

There are other respects in which the transcript fails to show that the board of education has fully complied with all of the provisions of law relative to the issuance and sale of the bonds in question, but in view of the conclusion expressed above, it is unnecessary to go further into detail.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1873.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS IN
 JEFFERSON, HURON AND MARION COUNTIES.

COLUMBUS, OHIO, February 24, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1874.

STATE DEPARTMENT OF HEALTH—BALANCES OF SPECIAL HEALTH
 EMERGENCY LEVY UNDER SECTIONS 4450 AND 4451 G. C. SHALL
 BE TRANSFERRED TO CITY SINKING FUND—SECTION 4450 G. C.
 DOES NOT CONTEMPLATE REGULAR LEVY IN ABSENCE OF UN-
 USUAL CONDITIONS.

1. *Balances or surplus proceeds of a special health emergency levy under sections 4450 and 4451 G. C., which are not needed or can not be used for such emergency purposes, under section 5654 G. C., as amended in 103 O. L., 521, shall be transferred to the city sinking fund.*

2. *Section 4450 does not contemplate a regular or annual levy in the absence of unusual conditions and the propriety of levies under this section must be determined by the existence or non-existence of the conditions described in said section.*

COLUMBUS, OHIO, February 24, 1921.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

“We respectfully request your written opinion on the following matter.

For the past three years the council of a municipality of this state has made an annual levy under section 4450 G. C., for general health epidemic purposes, the regular levy for the health department being insufficient to meet the expenses³ of epidemics. These moneys are placed in the health epidemic fund and the taxes levied and credited to such fund have been considerable more than necessary to meet the costs of epidemics, resulting in a large surplus in the fund.

Question 1.

Can the balance in the health epidemic fund raised by levy under au-

thority of section 4450 G. C., or any part thereof, be used to pay other expenses of the health department, such as maintenance and operation, or any expenses other than those required specifically for health epidemic purposes?

Question 2.

Can council or any board or officer legally transfer or divert or expend such balance or part thereof for work-house or work-house farm purposes?

Question 3.

Can funds raised by levy described above be used for any purposes other than health epidemic purposes?

Question 4.

Is such a general annual levy legal under section 4450 of the General Code?"

It is believed that questions 1, 2 and 3 will be governed largely by the same laws and legal principles and may be considered together. In one way or other they relate to purposes for which funds raised by levy under section 4450 for health epidemic funds may be used.

Section 4450 empowers the council of a municipality to "borrow any sum of money that the local board of health deems necessary to defray the expenses necessary to prevent the spread" of contagious diseases of unusual prevalence. This power may only be exercised under other provisions of this statute where such funds are not otherwise available and only in cases "of epidemic or threatened epidemic, or during the unusual prevalence of a dangerous communicable disease." This section is one of Chapter 2, beginning with section 4404, the subject of which was "Boards of Health" in cities and villages.

Much of that chapter has been amended or repealed by what are known as the Hughes-Griswold health laws, found in 108 O. L., Part 1, page 236, and Part 2, page 1085, where such laws are designated as 1261-16 et seq. G. C. You will note the reference in section 4450 to "the local board of health."

Section 1261-30 provides that the district board of health thereby created in the place of municipal and township boards of health "shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality."

So that no material change is made in 4450 by reason of the amendment in this regard.

In 103 O. L., p. 521, section 5654 provides in part that:

"The proceeds of a special tax * * * shall not be used for any other purpose than that for which the same was levied, * * * except as herein provided. When there is in the treasury of any city * * * a surplus of the proceeds of a special tax * * * which cannot be used, or which is not needed for the purpose for which the tax was levied, * * * all of such surplus shall be transferred immediately * * * to the sinking fund of such city * * * and thereafter shall be subject to the uses of such sinking fund."

From your letter it is concluded that the funds to which you refer were raised by a special levy and the answers to your questions therein are based upon that conclusion.

The force of section 5654 is apparent. It is rendered more so by consideration

of the fact that in the same act, of which it was a part, section 3802 was repealed. Section 3802 provided that when the cash balance existed at the end of a business year, in a fund other than a fund created for a public improvement, which could no longer be used for the purpose for which the fund was created, it should be transferred to the general fund of the corporation.

Section 3799 (103 O. L., 522) provides for the transfer of the balances remaining in funds other than proceeds of special levies, bond issues or loans, and the effect of these two sections is to quite clearly distinguish between the transfer of balances in funds raised by special levies and other funds under the last mentioned section.

So that your first three questions may be answered in this way: That the funds raised by a special levy under section 4450, can be used for no other purpose than to defray the proper expenses incident to epidemics, threatened epidemics or the unusual prevalence of a dangerous communicable disease, and to prevent the spread of such disease, and if a balance remains in such fund which cannot be used for those purposes, and which is not needed therefor, such balance or surplus shall be transferred immediately to the municipal sinking fund.

Question No. 4 questions the legality of "such a general annual levy * * * under section 4450."

Consideration of the terms and conditions upon which the powers granted by section 4450 may be exercised rather negatives the idea of an annual levy, in this that the section does not seem to have contemplated a regular annual occurrence of epidemics or threatened epidemics, or "unusual" prevalence of disease, nor that such funds would not otherwise be available. But this department would be unable to lay down any hard and fast rule, in fact no general rule would be attempted at all, as it would be impossible to say whether an annual levy was legal or not without information as to the existence or non-existence of the conditions set out in this section, and as to this it may be remarked the health officials in the first instance are the judges. So your fourth question can be answered by the statement that the statute itself furnishes the rule and that under it in the year or years or at such time or times as there exist cases of epidemic or threatened epidemic, or an unusual prevalence of a dangerous communicable disease, and funds are not otherwise available, the council of a municipality may exercise the powers granted by section 4450.

While your inquiry is directed to section 4450 and no mention is made of the levying section 4451, yet it must be assumed that the levy was made under section 4451 for the purpose mentioned in section 4450. It must be added that not all levies under section 4451 are exempt from tax limitations as emergencies while a levy made for the purposes referred to in 4450 have been held to be such an emergency. See *State ex rel vs. Zangerle*, 95 O. S., 1.

Respectfully,

JOHN G. PRICE,

Attorney-General.