

accounts or notes payable. With respect to this issue, the statement of the fiscal officer does not show this, but shows instead the aggregate amount of outstanding accounts or notes payable prior to July 1, 1935, which is later than the commencement of the current fiscal year, which under the provisions of Section 260-1, General Code, begins January 1, 1935. Since it is my view that this is a condition precedent to the right of the subdivision to issue bonds, it is my advice that you do not purchase the same.

It is my suggestion that if the school district desires to sell bonds under this statute to you, it obtain from the fiscal officer a correct certificate in accordance with the provisions of this act and proceed anew, repealing all the other proceedings heretofore taken.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4775.

APPROVAL, BONDS OF SUMMIT COUNTY, OHIO, \$290,600.00.

COLUMBUS, OHIO, October 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4776.

COUNTY BUDGET COMMISSION—ADJUSTMENT OF TAX
LEVIES UNDER SECTION 5625-23, GENERAL CODE.

SYLLABUS:

1. *Where the circumstances are such that a county budget commission in pursuance of its duty with respect to the adjustment of tax levies may allow the minimum levies within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit as fixed by the first sentence of paragraph (d) of Section 5625-23, General Code, that is, where the levies required by paragraphs (b) and (c) of this statute do not equal or exceed the minimum levy as provided for therein, the county budget commission should allow the minimum levy provided for therein, and disregard all that portion of said paragraph (d) following the first sentence thereof.*

2. *Section 5625-23 (d), General Code, requires that in cases where the*

minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit cannot be allowed by a county budget commission because of the fact that levies for debt charges and firemen's and policemen's pension funds required by paragraphs (b) and (c) of said statute equal or exceed the requirement of said minimum levy, an operating levy shall be provided for each such subdivision or taxing unit and the minimum levy for current expenses as fixed therein reduced accordingly, so that in the adjustment of said levies the ten mill limitation shall not be exceeded; but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45% of the millage available within the ten mill limitation after levies required for debt charges and firemen's and policemen's pension funds as required by paragraphs (b) and (c) of the statute as provided for.

3. *The 45% provision for school districts referred to above, and mentioned in the last sentence of paragraph (d) of Section 5625-23, General Code, has no application whatever, where a minimum levy for current expenses and debt service for the district may be allowed under the terms of the first sentence of said paragraph (d).*

COLUMBUS, OHIO, October 10, 1935.

HON. JACKSON E. BETTS, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Auditor of this county, as Secretary of the Northwestern Ohio Auditors' Association, has requested me to secure your opinion in regard to the application of Section 5625-23, Ohio General Code, effective June 12, 1935. The questions which the Auditor handed to me are as follows:

(1) In districts where the levies for (B) and (C)—for illustration, we will say the municipality—equal or exceed the minimum levy, and it is necessary for the budget commission to provide an operating levy, may the budget commission deduct from the minimum levy for schools, if such deduction would result in a figure less than the equivalent to 45% of the millage available within the ten mill limitation after all the levies in (B) and (C) have been provided for? Or, must the Budget Commission first provide for the 45% of the free millage for schools before making its deductions to provide an operating levy for the municipality?

(2) Does this apply to all schools or only to schools where the requirements under Paragraphs 'B' and 'C' of an overlapping taxing unit equal or exceed the minimum levy?”

This inquiry involves the interpretation of Section 5625-23, General Code, as enacted in House Bill 466, of the 91st General Assembly, particularly paragraph (d) of said statute. The pertinent part of this statute reads as follows:

“* * The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification:

(a) All levies outside of the ten mill limitation.

(b) All levies for debt charges not provided for by levies outside of the ten mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levies prescribed by section 4605 and 4621 of the General Code.

(d) A minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such sub-division or taxing unit requests an amount requiring a lower rate. Provided, however, that if the levies required in paragraphs (b) and (c) for said subdivision or taxing unit equal or exceed the entire minimum levy of said subdivision as hereinbefore fixed, the minimum levies of the other sub-divisions or taxing units shall be reduced by the budget commission to provide for said levies and in addition thereto an operating levy for said sub-division. Such additional levy thus required shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.

If any debt charge is omitted from the budget the budget commission shall include it therein.”

By reason of the ten mill limitation for the tax levies which are not expressly authorized by popular vote, as fixed by the Constitution of Ohio and pertinent statutory provisions, a county budget commission is limited in the allowance of such levies to a total of ten mills on each dollar of tax valuation of property listed on the real estate and public utility duplicate and located within the several subdivisions and taxing units under its jurisdiction, despite any statutory provisions making tax levies mandatory.

It will be observed from the terms of the statutory provisions quoted above, that a county budget commission is directed to approve without modification, thus in effect making them mandatory levies with some modification as to the third class, three distinct classes of tax levies enumerated in paragraphs (b), (c) and (d) of said statute. The first sentence of paragraph (d) fixes a definite, ascertainable rate which, under the terms of this sentence standing alone is a minimum rate that must be allowed for current expenses and debt service for each subdivision or taxing unit. The statute does not stop here, however. The Legislature recognized that in many cases levies as fixed by the first sentence of said paragraph (d) could not possibly be made within the ten mill limitation at the definite rate thereby fixed for each of the taxing units or subdivisions where they overlap or consist of the same territory, and at the same time make the required levies for the purposes set forth in paragraphs (b) and (c) of the statute, and that in such cases, in order to provide for operating purposes and to adjust the levies so as to keep them within limitations, it would become necessary to reduce the minimum levy for current expenses as therein fixed. Provision was therefore made to cover such situation by the proviso which constitutes the remaining portion of the said paragraph (d), particularly the second sentence of said paragraph.

It will be noted that the said paragraph (d) consists of three parts. First, the provision for a minimum levy in each subdivision or taxing district for current expenses and debt service at a definite ascertainable rate; Second, the proviso for a different rate than the minimum rate mentioned when the levies required by paragraphs (b) and (c) equal or exceed the minimum rate mentioned; and third, an exception to the provisions of the proviso.

The natural and appropriate office of a proviso in a statute is to restrain or qualify matters immediately preceding it in the statute, unless a contrary intention is manifest. A proviso is ordinarily to be construed in connection with the section of which it forms a part, and is substantially an exception to the provisions of the statute that it qualifies. See *Lewis' Sutherland Statutory Construction*, 2nd Ed., Sec. 352.

The proviso contained in the second sentence of paragraph (d) is without a doubt intended to be a qualification of or an exception to the sentence immediately preceding it. The same is true of the exception to the proviso which, in a sense, is a part of the proviso itself, contained in the third sentence of said paragraph (d). Manifestly, the terms "additional levy" and "operating levy" as used in this sentence mean a levy provided for in the immediately preceding sentence by the expression "in addition thereto and operating levy."

Unless the levies required by paragraphs (b) and (c) of this statute equal or exceed the minimum levy provided for by the first sentence of paragraph (c), there is no occasion to resort to or apply the provisions of the proviso, and of course in those cases where the terms of the proviso have no

application the exception to the proviso which is in a sense a part of the proviso or at least qualifies it, has no application. In other words, where the minimum levy for all overlapping subdivisions and taxing units may be allowed, and is allowed, because the levies required in paragraph (b) and (c) within the territory do not equal or exceed this minimum levy, it is not then necessary to reduce the minimum levy, and likewise not necessary to allow "in addition thereto an operating levy." It clearly follows that where the minimum levies spoken of in the first sentence of paragraph (d) may be allowed, the 45% provision for schools as contained in the last sentence of paragraph (d), which is the exception to the proviso, has no application. This is also manifest from the fact that it refers to an "operating levy" which is not to be allowed unless the terms of the proviso must be resorted to in making up the schedule of levies, as an "operating levy" is only allowed where the "minimum levies" must be reduced.

In my Opinion No. 4538, rendered under date of August 14, 1935, and addressed to the Prosecuting Attorney of Perry county, it is said with respect to the proviso contained in said paragraph (d) of this statute:

"This proviso has no force whatever in any case unless the levies required for debt charges (paragraph b) and firemen's pension funds and police relief funds (paragraph c) equal or exceed the minimum levy for a subdivision or taxing unit 'as hereinbefore fixed', in which event the *minimum* levy of the other subdivisions or taxing units must be *reduced* by the budget commission to provide for said levies (meaning those fixed by paragraph b and c), and in addition thereto, an operating levy for said subdivision. It further provides that such *additional levy* shall be *deducted from the minimum levies* of each of the other subdivisions or taxing units. * *

Under the terms of the proviso, where the reduction of the minimum levy fixed for a school district to provide for the levies required in paragraphs (b) and (c) and operating levies for all the other subdivisions involved, there is a limitation placed upon the extent of the reduction that may be made—to wit, not "below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for."

Where the levies for debt charges spoken of in paragraph (b) and those for firemen's pension funds and police relief funds as required by paragraph (c) equal or exceed the minimum levy for current expense and debt service in a subdivision or taxing unit as fixed by the first sentence of paragraph (d), recourse must be had by the budget commission to the provisions of the proviso as contained in the remaining portion of said paragraph (d) and

in those cases an operating levy for school purposes within the territory must be allowed at a rate not less than the equivalent of 45% of the millage available within the ten mill limitation after all the levies required by paragraphs (b) and (c) are provided for. In other words, where the "minimum levy" cannot be allowed because the levies for debt charges and police and firemen's pension funds equal or exceed the said minimum levy as fixed by the statute and it is necessary to provide operating levies for each of the subdivisions or taxing units involved, the operating levy for schools must first be allowed in accordance with the 45% provision spoken of, and the rates for other subdivisions and taxing units involved must then be adjusted so as to keep the total of all levies within the ten mill limitation.

With respect to the questions submitted, I am of the opinion:

1. Where circumstances are such that a county budget commission in pursuance of its duty with respect to the adjustment of tax levies may allow the minimum levies within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit as fixed by the first sentence of paragraph (d) of Section 5625-23, General Code, that is, where the levies required by paragraphs (b) and (c) of this statute do not equal or exceed the minimum levy as provided for therein, the county budget commission should allow the minimum levy provided for therein, and disregard all that portion of said paragraph (d) following the first sentence thereof.

2. Section 5625-23 (d), General Code, requires that in cases where the minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit shall not be allowed by a county budget commission because of the fact that levies for debt charges and firemen's and policemen's pension funds required by paragraphs (b) and (c) of said statute equal or exceed the requirements of said minimum levy, an operating levy shall be provided for each such subdivision or taxing unit and the minimum levy for current expenses as fixed therein reduced accordingly so that in the adjustment of said levies the ten mill limitation shall not be exceeded; but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45% of the millage available within the ten mill limitation after levies required for debt charges and firemen's and policemen's pension funds as required by paragraphs (b) and (c) of the statute are provided for.

3. The 45% provision for school districts referred to above, and mentioned in the last sentence of paragraph (d) of Section 5625-23, General Code, has no application whatever, where a minimum levy for current expenses and debt service for the district may be allowed under the terms of the first sentence of the said paragraph (d).

Respectfully,

JOHN W. BRICKER,
Attorney General.