

3760.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN MONROE COUNTY—L. R. BURKHART.

COLUMBUS, OHIO, November 13, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00, signed by L. R. Burkhart, as principal, and the Maryland Casualty Company of Baltimore, Maryland, as surety. Said bond is conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director in Monroe County.

Finding said bond to have been executed in proper legal form, I have endorsed my approval thereon as to form, and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3761.

BUDGET LAW AND UNIFORM BOND ACT—DISCUSSION OF EFFECT OF VARIOUS AMENDED AND NEWLY ENACTED STATUTES IN S. B. 337 AND H. B. 422 OF THE 89TH GENERAL ASSEMBLY, 1931, UPON QUESTIONS OF TAX LEVIES AND BOND ISSUES VOTED UPON BY ELECTORS OF SUBDIVISIONS AT NOVEMBER, 1931, ELECTION.

SYLLABUS:

1. Where there was submitted to the electors of a taxing subdivision at the November, 1931, election, the question of whether or not taxes should be levied, within the subdivision, outside the fifteen mill limitation for a specified number of years including the current year, and the vote on the said proposition was favorable thereto, the said levy may be made as voted for and may forthwith be extended on the tax duplicate for collection at the December, 1931, collection of taxes, as provided by section 5625-18, General Code, prior to its amendment by the 89th General Assembly.

2. Where in a school district, the question of participation in the state educational equalization fund, and the making of additional tax levies within the said district to qualify it for such participation, was submitted to the electors of the district at the November, 1931, election as provided for by section 5625-18a, General Code, and a favorable vote was had thereon, the additional levies so authorized shall be extended on the tax lists for collection after the February settlement in 1932, and collected at the next tax collection period thereafter.

3. When an election was ordered to be held at the regular election in November, 1931, on the question of additional levies in a taxing subdivision, and the election was so held, and the majority of the voters voting thereon voted in

favor thereof, the taxing authority of the subdivision may levy the proposed tax.

4. *If, at the regular November election in 1931, there had been submitted in a taxing subdivision, a proposed bond issue, and fifty-five percent of those voting on the proposition voted in favor thereof, the taxing authority of the said subdivision is authorized to proceed with the issue of such bonds and with the levying of a tax outside the fifteen mill limitation sufficient in amount to pay the interest on, and retire said bonds at maturity.*

COLUMBUS, OHIO, November 13, 1931.

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

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

“Section 5625-15, as amended in Senate Bill No. 337, provides for the voting of additional levies. Section 5625-17, as amended by the same bill, provides that the resolution to submit, must be certified to the Board of Elections prior to September 15th. Section 5625-17a, as enacted in House Bill No. 422, provides for extending such levy on the tax lists after the next succeeding February settlement.

Question: May this levy be extended on the duplicate payable one-half in December, 1931, and one-half in June, 1932, as provided by Section 5625-18 prior to its amendment?

Section 5625-18b, as enacted in Senate Bill No. 337, provides that an additional levy authorized by a vote under Section 5625-18a, shall be extended on the tax duplicate after the next succeeding February settlement.

Question: May this levy be placed upon the duplicate payable one-half in December, 1931, and one-half in June, 1932?

Section 5625-18, as amended in H. B. No. 422 in all cases other than school districts, requires a fifty-five percent vote for the enacting of an additional levy. Prior to its amendment it provided for a majority vote.

Question: If a majority vote for the proposition be less than fifty-five percent may the extra levy be made?

Section 2293-23, as amended in H. B. No. 422 requires a sixty percent vote to carry a bond issue while that Section prior to its amendment required only 55 percent.

Question: In a case where the vote was fifty-five percent or better and less than sixty percent, may the bonds be legally issued?”

Sections 5625-15, 5625-17, 5625-17a and 5625-18, of the General Code, which sections are referred to in your first question, have to do with the procedure to be followed by a taxing subdivision in making tax levies not otherwise permitted beyond the fifteen mill limitation fixed by amended section 2, of Article XII of the Constitution of Ohio, and section 5625-2 of the General Code, except by affirmative vote of the electors of the subdivision.

Sections 5625-15 and 5625-17, General Code, were amended, and section 5625-17a was enacted in Amended Senate Bill No. 337, of the 89th General Assembly; section 5625-18, General Code was amended in House Bill No. 422 of

the same session. The effective date of each of these bills was October 14, 1931—approximately three weeks prior to the November, 1931, election and nearly five weeks subsequent to September 15, 1931. By these same acts of the Legislature the then existing sections 5625-15, 5625-17 and 5625-18 were repealed, the effective dates of these repeals being October 14, 1931.

Prior to the repeal of former sections 5625-15 and 5625-17, General Code, as noted above, these sections provided in substance that the taxing authority of any subdivision might declare by resolution the necessity for additional taxation within the subdivision, beyond the fifteen mill limitation, for certain specified purposes. It was required that the resolution be confined to a single purpose and that it specify the amount of increase in rate necessary to levy, the purpose thereof, and the number of years during which the proposed increase should be in effect, which might or might not include a levy upon the duplicate for the current year.

It was provided that any such resolution adopted be certified to the board of elections for the proper county or counties prior to September 15th of any year, and said board of elections should, after proper notice had been given and necessary arrangements made therefor, submit the question to the electors of the subdivision at the succeeding November election by the use of a form of ballot set out in the statute. This ballot provided for voting for or against the levy.

Section 5625-18, General Code, prior to its repeal and the enactment of amended section 5625-18, General Code, provided that if a majority of the electors voting thereon at such election, voted in favor thereof, a tax in accordance with the resolution might be levied. Said section provided further:

“If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; in all other years, it shall be included in the annual tax budget that is certified to the county budget commission.”

Amended sections 5625-15 and 5625-17, General Code, provide substantially the same as did these statutes before amendment, so far as the time and manner of initiating and submitting the proposition of additional taxes in a subdivision is concerned. Section 5625-18, General Code, however, was amended to read as follows:

“If the majority of the electors voting on a levy for the current expenses of schools or fifty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution.”

At the same time, so far as the effective date of these several amendments

and enactments are concerned, that sections 5625-15, 5625-17, and 5625-18 were amended, section 5625-17a was enacted to read as follows:

“A levy voted outside of the fifteen mill limitation under section 5625-17 of the General Code shall be certified to the tax commission of Ohio, as well as to the officers mentioned in section 5625-18 of the General Code. In the first year thereof, such levy shall be extended on the tax lists after the February settlement next succeeding such election.”

In accordance with sections 5625-15 and 5625-17, General Code, both before and since amendment, it is necessary for the taxing authority of a subdivision desiring to submit the question of additional tax levies at the November election in any year, to initiate that proceeding by the passage of a resolution declaring the necessity therefor and setting forth the purpose of the levy and the proposed rate and length of time it is to run, prior to September 15th of that year, and certify the same to the board of elections of the proper county or counties prior to that time.

On September 15, 1931, amended sections 5625-15, 5625-17, 5625-18 and the newly enacted section 5625-17a, were not in force nor are there any provisions of this amendatory legislation indicating or suggesting an intent on the part of the Legislature that the said amendments or new legislation, should operate retrospectively so far as the passage and certification of the resolution initiating the movement for additional levies is concerned, or an intent that the provision directing passage and certification of this said resolution prior to September 15th be suspended or be inoperative for the year 1931.

We are not here confronted with the question as to whether or not, if the Legislature had provided in express language or by necessary implication that this amendatory legislation should apply to propositions submitted at the November, 1931, election, such a provision or construction would be violative of the constitutional inhibition on the passage of retroactive laws, for the reason that the Legislature did not so expressly provide and no language appears therein from which, by any possible construction, it may be said that such an intent is implied.

It is well settled that a retrospective effect will not be given to a statute unless it appears that it was the intention of the Legislature that it should have that effect. *Cooley's Constitutional Limitations*, section 370; *Broom's Legal Maxims*, section 35; *Kelly v. Kelso & Loomis*, 5 O. S., 199; *State v. Staley*, 5 O. C. C. 602; *Montpelier v. Senter*, 72 Vt., Ill.; *Brown v. Hughes*, 89 Minn. 150, 94 N. W., 438. In the latter case the court said:

“Again, it is a well settled rule that laws are not to be construed retrospectively, or to have a retrospective effect, unless it should clearly appear that it was so intended by the enacting body and unless such construction is absolutely necessary to give meaning to the language used.”

Standing alone, amended sections 5625-15; 5625-17, 5625-18 and section 5625-17a, General Code, as enacted by the 89th General Assembly, do not confer power on the taxing authority of a taxing subdivision to submit the proposition of additional levies at the November, 1931, election. Although these statutes

were in force at the time of the election in 1931, they set up a procedure for the submission of questions that could not possibly be complied with in 1931 to submit the question at the November, 1931, election in accordance therewith. These statutes were not in force on September 15, 1931, and therefore no authority existed on that date for taxing authorities to adopt the necessary resolution, and certify it to the board of elections in order to initiate the proceedings for submission of questions in accordance with the machinery set up by these statutes; nor do these statutes expressly or by any possible implication suspend the operation of the provisions of sections 5625-15 and 5625-17, General Code, as amended, with respect to the adoption and certification of the initiatory resolution prior to September 15th of any year, for the year 1931 or give to these statutes a retroactive effect in this respect.

If this had been entirely new legislation, and no authority had previously existed for the submission of questions relating to additional tax levies, it would be my opinion that an election on such a question could not lawfully have been held in 1931.

We must conclude, therefore, that any action taken prior to September 15, 1931, whereby a resolution was adopted and certified to the board of elections by the taxing authority of a subdivision providing for the submission of the question of additional tax levies at the November, 1931, election, was taken by favor of the statutes then in force, that is sections 5625-15, 5625-17, 5625-18 and cognate sections of the General Code, as they existed prior to amendment by the 89th General Assembly, although these sections were repealed as of October 14, 1931, and therefore were not in force at the time of the election in 1931. It becomes necessary, therefore, to inquire what effect the repeal of these statutes had on the proceedings which had been initiated by authority of their provisions, prior to their repeal. In this connection, section 26 of the General Code, of Ohio is pertinent. This section reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

The general rule is that when an act of the Legislature is repealed without a saving clause, it is considered, except as to transactions passed and closed, as though it had never existed. Lewis' Sutherland Statutory Construction, section 282. In nearly every state this rule has become largely inoperative because of general saving statutes such as section 26, *supra*. Such statutes are to be given the same effect as a saving clause in a repealing statute, unless a different intention is clearly apparent. Section 26, General Code, must be read into all legislation amending existing statutes, and where a different intention is not manifest, all causes of action, prosecutions or proceedings existing at the time of such repeal or begun prior to the said repeal are not affected thereby. *Friend v. Levy*, 76 O. S., 26; *Smith v. New York Central Railroad*, 122 O. S., 45.

Said section 26, General Code, in substance and effect, has been in force

for a great many years and has been before the courts for interpretation in a great many cases. It is said to be a rule of legislative interpretation and is to be construed as a part of any amended act, unless such amendment otherwise expressly provides. *State, ex rel. Andrews, et al., v. Zangerle, Auditor*, 101 O. S., 235. Wide scope is given to the term "proceedings" as used in this statute. It has been held to apply to proceedings for the issuing of bonds, the making of road improvements, the improvement of city streets and the assessing of property therefor, the construction of county buildings, the organization of private corporations and many other similar proceedings.

Without reviewing the many cases and opinions of this office where the subject has been considered, I believe it to be sufficient for the purposes of this opinion, to refer to a few of the authorities upon which I base my conclusions. See *Raymond v. Cleveland*, 42 O. S., 522; *Cincinnati v. Davis*, 50 O. S., 225; *State, ex rel., v. Scobie*, 84 O. S., 443; *Kelley v. State, ex rel.*, 94 O. S., 341; *State, ex rel., v. Zangerle*, 101 O. S., 235; *State, ex rel., v. Johnson*, 105 O. S., 599; *State v. Weiler*, 113 O. S., 443; *Toledo v. Marlowe*, 8 C. C. (N. S.) 121, affirmed by the Supreme Court without opinion, 75 O. S., 574; *State v. Cass*, 13 C. C. (N. S.) 449; Opinions of the Attorney General for 1920, page 580; for 1925, page 317; for 1927, pages 1345, 1357 and 2378; for 1928, pages 638, 971, 1196, 1382, 1451, 1580, 1737, 1921; for 1929 pages 499, 1077, 1172, 1993; and for 1930, pages 79, 222, and 1114.

In the light of the foregoing authorities I am convinced that when a taxing subdivision has had submitted a proposition for the making of additional tax levies outside the fifteen mill limitation to the electors of the subdivision at the November election in 1931, that submission was under and by virtue of sections 5625-15, 5625-17 and 5625-18, General Code, as they existed at the time of the passage of the resolution providing for such submission, which action was necessarily taken prior to September 15, 1931. The subsequent repeal of these statutes did not affect the proceedings thus initiated prior to October 14, 1931, and therefore if the majority of the electors voting thereon at such election voted in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate, and may extend the same on the duplicate for collection, as provided by section 5625-18, General Code, prior to its repeal, although amended sections 5625-18, and 5625-17a, General Code, which were in force at the date of the election provided otherwise.

Your first and third questions may therefore be answered in the affirmative.

By the same course of reasoning, your fourth question may be disposed of.

Sections 2293-1 to 2293-27, inclusive, of the General Code, relate to the issuing of bonds by counties, school districts, municipalities and townships, referred to in these statutes as "subdivisions."

Sections 2293-19 and 2293-21, General Code, which are pertinent to your inquiry, were amended by the 89th General Assembly, in amended Senate Bill No. 327, and former sections 2293-19 and 2293-21, General Code, were, by the express terms of said act, repealed. This act became effective October 14, 1931. Section 2293-23, General Code, was amended and section 2293-23a, General Code, enacted in House Bill No. 422 of the 89th General Assembly. The effective date of said House Bill No. 422 was also October 14, 1931.

Section 2293-19, General Code, prior to its repeal, provided in substance that when there is to be submitted a bond issue to the electors of any subdivision, the taxing authority thereof shall pass a resolution declaring the necessity of such bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levying of a tax outside

the fifteen mill limitation to pay the interest on and to retire the said bonds. It is also provided that such resolution shall be certified to the county auditor at least sixty days prior to the election, at which it is desired to submit such question. The county auditor is then required at least fifty days before said election to calculate and certify to the taxing authority the average annual levy throughout the life of the bonds which will be required to pay the interest on, and retire the said bonds. Thereupon, the said taxing authority, if it desires to proceed with the issue of such bonds, shall more than forty days prior to such election, certify its resolution, together with the amount of the average tax levy estimated by the county auditor and the maximum number of years required to retire the bonds to the deputy state supervisor of elections.

Former section 2293-21, General Code, provided for the holding of the election, of publication of notice thereof and the contents of that notice. It required the notice to be published for four weeks prior to the election and to state the amount of the proposed bond issue, the purpose of the issue, the maximum number of years during which such issue should run and the estimated average additional tax rate outside the fifteen mill limitation necessary to retire the said bonds as certified by the county auditor. While no substantial change was made in the terms of these two sections as amended, that fact is not significant, in my opinion, as obviously, if a bond issue were to have been submitted at the November, 1931, election, the initiation of these proceedings looking to such submission, by the passage of the necessary resolution, as well as the calculation by the county auditor of the average annual tax levy to pay the interest on and retire the bonds, and its certification to the taxing authority, the certification of the resolution, the average tax levy and the maximum years to retire the bonds to the board of elections and the publication of the notice of said election must have all been done necessarily prior to the effective date of the repeal of sections 2293-19, 2293-21 and 2293-23, General Code, and of the enactment of section 2293-23a, General Code.

It is my opinion, therefore, that section 26 of the General Code, should be read into the repeal of these statutes and that their provisions, as they existed prior to their repeal, govern the question of whether or not the vote was favorable, and that section 2293-23a, General Code, providing for the extension of the tax lists of the tax levy authorized by the vote, has no application whatever, to the issue of bonds so authorized or the levying of the tax for their retirement.

Section 2293-23, General Code, prior to its repeal, provided that if fifty-five percent of those voting upon the proposition, voted in favor thereof, the proposition will be held to have carried, and it is my opinion that in all instances where a question of this character had been submitted to the electors at the November, 1931, election and fifty-five per cent of those voting upon the proposition, voted in favor thereof, the taxing authority of such subdivision has authority to proceed with the issue of such bonds in accordance with the resolution adopted by it prior to said election and may levy a tax outside of the fifteen mill limitation, sufficient in amount to pay the interest on, and retire such bonds at maturity.

Your fourth question will therefore be answered in the affirmative.

Your second question, however, presents an entirely different problem. Section 26 of the General Code, has no application to this question, for the reason that the repeal of no statute is involved. Sections 5625-18a and 5625-18b, General Code, as enacted in amended Senate Bill No. 337, of the 89th General Assembly, provide for the submission to the voters of a question, no authority for which existed prior to their enactment. Authority previously existed, and

still does, for a school district to submit to the electors the question of additional tax levies for a designated purpose in a definite amount and for a definite number of years and, without a doubt, this may be done under the present law in a state aid district as well as any other. In fact the power is expressly saved to a school district by the terms of section 5625-18e, General Code, which provides in part:

"A school district which votes a levy under the provisions of sections 5625-18a to 5625-18c inclusive may vote additional levies from time to time under the general provisions of sections 5625-15 to 5625-18 inclusive."

Obviously, sections 5625-18a to 5625-18e, General Code, were not employed as a substitution for, or amendatory to any previously granted authority. They provide an entirely new method for a school district to submit the question of additional tax levies for the purpose of qualifying the district to participate in the state educational equalization fund. By their terms, a school district is authorized to submit to the electors of the district the question for or against participation in the state educational equalization fund, which carries with it the question of necessary additional tax levies to qualify the district for such participation. It is provided that such question shall be submitted to the electors of the district in accordance with the provisions of section 5625-17, General Code, with the exception of the form of ballot, which is set up in section 5625-18a.

To comply with the provisions of section 5625-17, General Code, with respect to the initiation of proceedings for an election on this question, it is necessary that a resolution be passed declaring the necessity for such election and that certification of such action to the board of elections of the proper county be made prior to September 15th next preceding the November election at which the submission is to be made.

It is clear that this could not be done in 1931, as the statutes, sections 5625-18a to 5625-18e, General Code, authorizing the submission of the question for or against participation in the state educational equalization fund and the making of additional levies to qualify the district for such participation were not in force on September 15, 1931, unless by the terms of this new legislation it appears to have been the intent of the Legislature that the legislation should operate retrospectively with respect to the initiation of the proceedings or that the requirement of the initiation of these proceedings in accordance with section 5625-17, General Code, be suspended or be inoperative for the year 1931.

The intent seems to be clearly expressed in section 5625-18a, General Code, which reads in part, as follows:

"If the board of education of any school district shall have applied to the director of education for participation in the state educational equalization fund under the provisions of section 7595-1 of the General Code for the school year 1931-1932, but cannot make tax levies sufficient to meet the requirements of such section, there shall be submitted to the vote of the electors of such district at the November election in the year 1931, the question whether the people of said district shall approve such application and authorize a tax for the current expenses of the school district outside of the fifteen mill limitation for so long a period as said district participates in said fund, * * *"

From the language used in the above statute, it appears clearly to have been the intention of the Legislature that a vote at the November election in 1931, in accordance with the statute, is authorized. This intent is also manifest by consideration of the terms of sections 5625-18c and 5625-18e. Either the Legislature realizing these statutes would not be in force on September 15, 1931, so that a board of education might take the preliminary steps for an election in accordance with section 5625-17, General Code, as the statute directs, intended the statute to operate retrospectively or that the provisions of section 5625-17, General Code, with respect to the preliminary resolution and other matters which must necessarily be taken care of in accordance with the strict terms of the statute prior to October 14, 1931, the effective date of said sections 5625-18a, et seq., should be suspended for the year 1931. Looking at it either way, it follows that an election on this question if held in 1931, was held by authority of said sections 5625-18a, et seq., General Code.

The extension of the levy for collection must therefore be made in accordance with section 5625-18b, which reads as follows:

"If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said school district may levy a tax within such school district at such additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution or at any less rate, or for any of said years. The result of the election shall be certified immediately after the canvass by the board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection after the next succeeding February settlement; in all other years it shall be included in the annual tax budget that is certified to the county budget commission."

In specific answer to your questions, I am of the opinion:

First, where there was submitted to the electors of the taxing subdivision at the November, 1931, election, the question of whether or not taxes should be levied within the subdivision outside the fifteen mill limitation for a specified number of years including the current year, and the vote on the said proposition was favorable thereto, the said levy may be made as voted for and may forthwith be extended on the tax duplicate for collection at the December, 1931, collection of taxes, as provided by section 5625-18, General Code, prior to its amendment by the 89th General Assembly.

Second, where in a school district, the question of participation in the state educational equalization fund, and the making of additional tax levies within the said district to qualify it for such participation, was submitted to the electors of the district at the November, 1931, election as provided for by section 5625-18a, General Code, and a favorable vote was had thereon, the additional levies so authorized shall be extended on the tax lists for collection after the February settlement in 1932, and collected at the next tax collection period thereafter.

Third, when an election was ordered to be held at the regular election in November, 1931, on the question of additional levies in a taxing subdivision, and the election was so held, and the majority of the voters voting thereon voted in favor thereof, the taxing authority of the subdivision may levy the proposed tax.

Fourth, if, at the regular November election in 1931, there had been submitted, in a taxing subdivision, a proposed bond issue, and fifty-five per cent of those voting on the proposition voted in favor thereof, the taxing authority of the said subdivision is authorized to proceed with the issue of such bonds and with the levying of a tax outside the fifteen mill limitation sufficient in amount to pay the interest on, and retire said bonds at maturity.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3762.

LIQUIDATION OF BANKS—SUPERINTENDENT OF BANKS MAY BORROW MONEY AND ISSUE NOTES TO PAY TAXES OF TRUST ESTATES—TRUST INCOME USED FOR REIMBURSEMENT.

SYLLABUS:

Discussion of duties of Superintendent of Banks in administering trust department of bank in liquidation.

COLUMBUS, OHIO, November 14, 1931.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication which reads as follows:

“A question has arisen in several of the closed banks in Toledo with reference to the right of the Superintendent of Banks to borrow money on his personal note in an amount sufficient to pay taxes due and owing on certain trust estates of which the closed bank is a trustee.

In connection with the foregoing, several questions arise upon which I would appreciate your opinion:

1. May the Superintendent of Banks borrow money on a note in his official capacity to pay taxes due and owing on certain trust estates of which the closed bank whose affairs he is administering is a trustee?

2. In order to protect the Superintendent of Banks and the lending bank, may income accruing after such borrowing in trust estates in which taxes were paid, be applied in payment of the pro rata share of that particular estate's participation in the tax moneys borrowed?

3. If the answer to inquiry 2 is in the affirmative, can a cestui que trust or a creditor or a stockholder of such closed bank legally object to trust income being applied as suggested in inquiry 2?”

I shall answer your questions in the order in which they are set forth in your communication.

Answering the first question of your communication, I call attention to Section 710-95, General Code of Ohio, which provides:

“Upon taking possession of the property and business of such bank, the superintendent of banks is authorized to collect money due to such