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## SYLLABUS:

Legislation adopted by a board of township trustees for the issuance of notes pursuant to Section 505.37, Revised Code, must also provide for levying and collecting annually by taxation amounts sufficient to pay the interest on and principal of such notes; but the amount necessary to be levied for such purpose is to be determined by the taxing officials at the time the levy is made, after taking into consideration other funds lawfully available to retire such notes. (The first paragraph of the syllabus of Opinion No. 3145, Opinions of the Attorney General for 1962, overruled.)

Columbus, Ohio, April 23, 1963

Hon. Richard E. Bridwell  
Prosecuting Attorney  
Muskingum County  
Zanesville, Ohio

Dear Sir:

Your request for any opinion reads:

“The purpose of this letter is to ask a reconsideration of 1962 Attorney General Opinion No. 3145. This opinion is in direct conflict with 1961 Opinions of the Attorney

General No. 2592, which was not specifically overruled in the 1962 Opinion.

“The question is as to the ability of Townships to issue notes under Revised Code Section 505.37 for fire purposes when an existing levy already provides for the levying and collecting of taxes to pay the interest and principal of such notes.

“I am enclosing a copy of a letter received from Bond Counsel, wherein the matter is discussed at greater length with the conclusion that the 1962 Opinion is not correct in view of the 1961 Opinion.”

At the outset, I believe your reference should have been to Opinion No. 2595, Opinions of the Attorney General for 1961, issued October 28, 1961, rather than to Opinion No. 2592. The syllabus of Opinion No. 2595 goes only to the question of the power of a board of township trustees to purchase or construct buildings and sites for the maintenance and protection of fire-fighting equipment and to issue notes to finance such buildings and sites.

The following paragraph appears in the body of the opinion :

“You have stated that there is already in existence in the township described in your request a voted levy outside the ten-mill limitation which was voted for the specific purpose of ‘providing protection against fire, and to provide and maintain fire apparatus, appliances, buildings and sites therefor.’ As the proceeds of this levy are apparently sufficient to retire the notes at maturity, there would appear to be no legal bar to the issuance of such notes and their retirement by means of the voted levy.”

As mentioned, that opinion was issued October 28, 1961. As of that date there was no provision in Section 505.37, Revised Code, that a tax levy was required for the payment of the four-year notes authorized; this section had been amended by Amended House Bill No. 512, 129 Ohio Laws, 1437, effective October 23, 1961, but no such requirement for a tax levy was then included.

Section 505.37, Revised Code, was, however, again amended by the 104th General Assembly. By Amended House Bill No. 1122, 129 Ohio Laws, 1817, effective November 8, 1961, the pertinent paragraph of Section 505.37, Revised Code, was amended to read:

“The board of any township or fire district created by such board under sections 505.37 to 505.44, inclusive, of the Revised Code or the legislative authority of any municipal corporation, may purchase the necessary fire-fighting equipment, buildings, and sites for such township, fire district, or municipal corporation and pay for it over a period of four years. Such board or legislative authority may issue the notes of the township, fire district, or municipal corporation, signed by the board or legislative authority and attested by the signature of the township or municipal clerk, covering such deferred payments and payable at the times provided, which notes may bear interest not to exceed six per cent per annum, and shall not be subject to sections 133.01 to 133.65, inclusive, of the Revised Code. *The legislation authorizing the issuance of such notes shall provide for levying and collecting annually by taxation amounts sufficient to pay the interest on and principal of such notes.* One fourth of such purchase price shall be paid at time of purchase, and the remainder of the purchase price shall be covered by notes maturing in two, three, and four years respectively. Such notes shall be offered for sale on open market or given to the vendor if no sale is made.”

(Emphasis added)

Opinion No. 3145, Opinions of the Attorney General for 1962, was issued July 14, 1962. The syllabus of that opinion reads in pertinent part:

“1. Under Section 505.37, Revised Code, a board of township trustees may issue notes to cover deferred payments for the cost of remodeling the township firehouse, but the legislation authorizing the issuance of such notes must provide for a tax levy sufficient to pay the interest on and principal of such notes, and the proceeds of a tax levy previously adopted pursuant to division (I) of Section 5705.19, Revised Code, may not be used for this purpose.”

It is, then, quite apparent that the seeming conflict between the statement in Opinion No. 2595, *supra*, and the conclusion reached in Opinion No. 3145, *supra*, results from the amendment which became effective in the intervening period.

Together with your inquiry, you have submitted a copy of a letter from bond counsel; the amendment to Section 505.37, Revised Code, is discussed, and it is suggested that where funds are available from other sources and are budgeted for the payment of

the principal and interest of the notes, the board of township trustees is not required to levy an additional tax.

The inquiry which was being considered in Opinion No. 3145, *supra*, stated that a general operating levy had been approved by the voters the prior November. It was asked whether the funds received from this levy could be used to repay the amounts to be borrowed by the board of township trustees to be used to remodel a fire station.

The writer of the said Opinion No. 3145 mentioned that funds for fire protection could be obtained from a tax levy within the ten-mill limitation in accordance with Section 505.39, Revised Code, and that funds for such purpose could also be obtained from a levy outside the ten-mill limitation pursuant to Paragraph (I) of Section 5705.19, Revised Code. This language then followed:

“Section 505.37, *supra*, does not specifically state that a special levy must be involved as part of the legislation authorizing the issuance of the notes. It does, however, require that such legislation ‘shall provide for levying and collecting annually.’ As to this, since an existing levy, and its collection, would have already been provided for at the time it was originally invoked, in enacting the new language the legislature must have intended that a new levy be adopted as part of the legislation providing for the issuance of the notes, and I am of the opinion that such a new levy is necessary.

“In reaching this conclusion, I am aware that it could make the issuance of notes a cumbersome procedure in some instances. And here I note that the board of township trustees is authorized to issue notes without the approval of the voters, while the levy of a tax in excess of the ten-mill limitation would require such approval; and in most cases a levy in excess of the ten-mill limitation would undoubtedly be necessary. Thus, in such cases nothing could be done as to the issuance of notes until voter approval of the tax levy was obtained.”

We are here concerned only with a board of township trustees which is proceeding in accordance with Section 505.37, Revised Code, to acquire fire-fighting equipment, buildings, and sites therefor and to finance such expenditures over a period of four years by the issuance of notes. The fact that such boards may proceed

under other sections of the Revised Code to provide fire protection is not material to the discussion here.

I am impelled to the conclusion that effect must be given to the language inserted in Section 505.37, Revised Code, by the amendment effective November 8, 1961, and that the legislation providing for the issuance of notes must provide for levying and collecting annually by taxation sufficient revenue to pay the interest and principal of such notes. The language of the amended section conforms to the requirement of Section II, Article XIX, of the Constitution of Ohio, which reads as follows :

“No bonded indebtedness of the state, or any political subdivisions 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.”

I am, however, not unaware of the principal that although the authorized legislation makes provision for taxation, it is not necessary that such tax be levied in the maximum amount each year during the period that an indebtedness continues. In *Link vs. Karb*, 89 Ohio St., 326, the Court was considering the effect of the language found in Section II, Article XII of the Constitution of Ohio. The third paragraph of the syllabus reads :

“This provision of the constitution does not require that at the time the issue of bonds is authorized there shall then be levied any specific amount or any specific rate, but it does require that provision shall then be made for an annual levy during the term of the bonds in an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity, which levy must be made annually in pursuance of the provisions of the original ordinance or resolution requiring the same. The amount necessary to be levied for the purpose specified is to be determined by the taxing official at the time the levy is made.”

The final paragraph of the syllabus of *State, ex rel. Speeth vs. Carney*, 163 Ohio St., 159, reads as follows :

“A bond resolution to cover the cost of a public construction, which provides that during the period such bonds are to run there shall be levied a direct tax an-

nually sufficient for the payment of principal and interest on such bonds to the extent the income from the improvement to be constructed is not sufficient therefor, complies with Section II, Article XII of the Ohio Constitution, providing for the levy and collection through taxation of an amount sufficient to pay the interest and sinking fund for the final redemption of such bonds at maturity."

In Opinion No. 1087, Opinions of the Attorney General for 1939, page 1565, the then Attorney General was considering Section 7201, General Code, which directed that boards of county commissioners and township trustees should make provision for levying and collecting annually by taxation an amount to pay the interest and principal of notes issued for the purchase of road machinery and equipment. It was said, at page 1571, that funds derived from gasoline taxes and motor vehicle license fees could lawfully be expended to purchase such machinery and equipment; this language then followed:

"These facts being true, I can see no reason why, if there be sufficient funds of the kinds here involved in the treasury, to retire any notes issued under authority of Section 7201, *supra*, the levy provided for in the legislation to purchase should not be reduced in amount or entirely omitted."

Therefore, although I am of the opinion that Section 505.37, Revised Code, as amended, is mandatory and that a board of township trustees must provide for levying and collecting annually by taxation an amount sufficient to pay the interest and principal of notes issued in accordance with that section, this does not mean that a tax at a special rate must be included in such legislation; this is a matter to be determined by the taxing officials at the time the levy is made.

Although you have said in your letter that there is an existing levy for the payment of notes, it is my opinion that a levy existing at the time of legislation for the issuance of notes can not be a levy for the specific purpose of retaining the indebtedness to be incurred and for which notes are to be issued. As I am not informed concerning the nature of this levy, I am not in position to express an opinion as to whether the funds derived by such taxation may be used for the purpose of retiring notes. This being true, I can only invite your attention to Sections 5705.10 and 5705.14 to 5705.16, in-

clusive, Revised Code, concerning the funds into which proceeds from taxation must be paid and the transfers which may be made from one fund to another.

It is, therefore, my opinion and you are advised that legislation adopted by a board of township trustees for the issuance of notes pursuant to Section 505.37, Revised Code, must also provide for levying and collecting annually by taxation amounts sufficient to pay the interest on and principal of such notes; but the amount necessary to be levied for such purpose is to be determined by the taxing officials at the time the levy is made, after taking into consideration other funds lawfully available to retire such notes. (The first paragraph of the syllabus of Opinion No. 3145, Opinions of the Attorney General for 1962, overruled.)

Respectfully,  
WILLIAM B. SAXBE  
Attorney General