

ACCOUNTS, STATE BOARD OF: Police pension fund levy mandatory tax for police pension investments of police fund; limit of levy for police pension, excess over 2/10 mill for police pension.

July 27, 1937.

Hon. William P. Cosgrove,
State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Sir:

In your letter of July 17 you present three questions which have arisen in regard to chapter 107, Acts of 1937.

The questions which you ask are as follows:

"1. Is it mandatory upon the common council of a civil city to levy two-tenths of one mill upon each dollar of taxable property in such city, for the Police Pension Fund, even though no budget is prepared by the board of trustees, showing the need of such levy?

"2. If the board of trustees of the pension fund prepares an estimate, and the excess of disbursements over receipts is such amount that a levy of more than two-tenths of one mill would be required, can such greater levy be made?

"3. What funds coming into the hands of the board of trustees of the pension fund can be invested?"

Section 2 of chapter 107, Acts of 1937, under part 4, makes provision for the levying of a special tax. This part 4 of section 2 is as follows:

"Fourth. Except as hereinafter otherwise provided, the sum of two-tenths of one mill shall be annually levied by such city upon each dollar of all taxable property in such city, as the same appears on the tax duplicate, which sum shall be collected by the treasurer of such city, and be by him credited to the said police pension fund, and not used or devoted to any other than the purpose of such fund."

Under part (b) of section 2 in speaking of the estimates which shall be made by the board of trustees of the police pension fund, the Act says:

“The estimated receipts so set forth shall consist of the several items enumerated in subsection (a) of this section.”

Now under subsection (a) which is spoken of, there is set out aside from the special tax other sources from which money may come into the police pension fund:

First: Gifts and bequests;

Second: Awards, fees, etc.;

Third: Assessments deducted from the salary of the members of the police force, and then,

Fourth: As heretofore set out, the special tax.

You will also notice that the provision for the special tax uses this language:

“Except as hereinafter otherwise provided, the sum of two-tenths of one mill shall be annually levied, etc.”

We come now to a determination of what was meant by the words “except as hereinafter otherwise provided.” A reading of part (b) of section 2 clearly indicates that the language, “except as hereinafter otherwise provided” does not operate as a limitation upon the two-tenths of one mill levy but rather opens the way for a levy greater than two-tenths of one mill in the event that a showing is made to the effect that an amount of greater than two-tenths of one mill is needed.

The language of part (b) which indicates that the words “except as hereinafter otherwise provided” does not operate as a limitation, is

“The total receipts shall be deducted from the total expenditures as set forth in such itemized estimate and the amount of the excess of the estimate expenditures over the estimated receipts shall be paid by such city, in the same manner as other lawful expenses of such city are paid, *and a tax levy shall be made annually for that purpose, as hereinafter provided.*” (Our italics.)

Further along in this same section this provision appears:

“In 1937, and annually thereafter, at the time provided by law, the common council of such city shall levy *a tax in such amount and at such rate as will be neces-*

sary to produce the revenue to pay that proportion of the police pensions which the city is obligated to pay, as hereinbefore provided. All money derived from such levy is hereby appropriated to the board of trustees of the police pension fund for the exclusive use of the police pensions and benefits. The respective amounts set forth in such estimated disbursements, if found to be correct, and in conformity with the data submitted in the certified statement hereinbefore provided for, shall be a binding obligation upon such city, and the common council *shall make a levy therefor which will yield an amount equal to such estimated disbursements, LESS THE AMOUNT OF THE ESTIMATED RECEIPTS,* and neither the county board of tax adjustment nor the State Board of Tax Commissioners shall have any power to reduce the levy so made, any law of this state to the contrary notwithstanding." (Our italics and capitals.)

Reading the whole of parts (a) and (b) of section 2 together, particularly those parts above quoted, we cannot escape the fact that the legislature intended that the yield of two-tenths of one mill annually shall be a mandatory tax and further that it shall be the duty of the common council to make a levy which will yield an amount equal to the estimated disbursements less the amount of the estimated receipts. Since a portion of the estimated receipts is to be the amount which will be raised of the two-tenths of one mill levy as provided in division four of part (a) of section 2 and since the council shall make a levy which will yield an amount equal to the estimated disbursements less the amount of the estimated receipts, it is my opinion that the levy of two-tenths of one mill upon each dollar of taxable property in a city, for the police pension fund, is mandatory.

It is my further opinion, based on what has heretofore been said in this opinion, that a levy of more than two-tenths of one mill upon each dollar of taxable property in a specific city may be made when the estimated disbursements are greater than the estimated receipts, which estimated receipts will include the amount of money that will be raised by the two-tenths of one mill levy.

In answer to your third question, we find that the latter portion of part (b) of section 2 says:

“The funds derived from the tax levy authorized by the provisions of subsection (a) of this section shall not be invested but shall be used for the exclusive purpose of paying such pensions and benefits as the board is obligated to pay, and shall be in addition to any and all money derived from the income on the invested funds of the board.”

In addition to this provision, we find in section 3, the following language:

“The board of trustees of such police pension shall determine how much of such fund may be safely invested, and how much shall be retained for the needs, demands and exigencies of the fund.”

It is my opinion in answer to your third question that the board cannot invest any amount of the money raised by the two-tenths of one mill levy spoken of in division four, part (a) of section 2.

It is my further opinion that only such an amount of the balance of the money, exclusive of the two-tenths of one mill levy which the board of trustees of any police pension fund holds can be invested as is not necessary to be retained for the needs, demands and exigencies of the fund. Thus in cases where a tax levy in excess of the two-tenths of one mill levy is necessary, there will be no funds to invest. The need for investing these funds will only arise in cases where the amount of money coming into the pension fund pursuant to divisions one, two, three and four of part (a) of section 2 are in excess of the estimated disbursements.