

It would appear that the contemplated use of the gas mains would preclude the village from being the sole controller of the property for the construction of which its credit is sought to be loaned, and further, that the contemplated procedure would constitute the joining the municipal and private property together to make one property, the parts owned by the village and the privately owned gas works being each necessary to the successful operation of the whole. In view of the fact that the village mains are to be connected with the mains of the privately owned gas works and used solely by such gas works, it could be said that the village was lending its credit to and in aid of a private enterprise.

In view of the foregoing, I am of the opinion that a village may not issue bonds in anticipation of the levy of special assessments; and thereby lend its credit, for the construction of gas mains, when such village has no gas works and does not contemplate the purchase and distribution of gas to its people, but proposes to join such mains with the mains of a privately owned gas company which will supply gas to the consumer's direct.

Respectfully,
GILBERT BETTMAN,
Attorney General.

491.

PENSION FUNDS—FIREMEN AND POLICE—LEVIES TO MAINTAIN
WITHIN FIFTEEN MILL LIMITATION.

SYLLABUS:

Levies made for the maintenance of firemen's pension funds and police relief funds under the provisions of Section 4605 and 4621, General Code, as amended in Amended Senate Bills Nos. 79 and 80, enacted by the 88th General Assembly, are not outside of the fifteen mill limitation as contained in Section 5625-2, General Code.

COLUMBUS, OHIO, June 7, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Amended Senate Bills Nos. 79 and 80 amend sections relative to the firemen's pension fund and policemen's relief fund in municipalities. Each bill provides for levy of taxes in addition to all other levies authorized by law.

By virtue of the provisions of Section 5625-21, the bureau is required to prescribe the form of budget to be submitted by various taxing districts to the budget commission.

Question: Are levies for firemen's pensions and police relief funds outside of the fifteen mill limitation provided by Section 5625-2, G. C., as amended 112 Ohio Laws 392?

Budget forms should be in the hands of local officials in the near future, for which reason the bureau will appreciate an early reply.”

Amended Senate Bill No. 79, enacted by the 88th General Assembly, amends seven sections of the General Code, contained in Chapter 1, Division VI, Title XII, under the heading, Firemen's Pension Fund, and repeals Section 4606, therein. Section 4605, General Code, as amended, is as follows:

"In each municipality availing itself of these provisions, to maintain the firemen's pension fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, *shall* levy tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in such municipality, *but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to firemen under existing laws.* In the matter of such levy, the board of trustees of the firemen's pension fund shall be subject to the provisions of law controlling the heads of departments in the municipality, and shall discharge all the duties required of such heads of departments."

The only amendment relative to the question before me, is to the effect that the duty placed upon council to levy such a tax now appears to be mandatory. Prior to the amendment it was provided that council each year "may" levy a tax of not to exceed three-tenths of a mill, etc. My predecessor comments upon this feature of Section 4605, in Opinions of the Attorney General for 1928, Vol. II, page 933, as follows :

"I do not, however, regard the provisions of the pertinent sections heretofore quoted as mandatory upon the municipality. Section 4605 of the Code is clearly permissive in character. It states that the council may, up to a certain limit, levy a tax for the maintenance of the firemen's pension fund. It is, of course, true that the succeeding section is mandatory in its language and requires the transfer of certain portions of the annual tax upon the business of trafficking in intoxicating liquors to the firemen's pension fund in the event of the failure of council to make the maximum levy provided in Section 4605. If, however, by reason of changed circumstances, the revenue derived from this annual tax is negligible, so there is nothing available to augment the levy authorized by Section 4605, the character of council's action in making the levy is not changed. That is to say, it still remains permissive only and there is no obligation upon the municipality to make appropriations sufficient to maintain the fund."

Section 5625-2, General Code, to which you refer, is as follows :

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'fifteen mill limitation.' "

In another opinion of my predecessor, appearing in Opinions of the Attorney General for 1927, Vol. IV, page 2558, it was held as disclosed in the syllabus, that :

"The amount levied by the council under the provisions of Section 4647-4, General Code, for the firemen's indemnity fund is authorized to be levied outside all limitations."

Section 4647-4, General Code, upon which this opinion was predicated, specifically provides that the levy to be made for the firemen's indemnity fund "shall be in addition to all other levies provided by law and shall not be limited by any law restrict-

ing such levies." In that opinion Section 4605 as then in force and effect, was quoted with the following comments:

"It is noted that in this section it is provided that the levy for the firemen's pension fund is to be made in addition to all other levies authorized by law, but there is no provision that said levy shall not be limited by any law restricting such levies, nor is there any provision that said levy shall be outside of all limitations."

As previously commented upon, the only changes in Section 4605 made by the 88th General Assembly is to the effect that there is now placed a mandatory duty upon the council to make the levy. There has been no change with reference to the language "in addition to all other levies authorized by law." I concur in the opinion of my predecessor to the effect that there appears no provision that this levy shall not be limited by any law restricting such levies, nor is there any provision that such levy shall be outside of any limitations.

Referring to Senate Bill No. 80, amending the sections of the General Code relative to the police relief fund, exactly the same situation with reference to the levy to be made by council for the maintenance of this fund exists as above in the case of the firemen's pension fund.

Section 4621, as amended, is as follows:

"In each municipality availing itself of these provisions to maintain the police relief fund the council thereof each year in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law *shall* levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality *but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen under existing laws*. In the matter of such levy the board of trustees of the police relief fund shall be subject to the provisions of law controlling the heads of the departments in the municipality and shall discharge all the duties required of such heads of departments."

The same change has been made in that it is now provided that council "shall" levy a tax, instead of that council "may" levy a tax as heretofore. The reasoning applicable to Senate Bill No. 79 is also applicable to Senate Bill No. 80, in this respect.

In specific answer to your question, therefore, I am of the opinion that levies made for the maintenance of firemen's pension funds and police relief funds under the provisions of Sections 4605 and 4621, General Code, as amended in Amended Senate Bills Nos. 79 and 80, enacted by the 88th General Assembly, are not outside of the fifteen mill limitation as contained in Section 5625-2, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.