

1800.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WALKER CONTRACTING COMPANY, HAMILTON, OHIO, FOR CONSTRUCTION AND COMPLETION OF PLUMBING IN THE ADDITION TO THE MCGUFFEY TRAINING SCHOOL BUILDING, MIAMI UNIVERSITY, OXFORD, OHIO, AT COST OF \$9,145.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, September 26, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

Dear Sir:—

You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works and The Walker Contracting Company, of Hamilton, Ohio. This contract covers the construction and completion of plumbing in the Addition to the McGuffey Training School Building, Miami University, Oxford, Ohio, and calls for an expenditure of \$9,145.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, informal bids were taken and tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

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

1801.

TAXES AND TAXATION—TAX LEVIES UNDER SECTION 1222 G. C. ARE NOT PLACED OUTSIDE OF ALL LIMITATIONS BY THE ISSUANCE OF BONDS AND THE SUBSEQUENT EXEMPTION OF SINKING FUND LEVIES BY VOTERS.

SYLLABUS:

Tax levies under section 1222, General Code, are not placed outside of all

limitations by the issuance of bonds under section 1223 and the subsequent exemption of sinking fund levies by the voters.

COLUMBUS, OHIO, September 27, 1924.

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

Gentlemen:—

I am in receipt of your communication as follows:

“Section 1222 G. C. authorizes the county commissioners to levy a tax of not to exceed $1\frac{1}{2}$ mill upon all the taxable property of the county for the purpose of providing a fund for the payment of the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of highways under the provisions of this chapter. It further provides that $\frac{1}{2}$ mill of this levy shall be subject to the combined maximum rate for all taxes now in force. The remaining one mill of said levy shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in any amount or otherwise, by any existing law or laws. Section 1223 G. C. provides that the county commissioners, in anticipation of the collection of such taxes and assessments, or any part thereof, may sell the bonds of the county in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damage, costs and expenses.

“Section 5649-6a G. C. authorizes the commissioners of the county to submit to a vote of the people, the question of exempting from the limitations of the tax rate the levies made to pay bonds issued prior to January 20, 1920.

“QUESTION: In the event that the commissioners of the county have issued bonds under Section 1223, in anticipation of the collection of the taxes authorized to be levied by Section 1222, and afterward have submitted the question to a vote of the people to exempt the levy for the payment of such bonds from the tax limitations, and the vote thereon is favorable,—may the tax levy authorized by section 1222 be made wholly outside of the limitations on the tax rate?”

Section 1222, General Code, provides:

“For the purpose of providing a fund for the payment of the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of highways and of bridges in municipalities under the provisions of this chapter, the county commissioners are hereby authorized to levy a tax, not exceeding one and one-half mills, upon all the taxable property of the county. Said levy shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the extent of one-half mill thereof, to the limitation upon the combined maximum rate for all taxes now in force. The remaining one mill of said levy so authorized shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. The proceeds of such levy shall be used solely for the purpose of paying the county's proportion of the cost and expense of constructing, improving, maintaining and repairing inter-county highways and main market roads or parts thereof in co-

operation with the state highway department or the federal government or both; and the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise.

"The county commissioners of any county in which less than one and one-half mills is levied in any year under the provisions of this section shall within the above limitations determine what part of such levy shall be subject to the limitations upon the combined maximum rate for all taxes now in force and what part of such levy shall be outside such limitation and unrestricted by any existing law or laws.

"For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies authorized by law for township purposes and shall be outside the limitation of two mills for general township purposes, and subject only to the limitation upon the combined maximum rate for all taxes now in force. Where the improvement is made upon the application of the county commissioners said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees said township trustees shall levy the tax. A county or township may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section."

By this section the county commissioners may levy a tax of one and one-half mills for the purpose of providing a fund for payment of the county's portion of the cost and expense of construction of highways. One mill of such levy is outside of all limitations and one-half mill is within the fifteen mill limitation. The township trustees may levy two mills for their portion of such cost of such highways, all of which is within the fifteen mill limitation.

Section 1223, General Code, provides:

"The county commissioners, in anticipation of the collection of such taxes and assessments or any part thereof, and whenever such construction, improvement or repair is being done upon their application, may, whenever in their judgment it is deemed necessary sell the bonds of said county in any amount not greater than the aggregate sum necessary to pay the respective shares of the estimated compensation, damages, cost and expense payable by the county, township or townships and the owners of the lands assessed or to be assessed for such improvement, but the aggregate amount of such bonds issued and outstanding at any one time and to be redeemed by a tax levy upon the grand duplicate of the county shall not be in excess of one per cent. of the tax duplicate of such county. In computing such one per cent. bonds to be redeemed by special assessments or by tax levies upon the interested township or townships shall not be taken into account. Bonds issued under authority of this section shall state for what purpose issued and bear interest at a rate not to exceed six per cent. per annum, payable semi-annually, and in such amounts, and to mature in not more than ten years after their issue, as the county commissioners shall determine. Prior to the issuance of such bonds the county commissioners shall provide

for the levying of a tax upon all the taxable property of the county to cover any deficiency in the payment or collection of any township taxes, or any deficiency in the levy, payment or collection of any special assessments, anticipated by such bonds. The proceeds of such bonds shall be used exclusively for the payment of the cost and expense of the construction, improvement or repair of the highway for which the bonds are issued. If bids are made for a portion of the proposed issue, the commissioners may accept a combination of bids, if by so doing the bonds will produce the best price to the county, and at the request of the purchaser the bonds may be issued in denominations of one hundred dollars or multiples thereof, notwithstanding any provision of the resolution providing for their issue. Where such construction, improvement or repair is made upon the application of the township trustees such township trustees are hereby authorized to sell the bonds of the interested township in any amount not greater than the estimated compensation, damages, cost and expense of such construction, improvement or repair, and under like conditions hereinbefore prescribed for county commissioners. The making of the special assessment hereinbefore referred to shall not be a condition precedent to the issuance of bonds under the provisions of this section and such special assessments may be made either before bonds are issued under the provisions of this section or after the issuance of such bonds."

When a levy has been made under section 1222, the county commissioners may issue bonds in anticipation of the collection of such tax and assessments against property holders. This section further authorizes the levy of a tax to cover a deficiency in the collection of assessments or township taxes. This provision is in compliance with Article XII, Section 11 of the Ohio Constitution, which provides:

"No bonded indebtedness of the state, or any political subdivision thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

There is no authorization of a levy for sinking fund purposes for bonds issued under section 1223.

Section 5649-6a, General Code, provides:

"The commissioners of any county, the trustees of any township, the council or other legislative body of any municipal corporation, or the board of education of any school district having a bonded indebtedness on January 20, 1920, or having authority by a vote of the electors at an election held prior to said date, to issue such bonds, or having provided for the issuance of such bonds without a vote of the electors by ordinance or resolution adopted on or before said date, whether the effectiveness thereof was postponed until after said date by laws or charter provisions requiring publication or subjecting such ordinance or resolution to a referendum, or not, may, at any regular or primary election held in the year 1920 or in any year thereafter, during the life of any such bonds submit to the electors of such county, township, municipal corporation, or school district, in the manner provided by sections 5649-5 and 5649-5a of the General Code the

proposition of exempting from the limitations of sections 5649-2, 5649-3a and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of such bonds. In the resolution providing for such submission, the rate of taxes that would be required for such purposes in the next succeeding year on the basis of the duplicate made up in the year in which the resolution is adopted shall be set forth, together with the number of years during which the exemption would apply. The form of ballots cast at such election shall be:

'For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "Yes".'

'For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "No".'

This section relates to interest and sinking fund levies and has no application to other levies.

Section 1222, General Code, authorizes a levy which may be expended annually or may be expended as provided in section 1223, that is, it may be appropriated by anticipation in the issuance of bonds. The levy may exceed the amount of the county share of road construction for which bonds are issued. Part of the levy may be used to accumulate a fund and part is appropriated by the issuance of bonds. As a matter of fact, no levy is made under section 1223 unless there is some deficiency in the collection of the township levy or of the assessment against property holders. In the event that such a deficiency levy is made, such levy would come within the ten mill limitation.

It may be argued that the words "having a bonded indebtedness on January 20, 1920," includes all indebtedness except such as is specifically excluded by this act. It is believed that this position cannot be sustained for the reason that the tax levy under section 1222, to pay the township's share of such road construction, is made on the township's duplicate by either the county commissioners or the township trustees, according to whether the application is made by the county or township.

When the application is made by the township, the levy to pay the township's share of such construction is made by the township trustees and is within the fifteen mill limitation. If the county commissioners issue bonds covering the county, township and property owner's share of such bonds, the township's share of said bonds is paid for out of the township levy under section 1222. In the event the township has not voted under section 5649-6a to place sinking fund and interest charges outside of all limitations and the necessary part of the levy under section 1222, to retire said bonds is a sinking fund levy, this enables the voters of the county to override the desires of the voters in the township in regard to sinking fund levies when the county has voted, under section 5649-6a. Further, if this levy ceases to be a road levy and becomes a sinking fund levy by reason of the issuing of bonds, then the same is subject to the ten mill limitation if the township has not voted all sinking fund and interest charges outside of all limitations.

This would be contrary to section 1222, which provides that township levies, under this section, shall be within the fifteen mill levy. If the necessary part of this levy to pay the county's portion of interest and sinking fund on bonds issued under section 1223 is a sinking fund levy, as contemplated by section 5649-6a, then there is an apparent conflict between said section and section 1222, and under the usual rules of statutory construction section 5649-6a would necessarily prevail, being the later enactment. As section 5649-6a is a departure of the express policy of the

legislature to curb expenditures by restricting the power to levy taxes, it is believed it must be given a strict construction.

In the case of *State ex rel vs. Zangerle*, 95 O. S., page 1, it was held in the first branch of the syllabus:

"In view of the legislative policy declared by the enactment of the so-called Smith one per cent. law (Sections 5649-2 to 5649-5b, General Code), the manifest purpose of which is to restrict the power of levying taxes and thus limit expenditure by administrative officers, statutes purporting to permit departures from that general policy and authorizing exemption therefrom will be strictly construed."

Considering all related sections of the statute and the case of *State ex rel vs. Zangerle*, supra, it is my opinion that in the event the county commissioners issue bonds under section 1223, and afterward submit the question of exempting all levies for interest and sinking fund purposes to the voters with favorable results, the levy under section 1222 is not wholly outside of all limitations.

Respectfully,

C. C. CRABBE,

Attorney-General.

1802.

APPROVAL, BONDS OF VILLAGE OF MINSTER, AUGLAIZE COUNTY, \$30,000.00, TO EXTEND, ENLARGE AND IMPROVE THE ELECTRIC LIGHT PLANT.

COLUMBUS, OHIO, September 27, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1803.

COUNSEL APPOINTED FOR INDIGENT PRISONER—SECTIONS 13617 AND 13618 G. C. CONSTRUED.

SYLLABUS:

1. Under the provisions of sections 13617 and 13618 G. C., when a number of indictments for felonies other than murder in first and second degree and manslaughter have been found against the same defendant and he is tried upon one indictment, and the others nollied, the counsel may receive, subject to the approval of the court and the allowance by the commissioners, the maximum fee of fifty dollars on each indictment.

2. When two defendants are jointly indicted for a felony other than murder