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QUESTION OF SPECIAL LEVY FOR PUBLIC SCHOOL DISTRICT LIBRARY—SUBMISSION TO VOTE OF ELECTORS—RESOLUTION IN CONFORMANCE WITH SECTION 5625-16, GENERAL CODE—WHERE THERE IS NO CONFORMANCE AND NO RESOLUTION THE LEVY IS ILLEGAL WHEN PASSED.

*SYLLABUS:*

*In order to submit to the vote of the electors of a subdivision the question of a special levy for library purposes of a school district public library, as authorized under Section 5625-15, General Code, it is mandatory that the provisions of Section 5625-15, and 5625-16, General Code, be strictly followed, and that, a resolution be adopted by the board of public library trustees requesting the board of education to submit the question of a special levy, and that, the board of education upon receipt of such a resolution take the necessary action for submitting to the vote of the electors of the subdivision the question of the special levy.*

*2. Where the board of public library trustees failed to pass a resolution requesting the board of education to submit the question of a special levy to the vote of the electors of the village school district and the council of the village passed a resolution requesting a one mill levy for library purposes, and the levy was voted upon, such procedure was not a compliance with the provisions of Sections 5625-15 and 5625-16, General Code, and such special levy for library purposes is illegal.*

COLUMBUS, OHIO, June 3, 1937.

HON. PETER CATRI, *Prosecuting Attorney, Erie County, Sandusky, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“In 1934, the Huron Village Board of Education appointed a Board of Library Trustees and turned over to them all their books, equipment, etc. In August, 1935, the Council of the Village of Huron passed a Resolution requesting a one mill levy for library purposes, a copy of which is enclosed herewith, together with the legal notice which was published.

This one mill levy was voted on at the November Election of 1936, and passed. The collection on the levy was made by the County Auditor's Office, and a check was sent to the Clerk of the Village Council.

Last summer, one of the State Examiners advised the clerk to hold the money and not turn it over to the Board of Library Trustees, stating that in his opinion the Village Council had no authority to make this levy; and the Clerk would receive an opinion from the Bureau of Inspection and Supervision of Public Offices. To date, we have received no opinion, and I am advised by the Bureau that the opinion would have to come from your office.

It should be borne in mind that this Board of Library Trustees, was appointed by the Village Board of Education; and they conduct a free library for all of the residents of the village. They also serve by agreement with the township trustees, people in the township; and the township trustees included them in their budget.

The Clerk of the Board of Huron Township Trustees, of Huron, Ohio, because he knows of the situation in regard to the village levy, is hesitant about turning over to the library board the money which he has on hand for them.

I am of the opinion that the levy in this case was according to law, and that there is no reason why this fund can not be turned over to the Library Board.

Section 5625-15 of the General Code, provides that the taxing authority may by resolution, declare the necessity to levy a tax in excess of the ten mill limitation for the following purposes: Section No. 4 thereof, is as follows: 'For a public library of, or supported by a municipality, township, school district or county, *under whatever law organized or authorized to be supported.*'

Section 7632 of the General Code, provides that 'the board of education, the council of any municipality, or the trustees of any township \* \* \* and may levy a tax therefor.'

The present Library Board of Trustees has been occupying rented rooms and it was their hope at the time this levy was passed, to purchase a building and remodel the same with WPA Funds. In view of the present status of affairs, the local WPA authorities hesitate to encourage the project.

The fact that the people of the Village of Huron passed the levy, is evidence that they are desirous of having a library building in the village.

I am Solicitor for the Village of Huron and also County Prosecutor, and would appreciate your opinion in this matter."

I assume: that, the library in question is a school district public library: and that, it was established under the provisions of Section 7635, General Code, which reads as follows:

“The board of educations of any city, village or rural school district, by resolution, may provide for the establishment, control and maintenance in such district of a public library, free to all the inhabitants thereof. It shall provide for the management and control of such library by a board of trustees to be elected by it as herein provided, which board shall hold title to all such library property.”

The sections of the General Code pertinent to your question are Sections 5625-15 and 5625-16. Section 5625-15, provides in part, as follows:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

\* \* \* \* \* \* \* \* \*

4. For a public library of, or supported by, a municipality, township, school district or county, under whatever law organized or authorized to be supported. \* \* \*”

Section 5625-16, provides:

“The taxing authority of any county, municipality, school district or township, having a board of public library trustees, shall upon the receipt of a resolution adopted by said board requesting the submission of a special levy, for the use of said board, submit to the vote of the electors of the subdivision the special levy for library purpose which they are authorized to submit under Section 5625-15 of the General Code. The proceeds of any library levy outside of the ten mill limitation shall be used for purposes of said board of library trustees in accordance with the provisions of law applicable to said board.”

Section 5625-15, supra, was amended in 1931, so as to include in the purposes for which taxes may be raised outside of the fifteen mill limitation by vote of the people, taxes for a public library of, or supported by, a municipality, township, school district or county. Section 5625-16, supra, was amended in 1931, in entirety, that is, it substituted provisions for the submission of the special levy for library purposes, for provisions for a petition for recreational levy. Both Sections 5625-15 and 5625-16, supra, were amended in 1934, to conform to the ten mill limitation. The procedure outlined in Section 5625-16, supra, for the submission of the special levy for library purposes is:

1. A resolution adopted by the board of public library trustees requesting the taxing authority to submit the question of a special levy.
2. The taxing authority upon receipt of the resolution from the board of public library trustees taking the necessary action for submitting to the vote of the electors of the subdivision the question of the special levy.

It is clear from the language of Section 5625-16, supra, that the taxing authority of any school district having a board of public library trustees must submit the question of a special levy to the electors. There is no question but that "the taxing authority of any subdivision" referred to in Section 5625-15, supra, and "taxing authority" of any school district having a board of public library trustees, referred to in Section 5625-16, supra, mean the same. This is made clear from the very language contained in both Sections 5625-15 and 5625-16, supra, and especially so when it states in Section 5625-16, supra, "The taxing authority \* \* \* shall \* \* \* submit \* \* \* which they are authorized to submit under Section 5625-15 of the General Code." "They" refers back to "the taxing authority of any subdivision." It therefore becomes necessary to determine what the proper "taxing authority" of any school district having a board of public library trustees that must submit to the vote of the electors of the subdivision the question of the special levy.

Section 5625-1, General Code, provides in part, as follows:

"The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county school district, except the county school district, municipal corporation or township in the state.

\* \* \* \* \*

(c) 'Taxing authority' or 'bond issuing authority' shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legis-

lative authority of such municipal corporation; in the case of a school district, the board of education; and in the cast of a township, the township trustees."

From the language of (a) and (c) in Section 5625-1, supra, no other interpretation can be adopted but that "taxing authority" as referred to in Section 5625-16, supra, means the board of education. In the instant case it would refer to the board of education of the Huron Village School District.

I think it advisable at this time to make the observation as to the similarity that exists in procedure necessary to secure a special levy for library purposes under the provisions of Section 5625-16, supra, and the procedure outlined for the tax levy for a school district public library under the provisions of Section 7639, General Code, which reads as follows:

"Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided."

It is to be noted that Section 7639, supra, imposes upon the board of library trustees the duty of certifying to the board of education the amount of money needed and upon the board of education the duty of making the levy. Sections 5625-15 and 5625-16, supra, imposes upon the board of library trustees the duty of adopting a resolution for a special levy and upon the board of education the duty of submitting the question to the electors.

It is apparent from the foregoing facts, that if the provisions of the Sections 5625-15 and 5625-16, supra, are mandatory, in respect to the school district board of public library trustees adopting a resolution, and upon receipt of the same by the board of education, the board of education taking the necessary action for submitting the question of the special levy for library purposes in the instant case, were invalidated by the failure to conform to the provisions of said statutes.

Section 5625-16, supra, as stated hereinbefore, was amended in its entirety for the purpose of providing the submission of the special levy for library purposes. It imposed certain mandatory procedure upon the

school district public library trustees and the board of education. There was an entire failure on the part of both boards to perform or take such procedure imposed upon them. Therefore, the question involved here is not one of substantial compliance with the statute. It is one of disregard of the statutes in question. I think the character of the provisions of the statutes in question has been conclusively determined by the Supreme Court, in the case of *Board of Education vs. Briggs*, 114 O. S., 413. At page 420, of the opinion, it is said:

“It is to be observed that the language prescribing the official action to be taken precedent to the question of issuing bonds is mandatory in character throughout these provisions. It could not be more imperative if it read that ‘in order to authorize the issuance of such bonds the bonding authority must,’ \* \* \*

The situation here presented calls for the application of the general rule stated by 2 Sutherland on Statutory Construction (2nd Ed.), Section 627:

‘Mandatory statutes are imperative; they must be strictly pursued; otherwise the proceeding which is taken ostensibly by virtue thereof will be void. Compliance therewith, substantially, is a condition precedent; that is, the validity of acts done under a mandatory statute depends on a compliance with its requirements.’

The further rule stated by the same author (Section 628) is applicable:

‘What the law requires for the protection of the taxpayer, for example, is mandatory, and cannot be regarded as directory merely.’

The decisions seem quite uniform in holding that those measures which are intended for the security of the citizen, or for securing equality of taxation, or to enable one to know with reasonable certainty for what real and personal property he is taxed, are conditions precedent and are mandatory, and that those provisions are directory which relate to some comparatively immaterial matter which is not of the essence of the thing to be done, as stated in the authority above quoted, ‘where compliance is a matter of convenience rather than substance.’

From a more casual reading of the statute before us for consideration in this case the conclusion is irresistible that the acts which were prescribed by the mandatory language employed were required for the protection of the taxpayer, and

therefore cannot be regarded as merely directory, but must be substantially complied with.

In your communication you refer to the provisions of Section 7632, General Code. You will observe that this section does not deal with the levying of a special tax in excess of the limitations imposed by law.

I further wish to make this observation: that no doubt the agreement for library service made by and between the Huron School District Public Library Trustees and the Board of Huron Township Trustees was in conformance with the provisions of Section 7632, General Code; and that, therefore the illegality of the special levy for library purposes does not in any way relieve the Board of Huron Township Trustees from paying any and all money due from them to the Huron School District Public Library Trustees, by virtue of the existing contract.

It therefore is my opinion: that, there was not a compliance with the provisions of Sections 5625-15 and 5625-16, General Code, in the submission of the special levy for library purposes to the vote of the electors of the Village of Huron at the November election of 1935, and that, said special levy of one mill for library purposes, is illegal.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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693.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO  
SALE OF TWO SMALL ISLANDS IN THE MAUMEE RIVER  
TO THE WOOD COUNTY PARK COMMISSION, BOWLING  
GREEN, OHIO.

COLUMBUS, OHIO, June 3, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: Some time ago you submitted for my examination and approval a transcript of your proceedings relating to the sale to the Wood County Park Commission of Bowling Green, Ohio, of two small islands in the Maumee River which are referred to in your later correspondence directed to this office, as a part of lands granted to the State of Ohio either directly by an act of Congress or by joint resolution of the General Assembly of the State of Indiana, to aid in the construction of