

bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1225.

BONDS—CITY OF YOUNGSTOWN, MAHONING COUNTY,  
\$50,000.00.

COLUMBUS, OHIO, September 25, 1939.

*Retirement Board, Public Employes Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Youngstown, Mahoning County,  
Ohio, \$50,000.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of a \$253,000 issue of a \$303,000 authorization of refunding bonds, dated September 1, 1939, and bearing interest at the rate of  $2\frac{3}{4}\%$  per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1226.

TAX BUDGET—DULY ADOPTED BY TAXING AUTHORITY—  
CONTROL LOST BY SUCH AUTHORITY WHEN BUDGET  
SUBMITTED TO COUNTY AUDITOR—DUTY TO AUTHOR-  
IZE BY ORDINANCE OR RESOLUTION TAX LEVIES—  
STATUS WHEN BOARD OF EDUCATION ADOPTS TAX  
BUDGET—TAX WITHIN SCHOOL DISTRICT—AUTHOR-  
ITY—COUNTY AUDITOR—COUNTY BUDGET COMMIS-  
SION TO GIVE CONSIDERATION.

*SYLLABUS:*

1. *When a tax budget is duly adopted by the taxing authority of a taxing subdivision or other taxing unit, all control over the same for tax rate making purposes is lost by the said taxing authority so soon as it is*

*submitted to the county auditor in pursuance of Section 5625-22, General Code, until it receives the certification of the county budget commission made in pursuance of Section 5625-25, General Code.*

2. *It is the duty of the taxing authority of a taxing subdivision or other taxing unit to authorize by ordinance or resolution tax levies for said subdivision or taxing unit at rates estimated by the county auditor and approved by the county budget commission as contained in the certification by the county budget commission of its action in connection with the budget for the taxing subdivision or other taxing unit, to the said taxing authority as directed by the provisions of Section 5625-25, General Code.*

3. *When a board of education adopts a tax budget for its district for the next ensuing fiscal year as provided by law, and submits the same to the county auditor as directed by Section 5625-22, General Code, by the provisions of which budget needs are shown which warrant and demand the levying of a tax within the school district for school operating purposes for the next fiscal year, and later adopts and certifies to the county auditor a resolution recommending that no tax be levied in the district for the said purpose, the said resolution is of no force and effect whatever and the county auditor and county budget commission are not authorized by law to give it consideration.*

COLUMBUS, OHIO, September 27, 1939.

HON. F. R. PARKER, *Prosecuting Attorney, Williams County, Bryan, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

"On June 26, 1939 the Board of Education of Center Township Rural School District in this county at a regular meeting considered its regular budget for the 1939 tax year. A budget was at that meeting approved unanimously and filed with the county auditor. A copy of that budget is attached to this letter.

At a special meeting of the Center Township Rural Board of Education held August 30, 1939, by a three to two vote the following resolution was passed:

'Motion by N. that due to the present accumulated school operating surplus fund of Center Township Board, we recommend to the Williams County Tax Commission that no tax for the 1939 tax year be levied in Center Township for school operating purposes. Seconded by S. Vote: N. yes; R. no; S. yes; M. didn't vote; A. yes.'

A copy of this resolution has been delivered to the Clerk of the school board.

May a tax levy be made for school purposes in Center Township Rural School District by the budget commission of this county for the tax year 1939, and if so, in what amount? Under the facts above outlined, is the budget commission required to make a tax levy for school purposes?"

In the consideration of your inquiry it should be noted at the outset that the making of budgets for taxing subdivisions and the levying of taxes within those subdivisions are controlled by the provisions of the "Uniform Tax Levy Law" sometimes called the "Budget Law" as found in Sections 5625-1 et seq. of the General Code of Ohio. Under the provisions of this law, a county budget commission is not authorized to make tax levies within the taxing subdivisions in the county wherein it functions. The actual levies must be made by the "taxing authority" for the subdivision. See Section 5625-25, General Code, hereinafter considered. The taxing authority for a school district is its board of education. See Section 5625-1, General Code, clause (c).

The term "budget" as applied to public corporate financing, other than State financing, means the annual financial statement submitted by the taxing authority of a taxing subdivision or the governing authority of a taxing unit within a county, to the county auditor for the information of the county budget commission in adjusting tax levies to conform to the limitations of law and fixing the limitations of appropriations and expenditures by the taxing subdivision or other taxing unit for and during the ensuing fiscal year.

By the terms of Section 5625-20, General Code, the taxing authority of each taxing subdivision or other taxing unit is charged in mandatory terms with the duty of adopting on or before the fifteenth day of July in each year a tax budget for the ensuing fiscal year.

Section 5625-21, General Code, prescribes what the budget shall contain. It is therein provided in substance, that the budget shall contain a statement of the necessary and contemplated needs of the subdivision or other taxing unit for the ensuing fiscal year, properly classified, and in such detail as may be prescribed by the Bureau of Inspection and Supervision of Public Offices, together with a statement of the estimated unencumbered balances in the several funds of the subdivision or other taxing unit at the end of the current fiscal year, and a statement of estimated resources and receipts from all sources during the ensuing fiscal year for the several purposes other than receipts from tax levies, the purpose being that the county auditor and budget commission may, upon inspection of the budget, by checking the amount required to meet the needs of the subdivision or taxing unit for the ensuing year against its resources, including existing balances at the beginning of the year and receipts during the year other than those from the proceeds of property taxes, determine what will be necessary by way of tax levies within the subdivision or taxing unit to meet these needs.

Section 5625-22, General Code, provides for public hearings upon each such budget after due notice therefor, before final adoption by the taxing authority and provides further that after adoption the budget shall be submitted to the county auditor on or before the twentieth day of July, or at such later date as may be prescribed by the Department of Taxation, Section 5625-23, General Code and Section 5625-24, General Code, fix the duties of the county auditor and the county budget commission after the budget has been submitted to the auditor, by way of determining what tax levies are necessary to meet the requirements of the subdivision or taxing unit in pursuance of the budget as submitted by its taxing authority and by way of making proper adjustment so as to bring the tax levies required within the limitation prescribed by law and the Constitution of Ohio, for such levies.

Section 565-25, General Code, provides in part :

“When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the ten mill tax limitation. *Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio.*” (Emphasis, the writer’s.)

It is axiomatic that political subdivisions and all public agencies must be financed in some way so that the purposes of their existence may be carried out and it is a matter of common knowledge that the source of that financing is to a great extent, local taxation. To that end laws have been passed from time to time providing orderly procedure for the making of tax levies and the allocation and disbursement of the proceeds of those levies so that the processes of government may be properly and efficiently carried on. It should especially be noted in this connection that in the present existing budget law the provisions fixing the duties of the taxing authority in adopting and transmitting its budget, those pertinent to what the budget should contain, and those setting forth the duties of the budget commission in making adjustments, and finally the budget commission’s duty to certify its action back to the taxing authority when its work is completed, as well as the duty of the taxing authority to authorize by ordinance or resolution the necessary tax levies as they have been certified to it as provided by Section 5625-25, supra, are in each instance couched in mandatory language, thereby evincing a legislative intent that the procedure outlined must be followed.

A former Attorney General in an opinion which will be found in Opinions of the Attorney General for 1935, page 285, said on page 289 with respect to this question:

“Budgetary procedure, the fixing and making of tax levies and the appropriation of public funds for public purposes are purely statutory. A complete scheme for the accomplishment of these ends, so far as political subdivisions and other taxing units of the state are concerned, is set up in the so-called Budget Law, and should be followed. In fact, no authority exists for the accomplishment of the purposes for which the budget law was enacted except the law itself. If the procedure therein outlined is not followed orderly government fails and legislative control of taxation and public corporate financing as the law contemplates, becomes a farce.”

As stated by the former Attorney General in the quotation above, it clearly appears upon consideration of the provisions of the Budget Law that a complete scheme is provided for the determination of proper tax levies that may and should be made in each taxing subdivision and taxing unit and for the making of those levies, and that each step in the process is complete in itself and should be taken in the order and in the manner set out in the law. It is apparent from these provisions that the taxing authorities of the several subdivisions and other taxing units lose entire control over their budgets so far as contemplated expenditures during the ensuing fiscal year upon which tax levies are predicated are concerned as soon as the budget is adopted and certified to the county auditor in pursuance of Section 5625-22, General Code, which action the legislature has fixed as one of the steps looking to the fixing of tax levies and which should be taken on or before June 20th of each year or at such later time as may be prescribed by the Department of Taxation.

It is equally clear that the Budget Commission and the County Auditor lose entire control over the budget for rate making purposes when the certification provided for by Section 5625-25, General Code, is effected, except as levies authorized by a vote of the people at the November election might affect the matter. Any further proceedings with respect to the budget authorized by Section 5625-26 and Section 5625-27, General Code, have to do with the fixing and the changing of the basis of the appropriation measures to be adopted in the next ensuing fiscal year. Of course, the Department of Taxation on appeal, may modify any action of the Budget Commission, but in so doing it may consider only “matter or matters presented to the Budget Commission”; it is not authorized to consider additional contemplated expenditures or contemplated changes in such expenditures to those set up in the original budget as adopted and filed with the county auditor in pursuance of Section 5625-22, Gen-

eral Code, any more than is the Budget Commission. See Section 5625-28, General Code.

In the 1935 opinion of the Attorney General referred to above, it was held as stated in the first and second branches of the syllabus :

“1. No authority exists for the taxing authority of a subdivision or other taxing unit, after adopting a budget as provided for by Section 5625-20, General Code, and submitting the same to the county auditor in pursuance of Section 5625-22, General Code, to file an amended or supplementary budget so far as the current needs of the subdivision or taxing unit for expenditures during the ensuing fiscal year are concerned, so as to affect tax levies to be made to meet those needs, and it is not within the power of a county budget commission or the Tax Commission of Ohio on appeal, to consider any needs of the subdivision or other taxing unit in fixing or adjusting tax levies for the subdivision or other taxing unit other than those set out in the original budget as it was filed with the auditor in pursuance of Section 5625-22, General Code.

2. The tax levying authority of a subdivision or other taxing unit is not authorized by law to levy taxes at a rate greater than is necessary to provide the necessary funds for the estimated needs of the subdivision or taxing unit during the ensuing fiscal year and it is the duty of a county budget commission and a county auditor in performing their duties as prescribed by Section 5625-24 and Section 5625-25, General Code, to take this lack of authority into consideration.”

In the course of the opinion, at page 289, it is said :

“It is clear from both the letter and the spirit of the law that when the taxing authority of a subdivision or other taxing unit adopts a budget on July 15th as directed by Section 5625-20, General Code, and submits the same to the county auditor in accordance with Section 5625-22, General Code, there is no power left in the taxing authority to afterwards change the budget so far as necessary contemplated expenditures for any purpose are concerned. The letter of the law is clear on this point, from the fact that nowhere in the law is such power extended, and the spirit of the law to the same effect is manifested from the fact that provision is made for public inspection and a public hearing on the budget before filing it with the county auditor (Section 5625-22, G. C.), so that the taxpayers who must foot the bill may have an opportunity to know what expenditures are contemplated, and protest if not satisfied. No other or later public hearing or public inspection of the budget is provided for. It would be an idle and

useless ceremony to have such a public hearing if the schedule of contemplated expenditures might later be changed by the taxing authorities which had submitted it, at least if the change involved increases in contemplated expenditures.”

It is true that in that opinion the Attorney General had under consideration the question of whether or not the county budget commission and the county auditor might lawfully consider additional contemplated expenditures and needs to those set up in the budget as originally submitted in determining and approving the rates of taxation to be levied; by the same course of reasoning, however, the converse of his conclusions would be reached if the question of reductions instead of increases were to be considered.

Inasmuch as the taxing authority that submits a budget loses control over it so far as contemplated needs are concerned, for rate making purposes, the county budget commission and the county auditor in pursuance of the powers conferred on them are without authority to consider any later certification from the taxing authority with respect to the subject but are obligated under the law to determine and approve rates for the levying of taxes in accordance with the budget as submitted and to certify those rates to the taxing authority as directed by the terms of Section 5625-25, *supra*. In accordance with its duty as fixed by the last mentioned statute the taxing authority is bound to authorize the levies by ordinance or resolution at the rates as certified to it, no more and no less, and to certify their action in so doing to the county auditor on or before October 1st in each year or at such later date as may be approved by the Department of Taxation.

In view of what has been said, it is apparent that the resolution passed by the Board of Education of Center Township Rural School District on August 30, 1939, as stated in your inquiry, is of no force and effect whatever, and that the county auditor and the county budget commission of Williams County are not authorized to consider this resolution in the performance of their duties in connection with the consideration of the budget for the school district as it had previously been submitted to it for the purpose of determining and approving the necessary tax levies to meet the needs of the district. The rates of such levies should be determined and approved by the auditor and the budget commission on the basis of the needs of the district as shown by the said budget and when this action is certified to the board of education as the taxing authority for the district, according to law, it becomes the duty of said board of education to authorize the levies in accordance with the rates certified to it as provided by Section 5625-25, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*