposes."

The tax levied by Section 5638, General Code, and distributed by Section 5639 is the same type of tax as that under consideration by the court in the foregoing opinion, in that it is a tax levied and distributed for local purposes.

The remaining question to be considered is whether or not the authority of the budget commission to determine the amount to be distributed to each participant must be exercised at a time which would prevent the use of such authority in 1949. Certainly the wording of the paragraph under consideration does not indicate any particular time when or within which the authority must be exercised. Since the residue which is provided for in this paragraph can not be determined until all the other payments required to be made in this section of the code are made or provided for it seems only logical that the authority of the budget commission should be exercised after such residue is determined and prior to the October settlement.

It is my opinion that the budget commission of any county, prior to the October settlement date, may allocate the residue of the undivided classified property taxes, collected by the county treasurer in 1949, in accordance with the provisions of Section 5639, General Code, as amended by Amended House Bill No. 26, 98th General Assembly, effective September 26, 1949.

Respectfully,

HERBERT S. DUFFY,
Attorney General.