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1. LIBRARY, COUNTY — ACQUIRED UNDER SECTION 2454, GENERAL CODE—SERVICES AVAILABLE TO ALL INHABITANTS OF COUNTY—TAX FOR LIBRARY SUPPORT MAY BE LEVIED, NOT IN EXCESS OF ONE-HALF MILL ON EACH DOLLAR OF TAXABLE PROPERTY IN COUNTY—SECTION 2456 — ADDITIONAL PORTION MAY BE RECEIVED FROM TAXES COLLECTED AS COUNTY BUDGET COMMISSION MAY ALLOW — SECTIONS 5625-20, 5625-24, 5639 GENERAL CODE.

2. GIFT OF PUBLIC LIBRARY—COUNTY COMMISSIONERS MAY NOT APPROPRIATE FOR SUPPORT OF SUCH LIBRARY, FUNDS RAISED BY GENERAL TAX LEVIES—EXCEPTION—PROCEEDS OF LEVY MADE UNDER PROVISIONS OF SECTION 2456, GENERAL CODE.

SYLLABUS:

1. A county which owns a library which has been acquired by the county, under Section 2454, General Code, the services of which are available to all the inhabitants of the county, may, pursuant to the provisions of Section 2456, General Code, levy a tax for the support of such library not in excess of one-half mill on each dollar of taxable property in such county, and may in addition thereto, by virtue of the provisions of Sections 5625-20, 5625-24 and 5639, General Code, receive from the proceeds of the classified taxes collected in such county, such portion thereof as the county budget commission may allow for the support of such library.

2. The county commissioners of a county which has received the gift of a public library, pursuant to the provisions of Sections 2454 and 2456, General Code, may not appropriate for the support of such library funds raised by general tax levies except the proceeds of a levy made under the provisions of Section 2456, General Code.

Columbus, Ohio, March 24, 1943.

Hon. Kerns Wright, Prosecuting Attorney,
Van Wert, Ohio.

Dear Sir:

I have your communication requesting my opinion, reading as follows:

"The county auditor of Van Wert County has requested an opinion as to whether the county commissioners of Van Wert County can appropriate for library purposes in the county, in excess of an amount equal to a levy of one-half mill on taxable real and personal property of the county.

The question involves the construction of a contract dated July 30, 1898, between the Brumback County Library and the county commissioners, a copy of which we are enclosing herewith, and a special act of the Legislature, 93 O. L., 355, Section 891A of which reads:

'The commissioners may receive a bequest, donation or gift of a building, or property wherewith to construct a building, for a county public library in the county seat of the county, and may enter into an agreement on behalf of the county to provide and maintain a public library therein. Any county accepting such bequest, donation or gift shall be bound to faithfully carry out the agreement so made to provide and maintain such library. The commissioners of any such county are hereby authorized, at their March or June session each year, to levy a tax of not exceeding a half mill on each dollar of taxable property of such county, and the fund derived from such levy shall constitute a special fund to be known as library fund, and shall be used for no purpose other than is contemplated in this section.'

You will note that it is similar to the Hamilton County arrangement and the subsequent legislation relating to maintenance of public libraries and classified tax distribution does not apply.

It would seem to be mandatory to levy a tax up to one-half mill and discretionary for the additional appropriation. The library has always been well within the limitation, but due to an emergency growing out of the maintenance of the Delphos branch, an additional \$1,000 for the current year is necessary.

Accompanying your letter I note the copy of contract executed by and between the heirs of J. S. Brumback and the commissioners of Van Wert County, by the terms of which the said heirs agreed to construct a library building on public ground and to donate the same to the county, and the county agreed that it would forever maintain and operate such library for the benefit of the citizens of the whole county, and would each year levy a tax in an amount not exceeding one-half mill on each dollar of taxable property in the county. A third party to the contract was the Van Wert Library Association, which agreed to donate to such library all of its books, furniture and other property.

While the policy of the state, as evidenced by its legislative acts, has been to encourage libraries and to authorize their maintenance by municipalities, school districts and other public bodies, it is rather surprising to find that the legislation relative to the power of a county to construct or otherwise provide library facilities for its citizens is not very clear. In fact, I find no direct general power given to county commissioners to erect and maintain libraries as an original enterprise. One of the earliest enactments which still finds a place in the statutes is that to which you call attention, being found in its original form in 93 O. L., 355, being Section 891a of the Revised Statutes. This was passed April 26, 1898, and was in force at the time of executing the contract hereinabove referred to, which was July 30, 1898. Section 891a read as follows:

“The commissioners may receive a bequest, donation or gift of a building, or property wherewith to construct a building, for a county public library in the county seat of the county, and may enter into an agreement on behalf of the county to provide and maintain a public library therein. Any county accepting such bequest, donation or gift shall be bound to faithfully carry out the agreement so made to provide and maintain such library. The commissioners of any such county are hereby authorized, at their March or June session each year, to levy a tax of not exceeding a half mill on each dollar of taxable property of such county, and the fund derived from such levy shall constitute a special fund to be known as library fund, and shall be used for no purpose other than is contemplated in this section.”

By subsequent amendment this section, with slight changes, became Sections 2454, 2455 and 2456 of the General Code. Section 2454 contains that part of the original enactment authorizing the commissioners to receive a gift or bequest of a library or money wherewith to construct and equip the same and to agree on behalf of the county to provide and maintain such library, and reads as follows:

“The county commissioners may receive a bequest or a gift of a building or of money or property wherewith to construct a

building for, or to furnish and equip a county public library. They may accept the gift of a library or of its use for a term of years or permanently, and may agree on behalf of such county to provide and maintain such library."

Section 2455, which is somewhat of a departure, authorizes a contract with a library association or other organization having a library for the use thereof by the people of the county.

Section 2456 contains a provision substantially like the latter part of the original enactment, and reads as follows:

"A county accepting such bequest or gift, or entering into such agreement, shall faithfully maintain and provide such library. At their June session each year, the commissioners thereof may levy a tax not to exceed a half mill on each dollar of taxable property in such county. The fund derived from such levy shall be a special fund, known as the library fund, and shall be used only for the purpose contemplated in this section."

Neither this original act nor its amendment in its present form makes any provision whatever for the appointment of trustees or other officers for the management of such library, and in the absence of any such provision it must be assumed that the management of the same is to be carried on by the commissioners themselves. The contract above referred to purports to provide for a board of trustees, appointed in part by the county commissioners, part by the donors and their heirs and part by the library association. Questions might arise as to the legality of this arrangement, but I do not consider it necessary to enter into any discussion of that matter. It is sufficient for this opinion that the county has had the library for over forty years, and is responsible for its maintenance.

Sections 2976-11 to 2976-17, General Code, were enacted in 1915, and the first section of that act, Section 2976-11, provides in part as follows:

"That in all counties of the state of Ohio where the county commissioners have received a bequest or gift of a building, money or property wherewith to construct a building for, or to furnish and equip and help a county library, or have accepted the gift of a library, or its use for a term of years, and have made an agreement to maintain and provide for such library *in accordance with the provisions of sections 2454 and 2456* of the General Code, there shall be established a county library for the use of all of the citizens of the county and the maintenance, management, care and control of such library shall be entrusted to a board of trustees consisting of six members; the members of such board shall be appointed by the judge of the court of common pleas of the county in which such library is situated as

soon as such gift or bequest shall have been accepted by the board of commissioners; * * *” (Emphasis mine.)

The subsequent sections of this act define the powers and duties of the trustees and refer to the moneys realized from the levy made by the commissioners under the provisions of Section 2456 of the General Code, placing such moneys in the custody of the county treasurer and making them subject to the order of the board of trustees of said library. These sections would seem to furnish the missing provisions as to the appointment and organization of a board of trustees to manage a library acquired by the county under the provisions of Section 2454. But, Section 2976-17 reads as follows:

“The provisions of this act shall not apply to county libraries heretofore organized and now being conducted under such organizations.”

This provision seems completely to undo what was done in the first section of the act and leaves the libraries so acquired as we found them, wholly without any provision for their management. The only construction I can give to Section 2976-17 is that it was intended to make the act prospective in its operation and to relate only to libraries that might thereafter be acquired pursuant to Section 2454.

One of my predecessors had these provisions before him in an opinion found in Opinions of Attorney General for 1933, page 718. In this opinion he quoted Section 2976-17, and after calling attention to the fact that the library which he had under consideration was acquired by the county in 1899, held that the provisions of Section 2976-11, et seq., could not apply to that library.

I find in Sections 7643-1 to 7643-13, General Code, inclusive, provisions relating to what are called county library districts. It appears from Section 7643-1 that a county library district may be created in any county in which public library service is supported in whole or in part by tax moneys, but not furnished to all the citizens of the county. This district under these circumstances is to be created by a vote of the people in that portion of the county which the commissioners may specifically prescribe by resolution.

Section 7643-1a provides that such county library district may be organized without a vote of the people so as to include either a part or all of the county in which there exists a public library or libraries organized under the provisions of Sections 2976-11, 3405, 4004 or 7635 to 7640-1, General Code. None of these sections could possibly apply to the

library situation here under consideration, excepting Section 2976-11, which, as I have already shown, is closely linked with Sections 2454 to 2456, but excludes libraries already organized under said sections. Apparently, therefore, it would not be possible to bring the library which we are considering under the provisions of the act relating to county library districts.

Section 7643-3 of this act authorizes the county commissioners to levy a tax of not more than *one mill* for library purposes for such county district. This, it will be noted, is just twice the maximum levy that may be made for a library obtained under the provisions of Section 2454.

I am forced to the conclusion that the library to which your letter refers was obtained and is held by the county commissioners pursuant to Sections 2454 and 2456, and that the right of the county commissioners to levy a tax for the support of said library is governed by Section 2456 and limited as to amount to one-half mill for each dollar of taxable valuation. This brings me to the question whether any other provision is to be found in the statutes which would authorize the county to receive for the support of this library additional taxes from sources other than the direct levy upon the taxable property of the county.

I come then to a consideration of the Uniform Tax Law, particularly the provisions of Sections 5625-5 and 5625-6 of the General Code.

Section 5625-5 describes the purpose and intent of the general levy for current expenses and reads in part 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 expenses 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, including the acquisition or construction of permanent improvements and the payment of judgments, but except the construction, reconstruction, re-surfacing or repair of roads and bridges in counties and townships and the payment of debt charges.”

Inasmuch as we have not found any general authority in the county commissioners to build and maintain libraries except under the circumstances hereinabove mentioned, it is my opinion that the county commissioners would not have the authority to make a levy for the general fund to include the maintenance and operation of a county library. This con-

clusion is strengthened by a consideration of Section 5625-6, which authorizes special levies in certain cases, and which reads in part as follows:

“The following special levies are hereby authorized without vote of the people: * * *

b. For the library purposes of the subdivision, in accordance with the provisions of the General Code, authorizing a levy or levies for such purposes, *but only to the extent so authorized.*
* * *

Each such special levy shall be within the ten mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the ten mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.” (Emphasis mine.)

This would seem to be specific authority to make a special levy for the purpose of maintaining the library in question by reason of the authority and subject to the limitation contained in Section 2456, General Code.

I have already called attention to the disparity between the limits of taxation allowed to the county for library maintenance as shown in Sections 2456 and 7643-3, General Code. A further discrimination is found in Section 7639, General Code, which authorizes a board of education to levy up to one and one-half mills, for support of a district school library.

It may have been a recognition by the Legislature of the inequalities of these statutes that led to the amendment of Section 5625-20, General Code (115 O. L., 548 (590), passed July 1, 1933), the amendment consisting of the addition of the following paragraph:

“The board of trustees of *any* public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes) on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. In all cases in which such rules and regulations have been so certified

and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board or boards of library trustees." (Emphasis mine.)

If the words "any public library" include a library owned by a county, and they certainly do include such library, then the way is open to the county of Van Wert to follow the procedure outlined in this statute and obtain such amount from the classified property taxes as the budget commissioners will allow, and certainly not limited by the provisions of Section 2456. There is nothing in Section 5625-20 that refers in any way to a limitation under which any library may have suffered by reason of specific provision relative to its levy of a general property tax.

It will be noted that this provision is not mandatory. In express terms it is permissive: "The board of trustees of any public library *desiring* to participate," etc. Reference will be made later to the view apparently taken by the Supreme Court.

Section 5625-24, General Code, authorizes the budget commission to adjust the amounts to be allocated to the various taxing authorities both from the general property tax and the classified taxes, including the amount to be allotted to the trustees of each library. The pertinent portion of that section reads:

"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, * * *."

One of my predecessors had before him the question of the right of public libraries which were entitled to support from special tax levies to share in the distribution of classified property taxes, and in Opinions Attorney General, 1935, page 586, held:

“Library associations or organizations established by will or otherwise, that maintain free public library service to all the inhabitants of a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio.”

Section 5639, General Code, provides for the distribution of the classified property taxes and appears to favor public libraries as against municipalities and other subdivisions. We are not concerned with the provisions of this section except to point out the general trend of legislative policy as strengthening my conclusion that the library here under consideration is not to be held, in the matter of its support, to the rather narrow limits of Section 2456, General Code. In construing Section 5639, the Supreme Court held in *State ex rel. v. Lutz*, 129 O. S., p. 201 :

“Under the provisions of amended Section 5639, General Code (115 Ohio Laws, 592), qualified public libraries are entitled to priority over municipal corporations, the county and school districts in the semi-annual distribution of the undivided classified property tax fund in the county treasury.”

A remark made by the court in its opinion at page 205, which is certainly not essential to the decision, is nevertheless worthy of note :

“A mere superficial examination of the statute might lead to a conclusion that the preference allowed the public libraries is unreasonable and discriminatory, thereby raising a serious question as to whether such a construction can be justified. However, this difficulty disappears when it is remembered that the *Legislature has completely deprived the public libraries of their former revenue from other sources, and they are now compelled to rely solely upon the proceeds of classified property taxes*, while the municipal corporations, the county and the school districts still derive their principal income from various other taxes.” (Emphasis mine.)

This comment was quoted later in *State ex rel. v. Davis*, 131 O. S., 380. In each case the comment was obiter dictum, and I am unable to find in the enactments of the Legislature any basis for the statement. However, in both of these cases the court was dealing with libraries other than county libraries, and in view of the plain provisions of Section 2456, General Code, applying to county libraries, I do not feel bound by the court's statement as an authority on the question before me. I hold,

therefore, that the county commissioners may, in the case under consideration, take advantage at the same time of the general levy allowed them under Section 2456, and also of an allowance from the classified taxes under Section 5625-20, et seq., of the General Code.

This discussion does not directly answer your question as to the power of the commissioners to make an appropriation for the maintenance of the library of a sum of money in addition to the amount realized from the half mill levy. From the language of your letter, I assume that the county has levied and presumably collected the levy of one-half mill of general property tax and has made no other provision by way of securing an allowance from the classified taxes. If the budget for the current year, made in 1942, included only the half mill special levy for the library, it is my opinion that there would be no other fund from which the county commissioners would have the right at this time to make a supplementary appropriation. This would certainly be true if the dictum quoted above from the Lutz case is an accurate statement of the law, for there would be no funds whatever that could lawfully be applied to the support of the library.

Section 5625-9 requires the establishment by each subdivision of certain funds, and reads as follows:

“Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.
- (h) A trust fund for any amount received by a subdivision in trust for any lawful purpose.”

Section 5625-20 requires the taxing authority of each subdivision, on or before the 15th day of July in each year, to adopt a tax budget for the ensuing year. Section 5625-21 prescribes what such budget shall show, among other things:

“(d) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized and the fund from which such expenditures are to be made.”

Sections 5625-24 and 5625-25 require the budget commission to adjust the amounts required for each fund and to certify its action to the several taxing authorities.

Section 5625-29 requires each taxing authority to make its annual appropriation, based on the budget as revised by the budget commission, and Section 5625-30 provides that the “total amount of the appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom as certified by the budget commission,” and further provides that “appropriations shall be made from each fund only for the purposes for which such fund is established.”

It was held in *Opinions Attorney General, 1933, page 1696*, that when there is a shortage in the amount of taxes levied, the county auditor has no authority to allocate to the bond retirement fund the whole amount that should have been realized for that fund to the detriment of the general fund, even though the constitution, as interpreted by the courts, requires the payment of interest and principal of bonds to be provided first and makes current expenses a secondary consideration. In this opinion the Attorney General, after discussing the various statutory provisions, said:

“From these statutes it will be seen that the taxes levied by a taxing district are divided into separate and distinct levies and that the proceeds from each such levy must be placed to the credit of the fund for which such tax was levied.”

If Section 2456 is still in force, it is both the authority for and an express limitation on the power of direct taxation for the support of the library, and an attempt to take from the general fund taxes raised for another purpose would plainly be doing indirectly what cannot be done directly. If that section is not in force, then there is no law whatever authorizing any support to the county library under consideration from general taxes.

In view of the fact that the county has only the limited rights hereinabove set forth relative to the establishment and maintenance of the

library, and in the light of the above mentioned statutes relative to levies and appropriations, it would appear that there would be no right to make any supplementary appropriation from the county's general fund for the maintenance of the library.

Respectfully,

THOMAS J. HERBERT,
Attorney General.