

3809.

APPROVAL, NOTES OF VILLAGE OF SYLVANIA, LUCAS COUNTY,
OHIO—\$25,000.00.

COLUMBUS, OHIO, December 3, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3810.

CLEVELAND PUBLIC LIBRARY—AUTHORITY AND DUTIES OF
BUDGET COMMISSIONERS DISCUSSED—DISTRIBUTION OF IN-
TANGIBLE TAXES TO SUCH LIBRARY—SENATE BILL No. 323.

SYLLABUS:

1. *The budget commission has no authority to consider the certification by the board of trustees of the Cleveland Public Library since Sections 4014 et seq. are repealed by implication, and therefore give no authority for the assessment in such manner, but the budget commission should, under Section 5625-23, General Code, include in its budget any items of omitted debt charges that are apparent.*

2. *The budget commission in determining the amount to be taxed for the purposes of the Cleveland Public Library should deduct from the amounts certified to it an amount equal to the tax levied for library purposes for the tax year of 1930 and base any assessment which it makes upon the product arrived at in this manner.*

3. *The amount which the Cleveland Public Library is entitled to receive from the distribution of intangible taxes includes the money for sinking fund purposes, the retirement of bonds, and the payment of interest on the outstanding bonds of the Cleveland Public Library.*

4. *No part of the taxes which are receivable by the public library can be advanced by the county treasurer prior to the settlement between the auditor of state and the county auditor as set forth in Section 7 of Amended Senate Bill No. 323, but the board of library trustees may derive their funds necessary for library purposes by the issuance of notes in the amount and manner provided in Section 7 of such act.*

COLUMBUS, OHIO, December 4, 1931.

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

GENTLEMEN:—We are in receipt of your request for opinion, with which you enclose a letter from the Director of Law of the City of Cleveland, which letter reads as follows:

“The Cleveland Public Library is organized pursuant to G. C. Section 7635 and subsequent sections.

Section 7639 reads:

‘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.'

The Cleveland Public Library issued bonds for the construction of its library building and appointed trustees of the library sinking fund in accordance with G. C. Section 4014.

G. C. Section 4017 reads:

'In the month of May in each year, and oftener if required, the trustees of such sinking fund shall certify to the library board the rate of tax, not to exceed the limit herein provided, necessary to provide a sinking fund for the payment of all bonds issued by authority of law for library purposes in such taxing district together with the amount necessary to be levied to provide for the payment of interest thereon, and the library board shall levy the amount so certified. Such board may increase the amount so certified, but the total amount so levied shall not exceed the limitation herein provided.'

In May, 1931, the trustees of the library sinking fund, to comply with the requirements of Section 4017, certified to the board of library trustees the requirements for the interest and sinking fund of such library for the year 1932, such requirement aggregating \$115,000.00, and requested the trustees of the Cleveland Public Library to levy an amount sufficient to produce said sum.

On May 27, 1931, the board of trustees of the Cleveland Public Library passed a resolution, levying on all property, real and personal, of the city school district of the City of Cleveland, a rate of taxation which will net the sinking fund \$115,000.00. That resolution was on the same day—May 27, 1931, certified to the county auditor.

On the same day—May 27, 1931, the trustees of the Cleveland Public Library passed another resolution reciting that there was needed for the year beginning with January 1, 1932, for interest on and retirement of bonds issued in 1922, the sum of \$146,200.00, which amount is in addition to the levy made by the library sinking fund trustees; and it was, therefore, resolved that the trustees of the Cleveland Public Library levy on all the property, real and personal, within the city school district of the City of Cleveland a rate of taxation which will net that fund the sum of \$146,200.00.

On May 27, 1931, pursuant to the provisions of G. C. Section 7639, the trustees of the Cleveland Public Library certified to the Board of Education of the City School District of the City of Cleveland that there will be needed for maintenance and operation of the Cleveland Public Library for the year beginning January 1, 1932, in addition to the funds available from other sources, the sum of \$1,998,500.00, and requested that the Board of Education certify to the county auditor such requirement and request a levy on the real and personal property of the city school district of the City of Cleve-

land which will realize said sum of \$1,998,500.00. This certificate was transmitted by the Board of Education to the county auditor.

Your attention is further invited to G. C. Section 2295-14 relating to 'sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district.' This statute does not include the sinking fund trustees of a public library.

In an opinion of the Attorney General, rendered in 1930, No. 1903, it was held that G. C. Sections 4013 to 4018, both inclusive, were repealed by implication by the Uniform Bond Act.

My information is that the board of sinking fund commissioners of the city school district of the City of Cleveland did not levy to meet the outstanding bonds of the Cleveland Public Library.

There appear to be two bond issues of the Cleveland Public Library still outstanding—one is for a million dollars—one-half of which falls due August 1, 1936, and the other half August 1, 1942. The other issue is for two million dollars, issued in 1922, some of which falls due in series, each year, and on which there is outstanding \$1,419,000.00.

It is contended that under the new intangible tax law the Cleveland Public Library will receive from the distribution of the income derived from the intangible taxes of the state an amount of taxes equal to that which was levied for library purposes in the year 1930, and that the county auditor and budget commission must disregard the certificates made to the county auditor by the trustees of the Cleveland Public Library, both for current operating expenses and for the sinking fund, and in that connection disregard the levy of the Board of Education made on behalf of the public library under Section 7639. (See Am. S. B. 323, Section 6).

An opinion of the Attorney General is desired on the following questions:

1. Is it the duty of the budget commissioners of Cuyahoga County to include in their budget for the taxes for the year 1931, providing for the operation of governmental agencies during the fiscal year 1932, an amount certified in May, 1931, for the sinking fund or the payment of maturing bonds and interest during 1932?
2. Is it the duty of the budget commissioners of Cuyahoga County to include in their budget for the taxes for the year 1931, providing for the operation of governmental agencies during the fiscal year 1932, an amount certified in May, 1931, by the trustees of the Cleveland Public Library to the Board of Education of the City School District of the City of Cleveland, and by it certified to the county auditor, in accordance with the provisions of Section 7639 of the General Code of Ohio?
3. Does the amount which the Cleveland Public Library is entitled to receive within the distribution of the intangible taxes, include money needed for sinking fund purposes, the retirement of bonds and payment of interest on outstanding bonds of the Cleveland Public Library?
4. May any part of the tax requirement certified to the county

auditor of Cuyahoga County under G. C. Section 7639 be advanced by the county officials as taxes are paid early in 1932?

5. May any part of the tax requirement certified to the county auditor of Cuyahoga County under G. C. Section 4017, be advanced by the county officials as taxes are paid early in 1932?"

We note from the above letter that in May, 1930, the trustees of the library sinking fund certified to the board of library trustees the requirements for the interest and sinking fund of such library for the year 1932, in the amount of \$115,000.00, and requested the trustees of the Cleveland Public Library to levy an amount sufficient to produce said sum.

I note that on May 27, 1931, the board of trustees of the Cleveland Public Library passed a resolution, according to said request, and certified said resolution to the county auditor.

Reference is made in said request to my opinion No. 1903, found in Opinions of the Attorney General for 1930, Vol. I, page 800, in which I held that by reason of the enactment of the Uniform Bond Act and the Budget Law by the 87th General Assembly, Sections 4013 to 4018, General Code, were repealed by implication.

The board of trustees of the sinking fund and the board of trustees of the library, in attempting to assess this tax for the year 1932, are evidently attempting to make such assessment by virtue of the provisions of Sections 4013 et seq.

Upon re-examination of my Opinion referred to above, and the reasoning therein contained, I desire to affirm said ruling, and therefore hold that the action of the board of trustees is a nullity by reason of the fact that it attempts to assess a tax under statutes which no longer are operative.

It is noted that on May 27, 1931, the trustees of the Cleveland Public Library passed another resolution reciting that there was needed for the year beginning January 1, 1932, for interest and retirement on bonds issued in 1922, the sum of \$146,200.00. I presume that this levy was likewise certified to the county auditor, and if such be the case, I am of the opinion that such assessment is void for reasons hereinbefore stated.

I am informed by this request that on May 27, 1931, pursuant to Section 7639 General Code, the trustees of the Cleveland Public Library certified to the Board of Education of the City School District of the City of Cleveland the amount needed for maintenance and operation of the library for the year 1932, and requested a levy by the Board of Education in the amount of \$1,998,500.00 that the Board of Education certified such requirement to the county auditor.

The enclosed letter states that no levy was made by the Board of Education to provide for interest and sinking fund purposes in the sum of \$115,000, and that no levy was made for interest and retirement of bonds in the sum of \$146,200.00.

Your attention is called to Section 5625-23, General Code, the second paragraph of which, in so far as material, reads as follows:

"The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification. * * *

If any debt charge is omitted from the budget the budget commission shall include it therein."

It is an elemental rule of taxation that the right to assess a tax must be given by the legislature and the method and manner of making such assessment must be strictly followed, otherwise there exists no right to levy the tax. Section 7639 of the General Code, apparently gives to the Board of Education authority to levy a tax for library purposes outside of all limitations, but the recent constitutional amendment has made this levy subject to the limitations therein contained. Accordingly, with respect to the operating expenses of the library, the board of education must follow the normal budgetary procedure. However, in Section 5638, General Code, which is part of the new Intangible Tax Law enacted by the 89th General Assembly, we find these provisions:

“For the purpose of the general revenues of the municipal corporations, school districts and special taxing districts, in this state, and to lessen the burden of general taxation on real property, taxes are hereby levied on the kinds and classes of intangible property, hereinafter enumerated, on the grand classified tax list and duplicate of the State of Ohio at the following rates, to-wit: investments, five per centum of income yield; unproductive investments, two mills on the dollar; deposits, two mills on the dollar; shares in and capital employed by financial institutions, two mills on the dollar; shares in and capital employed by dealers in intangibles, five mills on the dollar; capital and surplus of domestic insurance companies, five mills on the dollar; and moneys, credits and all other taxable intangibles so listed, three mills on the dollar.”

We would further call your attention to Section 6, of said act, being Senate Bill 323, which in so far as material, reads as follows:

“The proceeds of the taxes levied by section 5638 of the General Code shall be distributed in the years 1932 and 1933 as follows:

* * * *

To each board of public library trustees the amount of taxes levied for library purposes in the year 1930;

* * * *

In preparing the tax budget for the years 1932 and 1933, under Section 5625-20 of the General Code, the taxing authorities of each subdivision shall estimate that said subdivision will receive from the intangible tax fund the full amount to which such subdivision is entitled under the provisions of this section, to be apportioned among the several funds, including funds for the payment of interest, sinking fund and retirement charges on bonds, in accordance with the provisions of this act.”

It is to be noted that the language used in Section 5638, is:

“taxes are hereby levied.”

and that the language used in Section 6 of said Act is as follows:

“The proceeds of the taxes levied * * * shall be distributed * * * as follows:”

The legislature therefore levied a tax at the rate as set forth in Section 5638, supra, and has provided that the board of library trustees shall receive during the years 1932 and 1933 the amounts which they have received for the year 1931. It is therefore my opinion that the only tax that has been levied for the Cleveland Public Library Association is that assessed by virtue of Section 5638.

I would further call your attention to Section 7 of said act, which reads as follows:

“Upon receiving from the county auditors the certificates of the May settlements with the county treasurers in the years 1932 and 1933, the auditor of state shall ascertain therefrom the aggregate net amount of such taxes received in each county, after deducting the state’s share thereof and the fees of the auditor and treasurer, and the aggregate net amount of such taxes received in all the counties. Thereupon the auditor of state shall draw his warrant on the county treasurer of any county in which the net amount of such taxes so received, as shown by the certificates thereof, exceeds such county’s proportionate share of the net proceeds of such classified property taxes ascertained as herein provided, for the amount of such excess, which shall be paid into the state treasury as provided by law. At the same time the auditor of state shall draw his warrant on the treasurer of state in favor of the treasurer of any county in which the net amount of such tax, so received, as shown by the certificate thereof, is less than the county’s proportionate shares of such taxes, so ascertained, for the amount of such deficiency. A sum equal to the moneys paid into the state treasury pursuant to this section is hereby appropriated therefrom for the purpose of paying said deficiencies. In each case the auditor of state shall certify the amount of such draft or payment, as the case may be, to the county auditor. Sums paid into the treasury of any county pursuant to this section shall be credited in the first instance to the undivided classified property tax fund, and warrants paid out of the county treasury, pursuant hereto, shall be charged to the undivided classified property tax fund, and no distribution of such fund shall be made by any county treasurer until the foregoing requirements of this section have been fully complied with. Thereafter the county treasurer shall distribute the amount then standing to the credit of the undivided classed property tax fund in each of the years 1932 and 1933 among the municipal corporations, school districts, to the board or boards of public library trustees, park districts, sanitary districts and township park districts in his county pro rata in proportion to their respective shares of such revenue, as so ascertained, in the manner provided by law. The amount so distributed to each shall be apportioned among the several funds thereof in the same proportions and for the same purposes as are taxes collected on the general tax lists and duplicates for the same fiscal year. In the years 1932 and 1933, any board of public library trustees or any board of township park trustees may, in anticipation of the distribution herein authorized, borrow not to exceed one-third of the distributable share of such board and issue its notes therefor, payable not more than six months after date, bearing not to exceed six per cent. interest.”

I am therefore of the opinion that the action of the trustees of the library as to the certification of the items for interest and sinking fund purposes amounting to \$115,000 and \$146,200, respectively, was a nullity, and therefore void. It would have been the duty of the budget commission under Section 5625-23, General Code, as in effect prior to the enactment of the Intangible Tax Law, to include the omitted debt charges in the budget, but since the enactment of Amended Senate Bill No. 323 by the 89th General Assembly, the duty of the budget commission as to levies for a public library is modified for the years 1932 and 1933, and it should include in the preparation of the budget only the excess of the amount certified to it for all purposes by the board of education for library purposes after deducting therefrom an amount equal to that which such library received from taxes for all funds including sinking fund and retirement for bonds during the year 1930. In other words, the budget commission should prepare that part of the budget with reference to public libraries as provided in Section 6 of Amended Senate Bill No. 323.

From the statements in the communication enclosed, I can not assume that the tax has been assessed in this manner and in my opinion the statute is mandatory in this respect and therefore if the budget has not been prepared in this manner and the tax thus assessed, the library would receive only the amount of taxes which it received during the year 1930.

Answering specifically your questions, it is my opinion that:

1. The budget commission has no authority to consider the certification by the board of trustees of the Cleveland Public Library since Sections 4014 et seq. are repealed by implication, and therefore give no authority for the assessment in such manner, but the budget commission should, under Section 5625-23, General Code, include in its budget any items of omitted debt charges that are apparent.

2. The budget commission in determining the amount to be taxed for the purposes of the Cleveland Public Library should deduct from the amounts certified to it an amount equal to the tax levied for library purposes for the tax year of 1930 and base any assessment which it makes upon the product arrived at in this manner.

3. The amount which the Cleveland Public Library is entitled to receive from the distribution of intangible taxes includes the money for sinking fund purposes, the retirement of bonds, and the payment of interest on the outstanding bonds of the Cleveland Public Library.

4. No part of the taxes which are receivable by the public library can be advanced by the county treasurer prior to the settlement between the auditor of state and the county auditor as set forth in Section 7 of Amended Senate Bill No. 323, but the board of library trustees may derive their funds necessary for library purposes by the issuance of notes in the amount and manner provided in Section 7 of such act.

Respectfully,

GILBERT BETTMAN,

Attorney General.