

4044.

FIFTEEN MILL LIMITATION—BONDS ISSUED PRIOR TO JANUARY 1, 1925, MAY BE VOTED IN WHOLE OR IN PART OUTSIDE SUCH LIMITATION — PROCEDURE OUTLINED — INTEREST RATE OF SUCH BONDS.

*SYLLABUS:*

1. *The levy provided by section 5625-15, General Code, in excess of the fifteen mill limitation for the purpose mentioned in paragraph three of said section, to wit, "For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925," may include all or any number of the bond issues authorized or issued prior to January 1, 1925.*

2. *The resolution declaring the necessity for the levy of a tax outside of the fifteen mill limitation for the payment of debt charges on bonds issued and authorized to be issued prior to January 1, 1925, as provided by section 5625-15, General Code, even though such bonds may have been issued at different times and mature in different years, is confined to a single purpose within the meaning of said section.*

3. *In the case of bonds maturing serially, the rate set forth in such resolution should be the rate which will be required to pay the principal and interest obligations of such bonds for that year in which such obligations shall be the greatest.*

4. *In setting forth the purpose of the levy in such resolution and upon the ballots, it is sufficient to follow the wording of the statute.*

COLUMBUS, OHIO, February 8, 1932.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—I have your letter in which you make the following inquiries:

"The taxing authority of one of the subdivisions in Lake County desires to vote a levy outside of the 15 mill limitation for the purpose of paying debt charges as provided by Sec. 5625-15 P. 3, and Sec. 5625-17 General Code and I am not certain how to advise them as to certain details.

1. Paragraph 3 provides a levy may be made 'for the debt charges on all bonds, etc., authorized prior to January 1, 1925.' In the instant case there are several issues of bonds in this class and it is not desired to vote all of said issues out. Does the use of the word 'all' make it mandatory to include all issues or may certain issues only be voted on?

2. If certain described bonds may be selected, and if the issues so selected are for the same general purpose altho issued at different times and finally maturing in different years, may they be classified as being issued for a 'single purpose'?

3. The bonds in question all mature serially and consequently the millage decreases each year, less money being required to pay interest on outstanding bonds. In computing the 'increase in rate which it is necessary to levy' should the fiscal officer compute the rate for each of the years the various improvements will run, or should he compute the rate on the basis of the weighted average as may be done in an original issue, or should he compute the rate for the first year the levy will appear on the duplicate for collection?

4. In 'setting out the purpose' is it necessary to use the purpose

as originally set forth in the necessity resolution of each improvement or should the wording follow that of paragraph 3 of Section 5625-17 and simply recite 'for debt charges on all bonds (or certain bonds) issued prior to January 1st, 1925'? To set forth the entire purpose clause will necessitate a rather long ballot form which is generally undesirable."

The portion of section 5625-15, General Code, which is pertinent to your first inquiry, provides as follows:

"The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

\* \* \* \* \*

3. For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925."

It is my opinion that the use of the word "all" in paragraph three of the above section does not make it mandatory to include all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925.

In 2 C. J. 1134 it is said:

"In statutes, as well as in common parlance, the word 'all' is a general rather than a universal term, and it is used in one sense or the other according to the demands of sound reason."

The identical language is used in the case of *Stone vs. Elliott*, 11 O. S. 252 at page 258.

In nearly all cases it would not be necessary to levy a tax in excess of the fifteen mill limitation for the debt charges on all the bonds of a subdivision which were issued prior to January 1, 1925, and the legislature likely did not intend that all bond issues prior to said date must be included. This is more apparent by the fact that there were bond issues prior to said date, the levies for the payment of which were already outside of the fifteen mill limitation. It is my view, therefore, that the levy provided for the purpose mentioned in paragraph three of said section may include all or any number of bond issues authorized prior to January 1, 1925.

Referring to your second inquiry, section 5625-15, General Code, provides for the declaration by resolution "that it is necessary to levy a tax in excess of such limitation for any of the following purposes". The statute then sets forth eight separate and distinct purposes. It then provides as follows: "Such resolution shall be confined to a single purpose, \* \* \*". This refers to the purposes set forth in this section and apparently means that the resolution shall not contain more than one of those purposes, and as a levy for the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued before January 1, 1925, is set forth as one purpose, it is my view that a resolution declaring the

necessity for the levy of a tax outside of a fifteen mill limitation for the payment of debt charges on bonds issued and authorized to be issued before January 1, 1925, even though such bonds may have been issued at different times and mature in different years, is confined to a single purpose within the meaning of the statute. Especially would this be true where, as in your case, the bond issues included in the resolution are for the same general purpose, in view of the definition of the term "one purpose" contained in section 2293-20, General Code, which statute provides that a resolution providing for the submission to electors of the question of issuing bonds shall relate only to one purpose. Said section defines "one purpose" as follows:

"'One purpose' shall be construed to include, in the case of a county or township any number of roads, highways, bridges and viaducts; in the case of a municipality any number of streets, bridges, and viaducts, including the municipality's share in streets to be improved in part by assessment; in the case of a school district any number of school buildings; and in any case all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges and viaducts included in the same resolution."

As to your third question, the pertinent part of section 5625-15, General Code, provides that "Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, \* \* \*". If this provision stood alone, it might be permissible to compute the rate required for each year during the life of the indebtedness which is sought to be taken care of. However, section 5625-17, General Code, provides for the form of ballots which shall be cast at such election. This form is as follows:

"An additional tax for the benefit of (name of subdivision).....  
 .....for the purpose of (purpose stated in the resolution)  
 .....at a rate not exceeding ..... mills for .....  
 (life of indebtedness or number of years the levy is to run)."

It will be seen that the ballot provides only for one rate during the years the additional tax is to be levied, and makes no provision for a change of rate each year. This form also provides for a rate not exceeding ..... mills, thus making it possible to reduce the rate. Moreover, section 5625-18, General Code, provides for the levy of a less rate than that contained in the resolution. This section reads as follows:

"If the majority of the electors voting on a levy for the current expenses of schools or fifty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax, within such subdivision at the additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution."

If the average annual levy throughout the life of the indebtedness required to retire such indebtedness were used, as in the case of the original bond issues, the rate for the first years would be insufficient to take care of the indebtedness maturing in those years, and clearly there could be no levy during those years in excess of the rate set forth on the ballot; whereas in the case of the original bond issues, the rate is expressly stated to be only an estimate of the average annual levy during the life of the bonds required to pay the interest on and retire them, so that the rate actually levied during the forepart of the life of such bonds can be and generally is higher than the estimated average annual levy.

In answer to your third question, it is my opinion, therefore, that the rate should be used which will be required to pay the principal and interest obligations of such bonds for that year in which such obligations shall be the greatest.

As to your fourth question, the statute simply provides that the purpose shall be set forth, and as the statute names the various purposes for which an additional tax may be levied, if approved by the electors, it is my view that it would be sufficient to follow the wording of section 5625-15, General Code, as follows: "For the debt charges on certain bonds issued prior to January 1, 1925."

In Opinions of the Attorney General for 1927 at page 1673 the question arose whether in the case of an additional levy for certain improvements it would be necessary to specify on the ballot the specific streets sought to be improved. The opinion held that an additional levy may be authorized without the same degree of definiteness as is required in the case of bond issues.

It would not be objectionable, however, and perhaps preferable, so that the electors might know what bonds are affected, to describe such bonds briefly; for instance, by saying "For the debt charges on certain bonds issued prior to January 1, 1925, to wit, bonds for the improvement of highways issued on," and then set forth the dates on which the bonds for these improvements were issued.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4045.

COMPENSATION—PROBATION OFFICER—PROBATE JUDGE MAY NOT FIX SUCH IN EXCESS OF AMOUNT APPROPRIATED BY COUNTY COMMISSIONER.

*SYLLABUS:*

*Under the provisions of Section 1662, General Code, a probate judge may not fix the compensation of a probation officer or employees under such section in an amount in excess of the aggregate fixed by the county commissioners for such purposes.*

COLUMBUS, OHIO, February 8, 1932.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—Your recent request for my opinion reads:

"The Probate Judge of Meigs County has appointed a probation officer as authorized by Section 1662, G. C., and has designated his compensation. The County Commissioners in their tentative appropriations