

1050.

TAXES AND TAXATION—MUNICIPALITY MAY NOT DEMAND AND RECEIVE AN ADVANCE OF TAXES UNDER SECTION 2692 G. C. FOR PURPOSE OF PAYING OPERATING EXPENSES FOR PRECEEDING FISCAL HALF YEAR.

SYLLABUS:—

A municipality may not demand and receive an advance of taxes under section 2692, General Code, for the purpose of paying operating expenses for the preceding fiscal half year.

COLUMBUS, OHIO, December 29, 1923.

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

GENTLEMEN—I am in receipt of your recent communication as follows:

“Section 5649-3d, General Code, provides that:

‘At the beginning of each fiscal half year the various boards mentioned in section 5649-3A of this act shall make appropriations for each of the several objects for which money has to be provided, from the moneys known to be in the treasury from the collection of taxes and all other sources of revenue, and all expenditures within the following six months shall be made from and within such appropriations and balances thereof, but no appropriation shall be made for any purpose not set forth in the annual budget nor for a greater amount for such purpose than the total amount fixed by the budget commissioners, exclusive of receipts and balances.’

Section 2692, General Code, provides that:

‘When the local authorities so request the county auditor may draw, and the county treasurer shall pay on such draft to township, city and village treasurers, and the treasurer of any board of education, from June twentieth and December twentieth to the date of the semi-annual distribution, each year, any sum not exceeding two-thirds of the current collection of taxes for such local authorities, respectively, including, as to boards of education, the estimated distribution of the state common school fund and the levy for school purposes retained in the county, to become due to the school district, in advance of the semi-annual settlement.’

Question:

May a municipality demand and receive an advance of 1924 taxes during 1923 after December 20th for the purpose of paying operating expenses for the last half of said year 1923?”

Section 5649-3d, General Code, to which you refer, is part of the so-called Smith one per cent law, and it is essential in considering the above section to refer to other parts of the same act to ascertain the meaning of the same. The whole purpose of the so-called Smith act was to limit public expenditures by limiting the amount of funds which can be raised by taxation.

Section 5649-2, General Code, is the provision which limits the amount of tax that may be levied for general purposes to ten mills on each dollar of tax valuation.

Section 5649-3a, General Code, found in 109 Ohio Laws, page 146 provides:

"On or before the first Monday in June, each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education and all other boards or officers authorized by law to levy taxes, within the county, except taxes levied by the state or for state purposes, shall submit or cause to be submitted to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year, and for each month thereof. Such annual budgets shall specifically set forth:

(1) The amount to be raised for each and every purpose allowed by law for which it is desired to raise money for the incoming year.

(2) The balance standing to the credit or debit of the several funds at the end of the last fiscal year.

(3) The monthly expenditures from each fund in the twelve months and the monthly expenditures from all funds in the twelve months of the last fiscal year.

(4) The annual expenditures from each fund for each year of the last five fiscal years.

(5) The monthly average of such expenditures from each of the several funds for the last fiscal year, and also the total monthly average of all of them for the last five fiscal years.

(6) The amount of money received from any other source and available for any purpose in each of the last five fiscal years, together with an estimate of the probable amount that may be received during the incoming year from such source or sources.

(7) The amount of the bonded indebtedness, setting out each issue and the purpose for which issued, the date of issue and the date of maturity, the original amount issued and the amount outstanding, the rate of interest, the sum necessary for interest and sinking fund purposes, and the amount required for all interest and sinking fund purposes for the incoming year.

(8) The amount of all other indebtedness incurred, with a statement of the sections under which such indebtedness was incurred, and the amount of such additional taxes as may have been authorized as provided in section 5649-5 or 5649-4 or any other section of the General Code under which taxes have been levied outside of usual tax limitations or by a vote of the people, setting out in detail each item of indebtedness as provided in the next preceding paragraph and giving the details as to dates of such levies, their rates and the periods for which they run.

(9) Such other facts and information as the tax commission of Ohio or the budget commissioners may require.

The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for corporation purposes, on the tax list, shall not exceed in any one year five mills. The aggregate of all taxes that may be levied by a township, for

township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year one and five-tenths mills. The local tax levy for school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy provided for by a vote of the electors, any levy excepted from the limitation provided for in section 5649-2 of the General Code or authorized by said section or by any other provision of law to be made in addition to the limitation provided for in said section; nor shall such limits include special assessments, levies for road taxes that may be worked out by the taxpayers, and levies and assessments in special districts created for road or ditch improvements, over which the budget commissioners shall have no control.

Such budget shall be made up annually at the time or times now fixed by law when such boards or officers are required to determine the amount in money to be raised or the rate of taxes to be levied in their respective taxing districts.

The county auditor shall provide and furnish such boards and officers blank forms and instructions for making up such budgets."

Section 5649-3b, General Code, provides for a county budget commission, its members, powers and duties, and section 5649-3c, General Code, provides for the extension of a budget and estimates when certified; the adjustment of budget; what items may or may not be reduced.

Section 5649-3d, General Code, as quoted in your letter provides for the various boards at the beginning of each fiscal half year to make appropriations for each of the objects for which money is to be provided, and that all expenditures within the following six months shall be *from* and *within* such appropriations.

Section 3796, General Code, provides:

"In municipal corporations the fiscal year of each office, board and department shall terminate on the thirty-first day of December, in each year, and all accounts shall be closed on that day, and all annual reports required by law shall be made for the year terminating on that day."

Section 3797, General Code, provides:

"At the beginning of each fiscal half year, the council shall make appropriations for each of the several objects for which the corporation has to provide, or from the moneys known to be in the treasury, or estimated to come into it during the six months next ensuing from the collection of taxes and all other sources of revenue. All expenditures within the following six months shall be made from and within such appropriations and balances thereof."

Section 3797 supra is almost identical in words to section 5649-3d, except that it relates to municipalities solely, and it is identical in operation.

From the above sections it will be seen that council must in January and July of each year appropriate from the money in the treasury, or to come into same during the six months next ensuing, funds for each of the several objects for which it is to provide.

Can it be said that by reason of section 2692 G. C. authorizing the local authorities to make an advance draft on the county treasurer for taxes which have been collected but which they would not receive until the semi-annual distribution, that said moneys are in the treasury as contemplated by sections 3797 or 5649-3d of the General Code?

Article XII, section 5 of the Constitution of Ohio provides:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

Section 3784, General Code, provides:

"Each municipal corporation shall have special powers, to be exercised as provided by law, to levy and collect taxes upon the real and personal property within the corporation for the purposes of paying the expenses of the corporation, constructing improvements authorized, and exercising the general and special powers conferred by law."

Section 3794, General Code, as far as pertinent provides:

"* * * The ordinance prescribing the levy shall specify distinctly each and every purpose for which the levy is made and the per cent thereof,
* * *"

From the above section of the Constitution and the statutes quoted, municipalities have power to levy taxes, but the legislation authorizing the levy of taxes, must state the purpose of such tax and the money from same can only be applied for purposes stated in the legislation authorizing them. The statutes authorizing a municipality to levy a tax are modified by the so-called Smith law in that an ordinance, instead of becoming directly of its own force a levying ordinance, takes on the character of a budget.

It was held in Opinions of the Attorney-General, 1919, Volume II, page 1199 as follows:

"Taxes must be levied on the general duplicate through the agency of the local levying authorities and the budget commission for each purpose or fund separately."

Under section 5649-3a, General Code, there is set out in the city budget, which is submitted to the county auditor on the first Monday in June, an itemized estimate of the expenditures for the next fiscal year, and an ordinance is passed specifying the purpose for which a tax is to be levied, the amount to be levied in the budget is passed on by the county auditor and the budget commission, and certified for levy. The only duty of the budget commission is to see that the amount does not exceed the tax limitations, and if beyond the limitations for all taxing districts, it may reduce, but cannot increase same.

The first half of the taxes so levied and collected in December of the same year is for use after appropriation at the beginning of the next fiscal year. To use any of the moneys raised from a tax levy for a certain fiscal year to pay the obligations of the preceding fiscal year would be using the money for purposes for which the tax was not levied, contrary to Article XII, section 5 of the Constitution, and would be a use of money not appropriated, which is contrary to sections 4629-3d and 3797, General Code.

It is believed that section 2692, General Code, authorizes an advance draw on semi-annual tax distribution after December 20th and June 20th, but does not grant authority to municipalities to make such draw after such date and apply same on debts of preceding half of fiscal year.

This belief is strengthened by the opinion found in Opinions of the Attorney General, 1920, page 1133 that:

"The municipality may also if it finds itself in need of cash for expenditure between the time of passing the semi-annual appropriating ordinance and the time of semi-annual tax distribution, make an advance draft on the county treasury as early as the preceding December 20th or June 20th, to the extent of two-thirds of its share of the taxes now in question."

In the case of *Ampt v. The City of Cincinnati*, 5 Ohio Nisi Prius, page 99, it was held in the fourth and fifth branches of the syllabus:

"4. Where the estimate as to any particular object has been agreed upon by the officers and boards whose duty it is to make such estimate the amount of such expenditure cannot be increased by means of the appropriating ordinance; and an attempt to expend an amount above the estimate is illegal.

5. The main purpose of the legislation upon this subject was to secure an economical expenditure of the public funds, for those objects only which a wise and prudent foresight would deem necessary; and to this end to compel city officials in advance of expenditures to make public declarations of the amounts and objects for which they proposed to make expenditures, so that public attention and criticism might be directed to the same. Such being the purpose of the statutes the courts should give them a liberal construction in the interest of the public."

Answering your question specifically, it is therefore my opinion, that a municipality may not demand and receive an advance of 1924 taxes during 1923 after December twentieth, for the purpose of paying operating expenses for the last half of said year of 1923.

Respectfully,
C. C. CRABBE,
Attorney-General.

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APPROVAL, BONDS OF CITY OF GALION, CRAWFORD COUNTY,
\$29,794.63, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, December 29, 1923.