

1838

1. MUNICIPAL CHARTER PROVISION—UPON APPROVAL OF ELECTORS AUTHORIZES LEVY OF TAXES FOR SPECIFIC PURPOSES—RATE SUBJECT TO DIMINUTION IN EVENT OF REASSESSMENT—SECTIONS 5548-2, 5625-14 G.C.
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## SYLLABUS:

1. Where a municipal charter provision, adopted under authority of Article XII, Section 2, Ohio Constitution, and Section 5625-14, General Code, authorizes, upon the approval of the electors, the levy of taxes for specific purposes beyond a stated charter limitation, the rate of any such levy so approved is subject to diminution in the event of reassessment, as provided by Section 5548-2, General Code; but where such charter authorizes the legislative authority of such municipality to levy taxes within such stated limitation for all municipal purposes without a vote of the people, the levies so made within such limitation are not subject to the provisions of Section 5548-2, General Code.

2. Where additional levies for specific purposes have been approved at elections held in the year 1951 to be effective in such year, and where the county auditor in such year has completed a general reassessment of all real estate within his county under authority of Section 5548, General Code, and the revised valuations thereby made have been entered on the 1951 abstract and transmitted to the Board of Tax Appeals, as required by Section 5612, General Code, and where the Board of Tax Appeals has indicated, on December 17, 1951, that it does not intend to revise the valuations listed therein for the purpose of preparation of the 1951 tax list and

duplicate by the county auditor under the provisions of Section 2583, General Code, the rates of such additional levies are subject to reduction as provided in Section 5548-2, General Code.

3. The term "reassessment," as used in Section 5548-2, General Code, includes both (a) a general reassessment of real estate by the county auditor under the provisions of Section 5548, General Code, and (b) a revision of the valuation of real estate by the Board of Tax Appeals under the provisions of Section 5613, General Code. The term "year of reassessment," as used in Section 5548-2, General Code, is the year with respect to which the revised real estate valuations, effected by such reassessment, are entered on the tax list and duplicate prepared under the provisions of Section 2583, General Code.

Columbus, Ohio, September 15, 1952

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir :

I have your request for my opinion as follows :

"I am enclosing a letter received by me from the County Auditor of Montgomery County.

"Should your office desire any additional information, please inform me. An early opinion if possible is desirable for the meeting of the budget commission."

The auditor's statement of the facts and his specific questions are as follows :

"Under the provisions of Section 5624, General Code, and subsequent sections of the General Code of Ohio, as amended by House Bill 644, passed by the 98th General Assembly and effective October 25, 1949, the County Auditor has completed the revaluation or reassessment of all real property in Montgomery County, Ohio as evidenced by the legal advertisements appearing in the two Dayton daily papers from December 20th to 30th, 1951, as prescribed by the provisions of Section 5606, General Code.

"The abstract of this reassessment was forwarded to the Department of County Affairs, a branch of the Board of Tax Appeals on December 17th, 1951, and was accepted only on a *tentative* basis, subject to revision for the year 1952.

"The results of the county auditor's reassessment was entered on the 1951 tax duplicates, payable in December, 1951 and June, 1952. The revised figures as determined by the Tax Commission will be entered on the 1952 tax duplicates. The results of the reassessment as made by the county auditor is a higher valuation than the year before reassessment.

"There are presently in effect certain levies made by the city commission under authority of the Charter Amendment of the City of Dayton, approved by the voters on November 6, 1945. At the regular elections held on November 6, 1951, and at a special election held on December 11, 1951, tax levies in excess of the ten mill limitation for specific purposes were voted upon favorably by the electorate of several taxing subdivisions in this county. There are certain levies to be voted upon at the regular election to be held November 4, 1952.

"Our specific questions are as follows:

"1. Are the levies voted by the city commission under authority of the Charter Amendment approved by the voters of City of Dayton on November 6, 1945, to be computed on the 1951 tax duplicates subject to reduction prescribed by Section 5548-2, General Code.

"2. Are the levies voted at the November 6, 1951 regular election and those voted upon favorably at the special election of December 11, 1951, subject to the reduction prescribed in Section 5548-2, General Code? If so, how is such reduction to be calculated?

"3. Are the levies to be voted upon at the regular election to be held on November 4, 1952, subject to reduction prescribed by Section 5548-2, General Code? If so, how is such reduction to be calculated?"

Section 5548-2, General Code, to which reference is made in the auditor's inquiry, is as follows:

"When the people of any taxing subdivision have voted additional levies for specific purposes in the year of reassessment or any year prior thereto, and said additional levies are effective in the year of re-assessment or thereafter and are to be calculated on a total valuation of property higher than that of the year before re-assessment, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment over the total valuation of the year preceding the re-assessment."

Your first question requires an examination of Section 171 of the charter of the City of Dayton, approved by the voters on November 6, 1945. This section reads:

"The City Commission is hereby granted the authority, without a vote of the people, to levy taxes upon the tax lists or duplicates of property assessed and listed for taxation according to value for all the purposes of the City of Dayton, its boards,

departments and institutions, in amounts not in excess of the following total maximum levies for the years specified, to wit :

“Eight and one-half ( $8\frac{1}{2}$ ) mills on each dollar of assessed valuation on the tax list or duplicate for the years 1945 to 1950, both inclusive (for the purposes of the fiscal years 1946 to 1951, both inclusive) ;

“Nine (9) mills on each dollar of assessed valuation on the tax list or duplicate for the years 1951 and 1952 (for the purposes of the fiscal years 1952 and 1953) ;

“Ten (10) mills on each dollar of assessed valuation on the tax list or duplicate for the year 1953 and all years thereafter (for the purposes of the fiscal year 1954 and all years thereafter).

“Out of said total maximum levy for each of said years, an amount shall annually be levied sufficient to pay the interest, sinking fund and retirement charges on all bonds and notes of the City of Dayton heretofore or hereafter authorized to be issued without the authority of the electors, which levy shall be placed before and in preference to all other levies and for the full amount thereof. Of the remaining portion of said total maximum levy, commencing with the levy against the tax list or duplicate for the year 1945 and continuing thereafter, an amount not exceeding five (5) mills may be levied annually for the general fund of said City.

“The City Commission, without a vote of the people, may not authorize any tax levy or levies for permanent improvements other than those which may be made within the five (5) mills levy for the general fund, as set forth in the fifth paragraph of this section, if such levy or levies will increase the total levies for all City purposes, inclusive of all levies to pay the interest, sinking fund and retirement charges on all unvoted bonds and notes of the City of Dayton and those voted bonds heretofore or hereafter issued pursuant to vote of the electors at any election held prior to November 15, 1945, beyond eight and one-half ( $8\frac{1}{2}$ ) mills for the tax years 1945 to 1950, nine (9) mills for the tax years 1951 and 1952, and ten (10) mills for the tax year 1953 and all years thereafter.

“Unless authorized and approved by a vote of the electors conformably with the general laws of this State, the City Commission shall levy no tax outside of the limitations set forth in this Section. Provided, however, that the City Commission shall annually levy, to the extent necessary, outside the limitations provided in this Charter and by general law a sufficient sum to pay the interest, sinking fund and retirement charges on all bonds and notes of the City of Dayton heretofore or hereafter lawfully issued, the tax for which by general law or by this Charter has been or shall be authorized to be levied outside the tax limitations.

“This section shall take effect and be in force as of the date of the certification to the Secretary of State by the Board of Elections, for the purpose of fixing the tax rate upon the tax list or duplicate for the year 1945 and all years thereafter.”

The purpose, function and legal effect of this charter provision are more readily appreciated by reference to Article XII, Section 2, Ohio Constitution, which, in pertinent part, provides:

“No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, *or when provided for by the charter of a municipal corporation.* \* \* \*”  
(Emphasis added.)

Acting under this constitutional provision that “laws may be passed authorizing additional taxes to be levied outside of such limitation,” the General Assembly has enacted Sections 5625-2, 5625-7 and 5625-14, General Code, which sections, in pertinent part, are as follows:

Section 5625-2, General Code:

“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 ten mills of each dollar of tax valuation of such subdivision or other taxing unit, *except taxes specifically authorized to be levied in excess thereof.* \* \* \*”  
(Emphasis added.)

Section 5625-7, General Code:

“The taxing authority of any subdivision may make the following levies outside of the ten mill limitation and irrespective of all limitations on the tax rate: \* \* \*

“(c) Tax levies hereafter authorized outside of said ten mill limitation by a vote of the people under the provisions of law applicable thereto.”

Section 5625-14, General Code:

“The provisions of sections 5625-2 and 5625-24 of the General Code shall not apply to the tax levies of any municipality which, by its charter or amendment thereto, provides or has provided for a limitation of the total tax rate which may be levied without a vote of the people for all the purposes of the munic-

ipality, or for the current operating expenses thereof. Said charter or charter amendment may also provide for the levying of taxes by said legislative authority outside of said charter limitation upon approval by the majority of the electors of said municipality voting thereon at a November election. \* \* \*

We may first observe that by reason of the requirements of Article XVIII, Sections 8 and 9, Ohio Constitution, a charter provision can be adopted only by a vote of the electors of the municipality concerned. In the instant case, it is clear that the Dayton charter provision, quoted above, was so adopted and that the authority therefor is found in Article XII, Section 2, Ohio Constitution, and in Section 5625-14, General Code. Thus, the precise question raised in your first query is whether the adoption of such charter provision constitutes an instance where "the people of any taxing subdivision have voted additional levies for specific purposes" within the meaning of Section 5548-2, *supra*.

In the first place, it is apparent that the vote at the election of November 6, 1945 was not on *specific* levies, but was on a proposal to empower the municipal legislative authority to make levies for *all* the purposes of the city.

Moreover, it is clear that the General Assembly, by the enactment of the provisions quoted above in Sections 5625-7 and 5625-14, have recognized the distinction between (1) "levies \* \* \* authorized \* \* \* by a vote of the people" and (2) the adoption of general charter provisions relative to municipal levies which may be made *without* a vote of the people. Nor is it surprising that such distinction should be made in view of the separate references in Article XII, Section 2, Ohio Constitution, to these two subjects.

Furthermore, it is to be recalled that Section 5548-2, General Code, was enacted, effective July 21, 1925, and at that date there was no constitutional limitation of tax rates, and, of course, no constitutional provision or statute relative to the adoption of a charter tax levy provision such as that with which we are presently concerned. At that date the limitation on tax levies was provided for by statute in Section 5649-2, General Code, and the authorization of levies beyond such limitation, by a vote of the electors, was provided for in Section 5649-5, *et seq.*, General Code.

These latter sections were enacted to become effective on the same date as Section 5548-2, *supra* (July 21, 1925), and it is thus clear that

the language in the latter section relative to a vote by the people of "additional levies for specific purposes" had reference to elections of the sort for which provision was made in Section 5649-5, et seq. In this connection it is understood that the argument has been advanced that it was the legislative intent that the proportionate diminution of levies for specific purposes, as thus provided for in the 1925 enactment, is to be applicable thereafter to *all* such levies by whatever means authorized; and that such interpretation is necessary to avoid inequity in the adjustment of the rates of such levies as applied to (a) charter municipalities, and (b) other subdivisions. However, in the later enactment of Sections 5625-7 and 5625-14, General Code, providing two separate and distinct methods by which levies could be authorized outside the ten mill limitation, the General Assembly must be presumed to have been aware of the limited scope of the language in the 1925 enactment relative to instances in which the "people \* \* \* have voted additional levies," and to have enacted such later legislation with the knowledge that the prior act would henceforth be applicable only to levies voted by the people under authority of Section 5625-7, General Code.

Finally, it will be observed that Section 5625-14, General Code, authorizes the inclusion in a municipal charter of a provision "for the levying of taxes \* \* \* outside of said charter limitation upon approval by the majority of the electors of said municipality voting thereon at a November election." It is quite clear that any levies for specific purposes thus approved would be subject to diminution as provided in Section 5548-2, General Code, and this provision, therefore, is strongly indicative of a legislative intent that such diminution in rate should be applicable in charter cities only to such levies for specific purposes so approved by the electors.

For these reasons, I conclude that the provisions of Section 5548-2, General Code, are not applicable to taxes levied by the city commission without a vote of the people under authority of Section 171 of the charter of the City of Dayton.

In reaching this conclusion, I am not unmindful of the argument, already noted herein, that political inequity will result from the failure to apply the rate diminution provided in Section 5548-2, supra, to certain levies for specific purposes within the charter limitation in charter cities, and the application of such provision to levies outside the ten mill limitation in other subdivisions within the same county. However, redress of

such inequity is clearly the function of the General Assembly, and is not within the province of my office for it is evident, in view of the clear and unambiguous language of the legislative enactments already discussed, that any attempt on my part to justify a conclusion other than that already stated would amount to an act of legislation.

As to your second question, it appears that the auditor's general reappraisal, under the provisions of Section 5548, General Code, was completed in 1951 and the abstract of the tax duplicate reflecting such reappraisal was accepted by the Board of Tax Appeals on December 17, 1951 "only on a *tentative* basis, subject to revision for the year 1952." The auditor indicates, however, that such revision, if made, "will be entered on the 1952 tax duplicates." For this reason, we may regard the "tentative" approval by the Board under date of December 17, 1951, as a *final* approval to the extent that the 1951 tax list and duplicate are concerned.

In this situation, it is readily apparent that the 1951 abstract, thus "tentatively" accepted, reflected the results of a reappraisal, or re-assessment, made by the auditor in 1951. Accordingly, the year 1951 is the "year of re-assessment" to which reference is made in Section 5548-2, General Code. Such being the case, it follows that the special levies voted at the elections of November 6, 1951 and December 11, 1951, constitute instances in which "the people \* \* \* have voted additional levies \* \* \* in the year of re-assessment" within the meaning of the language as used in Section 5548-2, General Code; and the provisions of this section are applicable, therefore, so as to effect a proportionate reduction of such special levies as applied to the 1951 tax duplicate. The amount of such reduction in the rate of the levies affected is to be calculated, of course, by comparison of (a) the total valuation as set out in the 1951 tax list and duplicate, including the increase therein effected by the auditor's reassessment of 1951, with (b) the total valuation as set out in the tax list and duplicate "of the year preceding the re-assessment."

It would hardly appear necessary, at this time, to consider your third query since it is not yet certain either (a) that the electors will approve any "additional levies for specific purposes" in the year 1952, or (b) that any re-assessment will be made in that year. However, it may be said that if both of these eventualities should come about, the provisions of Section 5548-2, General Code, would clearly become applicable to such levies, and the proportionate reduction thus effected would



be calculated by a comparison of the total valuation, as set out in the 1952 tax list and duplicate, with the total valuation as set out in the tax list and duplicate of the year preceding. Moreover, I think it is clear that the "revision for the year 1952," as mentioned in the auditor's statement of facts, would constitute a "re-assessment," as that term is used in Section 5548-2, General Code, whether such revision is (a) effected by an order of the Board of Tax Appeals under authority of Section 5613, General Code, or (b) effected by a reappraisal by the auditor under authority of Section 5548, General Code.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. Where a municipal charter provision, adopted under authority of Article XII, Section 2, Ohio Constitution, and Section 5625-14, General Code, authorizes, upon the approval of the electors, the levy of taxes for specific purposes beyond a stated charter limitation, the rate of any such levy so approved is subject to diminution in the event of reassessment, as provided by Section 5548-2, General Code; but where such charter authorizes the legislative authority of such municipality to levy taxes within such stated limitation for all municipal purposes without a vote of the people, the levies so made within such limitation are not subject to the provisions of Section 5548-2, General Code.

2. Where additional levies for specific purposes have been approved at elections held in the year 1951 to be effective in such year, and where the county auditor in such year has completed a general reassessment of all real estate within his county under authority of Section 5548, General Code, and the revised valuations thereby made have been entered on the 1951 abstract and transmitted to the Board of Tax Appeals, as required by Section 5612, General Code, and where the Board of Tax Appeals has indicated, on December 17, 1951, that it does not intend to revise the valuations listed therein for the purpose of preparation of the 1951 tax list and duplicate by the county auditor under the provisions of Section 2583, General Code, the rates of such additional levies are subject to reduction as provided in Section 5548-2, General Code.

3. The term "reassessment," as used in Section 5548-2, General Code, includes both (a) a general reassessment of real estate by the county auditor under the provisions of Section 5548, General Code, and (b) a revision of the valuation of real estate by the Board of Tax Appeals under the provisions of Section 5613, General Code. The term "year of reassessment," as used in Section 5548-2, General Code, is the year with

respect to which the revised real estate valuations, effected by such reassessment, are entered on the tax list and duplicate prepared under the provisions of Section 2583, General Code.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General