

Note from the Attorney General's Office:

1930 Op. Att'y Gen. No. 30-2114 was overruled by
1991 Op. Att'y Gen. No. 91-008.

2114.

SOLDIERS' RELIEF—COUNTY COMMISSIONERS MUST INCLUDE IN GENERAL LEVY AMOUNT CERTIFIED BY SOLDIERS' COMMISSION—EXCEPTION—WHEN BUDGET COMMISSION MAY REDUCE SUCH AMOUNT—AMOUNT SET UP IN BUDGET MUST BE APPROPRIATED BY COUNTY COMMISSIONERS.

SYLLABUS:

1. *The board of county commissioners is required, under the provisions of Section 5625-5, General Code, to include in the general levy, the amount which the soldiers' relief commission has, under Section 2936, General Code, certified to it as necessary for soldiers' relief, providing such amount does not require a levy in excess of one-half mill.*
2. *The budget commission may not reduce the amount certified to be necessary for soldiers' relief unless such amount should require a levy in excess of the one-half mill limitation set forth in Section 2936, General Code.*
3. *It is the mandatory duty of the county commissioners to appropriate the amount appearing in the budget for soldiers' relief.*

COLUMBUS, OHIO, July 19, 1930.

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

GENTLEMEN:—YOUR letter of recent date is as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2936 of the General Code provides that the Soldiers' Relief Commission shall determine the probable amount necessary for the aid and relief of indigent soldiers, sailors, marines, etc., and that after determining such probable amount, shall certify it to the county commissioners, who at their June session, shall make the levy necessary to raise the required amount, not to exceed 5/10 of a mill per dollar on the assessed value of the property of the county, hereinafter authorized. The words 'hereinafter authorized' evidently refer to the provisions of Section 2942 of the General Code, which specifically authorize the levy, and which section was repealed in 112 O. L. at page 409. Section 5625-5, G. C., which is a part of the Budget Act provides that without prejudice to the generality of the authority to levy a general tax for any current expense, such general tax shall include amounts certified in the case of counties * * * for the relief of honorably discharged soldiers, indigent soldiers, sailors and marines * * * .

Question 1. Under these sections of the law, are the county commissioners required to include in their budget the amount asked for by the soldiers' relief commission under the provisions of Section 2936 of the General Code?

Question 2. If it is mandatory for the commissioners to include this amount in their budget for the general fund, may this amount be reduced by the budget commission?

Question 3. If the amount is included in the budget, and no change is made by the budget commission, is it mandatory upon the board of county commissioners that they appropriate under the provisions of Section 5625-29, G. C., the full amount so included in the budget?"

Section 2936, General Code, to which you refer, provides:

“On such last Monday in May the commission shall meet and determine from such lists the probable amount necessary for the aid and relief of such indigent persons for the ensuing year, together with an amount sufficient in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief shall be established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the county commissioners, who, at their June session shall make the levy necessary to raise the required relief, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county hereinafter authorized.”

As you indicate, the levy necessary for soldiers' relief referred to in this section was that provided in Section 2942, which section prior to its repeal by the 87th General Assembly, provided as follows:

“The board of county commissioners of each county shall levy, in addition to the taxes, now levied by law for other purposes than those herein provided, a tax not exceeding five-tenths of one mill per dollar on the assessed value of the property of the county, to be levied and collected as provided by law for the assessment and collection of taxes, for the purpose of creating a fund for the relief of the honorably discharged soldiers, indigent soldiers, sailors and marines of the United States, and the indigent wives, parents, widows and minor children under fifteen years of age, of such indigent or deceased soldiers, sailors or marines, to be disbursed as hereinbefore provided.”

The repeal of this section is contained in Section 40 of the Budget Law enacted by that General Assembly. The Budget Law in its present form contains no provisions for a special levy for soldiers' relief, but has provided that the amount certified to be necessary for such purpose shall be included in the general levy, as will be hereinafter discussed.

Your first question was passed upon by this office prior to the repeal of Section 2942 in two opinions, one appearing in Opinions of the Attorney General for the year 1912, Vol. II, p. 1011, and the other appearing in Opinions of the Attorney General for 1914, Vol. I, p. 852, the syllabi of these opinions being as follows:

Opinion rendered in 1912.

“Under Section 2936, General Code, the amount levied by the commissioners for soldiers' relief, after the soldiers' relief committee has certified the probable amount required, is optional with the commissioners.

To hold that it was mandatory upon the commissioners to levy the amount certified by the soldiers' relief commission would confer the levying power upon the commission and thereby contravene Sections 1 and 7 of Article X of the Constitution, which vests the powers of taxation in county commissioners, township trustees, and similar boards.”

Opinion rendered in 1914.

“County commissioners are not required to levy the exact amount which the soldiers' relief commission finds to be necessary for its purpose, even though such an amount would require a levy less than one-half of one mill.”

Although this office held that the county commissioners were not required to levy the exact amount which the soldiers' commission found to be necessary, even though such amount was within the one-half mill limitation, it was expressly pointed out that the commissioners were required to make some levy such as in the exercise of reasonable discretion they found to be necessary.

The requirement as to this levy is now contained in Section 5 of the Budget Law, being Section 5625-5, General Code. This section provides, insofar as pertinent, as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, * * *. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary for the payment of final judgments, the amounts necessary for general, special and primary elections; for boards and commissioners of health, and other special or district appropriating authorities deriving their revenue in whole or part from the subdivision; in the case of municipalities, for the maintenance, operation and repair of public buildings, wharves, bridges, parks and streets, for a firemen's pension fund, police relief fund and sanitary fund; in the case of counties for the maintenance, operation and repair of public buildings, for the relief and support of the poor, for the relief of needy blind, for the relief of honorably discharged soldiers, indigent soldiers, sailors and marines, for mothers' pension fund and for the county's share of the compensation to be paid judges; in the case of a school district, for tuition, teachers' retirement fund and the maintenance, operation and repair of schools; and in a township, for the relief of the poor. * * * * * ."

It is no longer provided that "the board of county commissioners of each county shall levy * * * a tax not exceeding five-tenths of one mill per dollar * * * for the purpose of creating a fund for the relief of the honorably discharged soldiers, * * * ." Under the provisions of Section 5625-5, supra, as now in force and effect, the county commissioners shall include in the general levy "the amount certified to be necessary" for soldiers' relief. While these moneys are no longer required to be placed in a special fund as heretofore, the legislature has placed the amount certified to be necessary for soldiers' relief in the same category as the amount certified to be necessary for the payment of final judgments, the county's share of the compensation to be paid judges, etc. There is no authority vested in the commissioners to reduce the amount certified to it as necessary for a specific purpose by a commission charged with the duty of effectuating such purpose, providing such amounts do not exceed whatever limitation is placed upon them by law. Section 5625-5, supra, expressly provides that such amounts shall be included.

In view of the foregoing, it is my opinion that your first question must be answered in the affirmative, providing, of course, the amount certified does not require a levy in excess of one-half mill.

In your second question you inquire as to whether or not the budget commission may reduce the amount certified to be necessary for soldier relief. Since the amount necessary for soldiers' relief is one of the items within the general levy, if the budget commission may reduce this item, it follows that it must have authority to reduce, alter or change any of the other items within the general levy. The general authority of the county budget commission with respect to this matter was discussed in an opinion of this office addressed to the Tax Commission of Ohio, appearing in Opinions of the Attorney General for the year 1927, Vol. III, p. 2398. Upon the question of whether or not the budget commission may designate how any portion of the general fund may be expended, the Attorney General said at p. 2402:

"Having ascertained the total amount of taxes to be raised for the purposes of the subdivision, ascertained that the levies named are properly authorized, and approving the same, the budget commission has exhausted the authority granted under the above Section (5625-23), with the exception that said commission is authorized to include debt charges omitted from the budget. There is no authority granted in the above section to require that any portion of the general fund shall be expended for any particular purpose."

After quoting Section 5625-24, General Code, which authorizes the budget commission to adjust the estimated amounts required from the general property tax for each fund in order to bring the taxes required therefor within the tax limitations provided by law, the foregoing opinion held:

"This section grants the authority to the budget commission to so adjust the estimated amounts required for each fund as to bring said levies within specified limitations, and to revise and adjust estimates of balances from receipts and to determine the total appropriations.

This section pertains to total amounts and adjustments and confers no authority upon the budget commission to designate that any portion of the general fund shall be used to pay final judgments or any other particular item in the general fund. Neither do I find in any other sections or parts of sections in the act creating the budget commission and defining its powers and duties any authority for such designation." (Italics the writer's.)

It is obvious that if the budget commission has no authority to designate how any portion of the general fund may be expended, it has no authority to prescribe how any portion of the general fund may not be expended. As stated in the foregoing opinion "When said commission has adjusted the amount of the general fund within the limitations prescribed by law, its duty is then to certify said amount to the taxing authority of the subdivision." The function of the budget commission is obviously so to determine amounts and see to it that such amounts do not require tax levies in excess of tax limitations. Of course, if the amount certified for soldiers' relief should require a levy in excess of one-half mill, the maximum permitted by Section 2936, supra, if the county commissioners should fail to reduce the amount certified so as to bring it within this limitation, the budget commission under those circumstances would probably have authority so to do, but if the amounts set forth in the various items within the general fund do not exceed the statutory limitations as to levies for the various purposes of such items, I think it is clear that the function of the budget commission is only to

reduce the total amount of the general levy in the event such amount, together with all other levies within the statutory limitations, exceeds such limitations.

In specific answer to your second question, therefore, it is my opinion that the budget commission may not reduce the amount certified to be necessary for soldiers' relief unless such amount should require a levy in excess of the one-half mill limitation set forth in Section 2936, General Code.

Coming now to the question of whether or not a board of county commissioners is charged with the mandatory duty of appropriating the amount certified to be necessary for soldier relief, Section 5625-29, General Code, provides in part:

"On or about the first day of each year, *the taxing authority* of each subdivision or other taxing unit *shall pass an annual appropriation measure* and thereafter during the year may pass such supplemental appropriation measure as it finds necessary, *based on the revised tax budget and the official certificate of estimated resources or amendments thereof.* * * * Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; provided that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, custody and control of the funds of the university, such funds shall be appropriated as a lump sum for the use of the university." (Italics the writer's.)

Section 5625-30, General Code, provides as follows:

"The total amount of appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission or in case of appeal by the tax commission of Ohio. No appropriation measure shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the total appropriations from each fund taken together with all other outstanding appropriations, do not exceed such official estimate, and if amended the last amended official estimate, and in every case in which the appropriation does not exceed such official estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure. Appropriations shall be made from each fund only for the purposes for which such fund is established."

In considering whether or not the county commissioners may, by refusing to appropriate the amount included in the budget for soldiers' relief, thereby defeat the mandatory provisions of Section 5625-5, supra, to the effect that the county commissioners must include in the budget the amount certified to be necessary, it should be kept in mind that the county commissioners have nothing whatsoever to do with the disbursements of these moneys raised by taxation for soldier relief. This is the function of the soldiers' relief commission. Section 2937, General Code, provides for the annual meeting of the commission and for such other meetings as may be necessary, when the commission shall fix the amount to be paid each month to each person or family entitled to relief. Section 2938 provides as follows:

"Upon the conclusion of such examination and the determination of

the monthly allowance, the relief commission shall make a complete list of those to whom relief has been so awarded, showing the monthly amount awarded to each person, and, so far as practicable, the place of residence of each, and certify it to the auditor of the county. Within ten days thereafter the county auditor shall transmit to the township clerk, in his county, a list of the names of the persons in the respective townships, and the amount payable monthly to each, and on the first day of each month after the fund is ready for distribution, the auditor shall issue to the trustees of each township his warrant upon the treasurer of the county for the amount awarded to the persons in such township, and the township trustees shall disburse such moneys in the amounts and to the persons named in the list furnished to the township clerk, taking receipts therefor.

But in townships embracing a county seat, in which the office of county treasurer is kept, the county treasurer shall disburse such fund to the persons entitled to same, upon the voucher of the soldiers relief commission, properly authorized by the county auditor."

I find no reference in the sections of the law relating to the disbursement of funds for soldiers' relief to the effect that such disbursement shall be subject to the approval of the county commissioners or that it shall be subject to the discretion of the county commissioners as to whether or not it shall be appropriated. To say that a special levy may be included in the general levy for the purpose of soldier relief and then having been made and the moneys having been collected, such moneys may not be expended for the purpose for which they were collected from the taxpayers, is manifestly absurd. I do not find that the legislature has so provided. While it is true that these moneys are no longer required to be credited to a special fund, I think the legislature clearly intended where there is a mandatory requirement to include a specific item in the general fund for a specific purpose, moneys raised by taxation for that purpose must be appropriated therefor. This, particularly where the responsibility as to effectuating such specific purpose and spending tax money therefor, is not vested in the county commissioners but in a separate commission.

In view of the foregoing and in specific answer to your third question, it is my opinion that it is the mandatory duty of the county commissioners to appropriate the amount appearing in the budget for soldiers' relief.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2115.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENT ON
GREENVILLE-NEW PARIS ROAD IN DARKE COUNTY, OHIO.

COLUMBUS, OHIO, July 19, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval Final Resolution relating to the following improvement:

Greenville-New Paris Road, S. H. No. 215, Section A-2, D & E, Darke County.