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VILLAGE NOT AUTHORIZED TO CREATE OR INCUR BONDED INDEBTEDNESS IN EXCESS OF ONE PERCENT OF TOTAL VALUE OF ALL PROPERTY IN VILLAGE AS ASSESSED FOR TAXATION WITHOUT A VOTE OF THE ELECTORS—PROVISION IN VILLAGE CHARTER AUTHORIZING TAX LEVY IN EXCESS OF TEN MILL LIMITATION WITHOUT VOTE OF ELECTORS OF NO AVAIL—SECTION 133.03 RC, AM. SB 224, AM. SUB. SB 329, 100 GA.

SYLLABUS:

Under the provisions of Section 133.03, Revised Code, as amended either by Amended Senate Bill No. 224, or by Amended Substitute Senate Bill No. 329 of the 100th General Assembly, a village is not authorized, without a vote of the electors, to create or incur a bonded indebtedness in excess of one percent of the total value of all property in such village as listed and assessed for taxation, regardless of any provision of the charter of such village authorizing a tax levy in excess of the ten mill limitation without a vote of the electors.

Columbus, Ohio, May 10, 1954

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“The 100th General Assembly passed Senate Bill No. 224, effective on October 23, 1953, which provides, in part, as follows: (Section 133.03 of the Revised Code.)

‘The net indebtedness created or incurred by a municipal corporation without a vote of the electors shall never exceed one percent of the total value of all property in such municipal corporation as listed and assessed for taxation, except in case of *charter cities* where the charter provides for the levying of taxes outside the ten mill limitation without a vote of the electors then said net indebtedness created or incurred without a vote of the electors shall not exceed *two percent* of said total value.’

“We have had a question from the village of Parma Heights as to what is the limitation on the net debt of a *charter village*, under the provisions of this Section 133.03 of the Revised Code.

“As this question appears to be of state wide concern, as there are several villages in the state which are operating as charter villages, will you please give us your opinion on the following question :

“Under the provisions of Section 133.03 of the Revised Code, is the net debt limitation of two percent of the total value of all property in such municipal corporation as listed and assessed for taxation applicable to a *charter village*, where the *village charter* provides for the levying of taxes outside the ten mill limitation without a vote of the electors?

“It has been my thought that the General Assembly, in using the words ‘charter cities’ might have intended to limit this two per cent debt limitation, without a vote of the people, to *charter cities* alone, in its application to municipal corporations.”

Your request is, in effect, whether a *village*, without a vote of the electors, may create or incur a bonded indebtedness in excess of one percent of the total value of all property in such village as listed and assessed for taxation, if such village has adopted a charter providing for the levy of taxes outside the ten mill limitation without a vote of the electors.

Your question assumes that Section 133.03, Revised Code, as currently in force and effect, is that section as amended by Amended Senate Bill No. 224, which amended the first paragraph of that section by the addition of the words :

“* * * except in the case of charter cities where the charter provides for the levying of taxes outside the ten mill limitation without a vote of the electors then said net indebtedness created or incurred without a vote of the electors shall not exceed two per cent of said total value.”

It would appear that there might be some question as to whether this is true. Section 133.03, Revised Code, was amended twice by the 100th General Assembly.

Amended Senate Bill No. 224, referred to above, was passed July 14, 1953, approved by the Governor July 20, 1953, filed with the Secretary of State July 22, 1953, and presumably took effect ninety days thereafter, or on October 21, 1953.

Amended Substitute Senate Bill No. 329 was passed July 9, 1953, approved by the Governor July 20, 1953, filed with the Secretary of

State July 22, 1953, and as an emergency measure declared to be effective October 1, 1953. The latter bill added a new paragraph (H) to Section 133.03, providing that voted bonds issued for the purpose of urban redevelopment should not be included in the limitations provided by that section to the extent that such bonds do not exceed two percent of the total value of all property in such municipal corporation as listed and assessed for taxation. It should also be noted that Amended Substitute Senate Bill No. 329, in effect, was but a recodification of the changes made by Amended Substitute Senate Bill No. 256 which had amended Section 2293-14, General Code, to the same effect. Amended Substitute Senate Bill No. 256 was passed July 8, 1953, approved by the Governor July 17, 1953, filed with the Secretary of State July 17, 1953, and as an emergency measure became effective at that time.

We find, therefore, a situation where Amended Senate Bill No. 224 amended Section 133.03 in one respect, and Amended Substitute Senate Bill No. 329 amended this same section in another respect, neither of such amendments including the new language added by the other, and where both amendments were signed by the Governor the same day.

In view of the provisions of Section 16, Article II, of the Ohio Constitution that "no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed," it would appear probable that one or the other of such amendments of Section 133.03 is not now in force and effect.

I find, however, that I need not solve the question of which amendment is now in force and effect in order to answer your question. If Section 133.03 as currently in force and effect is that section as amended by Amended Substitute Senate Bill No. 229, all municipal corporations, both cities and villages, are limited to a net indebtedness of one percent of the property tax valuation except by vote of the electors, regardless of any charter provision. If, on the other hand, Section 133.03 as currently in force and effect is that section as amended by Amended Senate Bill No. 224, it is my opinion that the plain and unambiguous language of the exception in the statute would not include a charter *village*.

In reaching this conclusion, I am fully aware of the fact that the Constitution makes no distinction between cities and villages as to the power to adopt a charter; and that the Constitution and the statutes

adopted pursuant thereto make no such distinction as to the power of a city or a village to levy taxes beyond the ten mill limitation without a vote of the electors.

Section 8, Article XVIII authorizes "any city or village" to adopt a charter. Section 13, Article XVIII, provides that "Laws may be passed to limit the power of municipalities to levy taxes and incur debts," and Section 6, Article XIII, authorizes the General Assembly to restrict the power of cities and villages as to taxation and contracting debts.

Section 2, Article XII, after first providing that no property taxed according to value shall be taxed in excess of one percent of its true value in money for all state and local purposes, then provides that laws may be passed authorizing additional taxes to be levied outside of such limitation either (1) when approved by a vote of the electors, or (2) "when provided for by the charter of a municipal corporation."

Pursuant to the authorization of Section 2, Article XII, the General Assembly has enacted Section 5705.18, Revised Code, Section 5625-14, General Code, which, in effect, authorizes "any municipal corporation" to levy taxes beyond the ten mill limitation without a vote of the electors if so provided by charter. It is clear, of course, that both cities and villages are included within the scope of a "municipal corporation."

Although the General Assembly has chosen to draw no distinction between charter cities and charter villages as to the power to levy taxes, without a vote of the electors, beyond the ten mill limitation, this does not mean that the General Assembly may not choose to make a distinction between charter cities and charter villages as to the power to issue bonds in excess of the basic one percent limitation provided for by Section 133.03. Whether such distinction should be made, of course, is a matter of policy for legislative determination. The inescapable fact, however, is that such a distinction has been made in Amended Senate Bill No. 224 by the language actually employed. It will be noted that throughout the text of this bill, reference is made to a "municipal corporation," thus including both cities and villages, with the single exception of the new language of the amendment which does not refer to "charter municipalities" or to "charter cities and villages," but instead refers to "charter *cities*."

That a "city" in Ohio is not a "village" should be clear from the language of Section 1, Article XVIII of the Ohio Constitution which reads:

“Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.”

In conclusion, it is my opinion that under the provisions of Section 133.03, Revised Code, as amended either by Amended Senate Bill No. 224, or by Amended Substitute Senate Bill No. 329 of the 100th General Assembly, a village is not authorized, without a vote of the electors, to create or incur a bonded indebtedness in excess of one percent of the total value of all property in such village as listed and assessed for taxation, regardless of any provision of the charter of such village authorizing a tax levy in excess of the ten mill limitation without a vote of the electors.

Respectfully,

C. WILLIAM O'NEILL

Attorney General