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1. BUDGET COMMISSION, COUNTY—HAS AUTHORITY TO DETERMINE THAT AMOUNTS REQUESTED BY BOARD OF LIBRARY TRUSTEES AND INCLUDED IN BUDGET OF TAXING AUTHORITY REPRESENT “NEEDS” OF LIBRARY—SECTION 5705.28 RC.
2. COUNTY BUDGET COMMISSION—HAS AUTHORITY TO FIX AMOUNT OF CLASSIFIED PROPERTY TAX TO BE ALLOCATED TO LIBRARIES—NOT MANDATORY FULL AMOUNT REQUESTED BE APPROVED.
3. NO PROVISION FOR PRIORITY FOR ANY LIBRARY QUALIFIED UNDER SECTION 5705.28 RC FOR ALLOCATION OF CLASSIFIED PROPERTY TAX—REQUESTS FROM ALL LIBRARIES MUST BE CONSIDERED AS A GROUP.
4. PUBLIC LIBRARIES CAN NOT DEMAND PROCEEDS FROM CLASSIFIED PROPERTY TAX IN EXCESS OF THEIR “NEEDS” BE ALLOCATED TO THEM—SUCH PROCEEDS IN EXCESS OF THEIR “NEEDS” ARE TO BE ALLOCATED IN ACCORDANCE WITH SECTION 5705.32 RC—LIBRARIES HAVE PRIORITY IN DISTRIBUTION OF CLASSIFIED PROPERTY TAX PROCEEDS.

SYLLABUS:

1. A county budget commission has authority to determine that the amounts requested by a board of library trustees and included in the budget of the taxing authority pursuant to Section 5705.28, Revised Code, actually represent the “needs” of the library.

2. A county budget commission has authority to fix the amount of classified property tax to be allocated to libraries based on the “needs” of such libraries; therefore it is not mandatory that the full amount requested be approved.

3. There being no provision for priority of any library which has qualified under Section 5705.28, Revised Code, for allocation of classified property tax, the requests from all libraries must be considered as a group.

4. Public libraries cannot demand that proceeds from classified property tax in excess of their “needs” be allocated to them. Proceeds from classified property tax in excess of their “needs” of libraries are to be allocated in accordance with Section 5705.32, Revised Code. Libraries do, however, have priority in the distribution of classified property tax proceeds.

Columbus, Ohio November 19, 1955

Hon. Myron A. Rosentreter, Prosecuting Attorney
Ottawa County, Port Clinton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Harris-Elmore Public Library was duly formed as a school district library. It is contemplating the construction of a library building, and to raise the necessary funds for the construction of this building said Library Board has requested of the County Budget Commission an increased allowance from the classified property taxes, over and above the Board's usual request for operating expenses.

"The Budget Commission has requested an opinion as to what discretion, if any, the Budget Commission has in determining what allowance to be made to said library board toward the construction of its library building. This library has adopted appropriate rules and regulations extending the benefit of its services to all inhabitants of the county on equal terms and has certified a copy of such rules and regulations to the taxing authority. To date this library board is the only one in the county that has requested money for construction of a library building; however, other library boards in the county are also very much in need of expanded facilities and additional room and have indicated that they too will request funds for construction purposes from the classified property taxes.

"1. What discretion, if any, has the County Budget Commission in deciding how much revenue should be given public library from classified property taxes in view of Sections 5705.28 (particularly the latter part of said Section) and 5705.32 as amended of the Revised Code, and in view of any other section of the code that may be relevant thereto?

"2. If it is mandatory that the Budget Commission include in its budget of expenditures the *full* amount requested from the classified tax by such Board, in what order are the various requests from the different libraries of the county processed?

"3. Are public libraries of the county which are entitled to participate in the proceeds of classified property tax entitled to demand that all classified property tax be distributed to said public libraries?"

Section 5705.28, Revised Code, in so far as it is pertinent, reads as follows :

“The board of trustees of any public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. Where such rules and regulations have been so certified or where the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as are specified by such board as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board.”

Section 5705.32, Revised Code, reads in part as follows :

“* * * The commission may fix the amount of proceeds of classified property taxes, collected within the county, to be distributed to each board of public library trustees which has qualified under section 5705.28 of the Revised Code for participation in the proceeds of such taxes based on the needs of such library for the construction of new library buildings, parts of buildings, improvements, operation, maintenance, or otherwise, and notwithstanding the fact that alternative methods of financing such needs are available, the amount of proceeds of such taxes, collected within the county, to be distributed to each board of township park commissioners, the amount of proceeds of such taxes originating outside the limits of municipal corporations, to be distributed to the county, and the amount of proceeds of taxes originating within each municipal corporation, to be distributed to each municipal corporation and shall separately set forth the amount so fixed and determined in the ‘official certificate of estimated resources,’ as provided in section 5705.35 of the Revised Code, and separately certify such amount to the county auditor who shall be guided thereby in the distribution of the undivided classified property tax fund for and during the fiscal year. In determining such amounts, the commission shall be guided by the estimate of the auditor under section 5705.31 of the Revised Code as to the total amount of such undivided classified property taxes to be collected in the county during such fiscal year, and as to the shares thereof distributable to municipal corporations and the county, pursuant to section 5707.05 of the Revised Code.

“Before the final determination of the amount to be allotted to each subdivision from any source, the commission shall per-

mit representatives of each subdivision and of each board of public library trustees to appear before it to explain its financial needs.

“If any public library receives and expends any funds allocated to it under this section for the construction of new library buildings or parts of buildings, such library shall be free and open to the inhabitants of the county in which it is located.”

Section 5705.28, Revised Code, provides that when a public library has qualified by adopting appropriate rules and regulations extending the benefits of the library service of such library to all inhabitants of the county on an equal basis and has certified said rules and regulations to the taxing authority, the taxing authority shall include in its budget of expenditures the full amount requested by the board of trustees of such library.

This amount, however, is subject to the determination of the county budget commission as to the amount of proceeds of classified property taxes to be allotted to each board of public library trustees qualifying under Section 5705.28, Revised Code, based on the “needs” of such library.

The commission has discretion in the determination of the “needs,” and what the “needs” of a library are is a question of fact upon which the library has the burden of proof. This was specifically pointed out by the Ohio Supreme Court in *County of Montgomery v. Budget Commission of Montgomery Co., et al.*, 160 Ohio St., 263, in the per curiam opinion at page 265:

“It appears, therefore, that the General Assembly has replaced the provision, that allotments to libraries should be made ‘according to the relative needs of the libraries and other units entitled to share in the distribution of such taxes,’ by a provision requiring the budget commission to base such allotments upon ‘the needs of’ libraries.

“What ‘the needs of’ a library are is a question of fact upon which a library has the burden of proof. In the first instance, the trier of the facts is the budget commission. Where a trial de novo is held by the Board of Tax Appeals, it then becomes the trier of the facts. Unless its determination of the fact of ‘the needs of’ a particular library is unreasonable, this court will not disturb such determination.”

This was followed by the Board of Tax Appeals in *City of Shaker Heights, et al., v. Cuyahoga County Budget Commission, et al.*, and said decision was affirmed by the Supreme Court in 162 Ohio St., 545.

Therefore, the county budget commission does have discretion to determine that the amount requested by the board of library trustees and included in the budget by the taxing authority pursuant to Section 5705.28, Revised Code, represents "the needs of" the library, and to make the allocation to the library on the basis of its "needs," and if such discretion is reasonably exercised such determination will not be disturbed.

Your second question asks: "If it is mandatory that the Budget Commission include in its budget of expenditures the full amount requested from the classified tax by such Board, in what order are the various requests from the different libraries of the county processed?"

The first part of this question is answered *supra*, in that there is certain discretion in the commission as to determination of the "needs" of a library. As to the latter part of the question, there is no provision for priority of any library which has qualified under Section 5705.28, Revised Code, so that the requests from all the libraries would have to be considered as a group and the "needs" of each determined.

This would pose a problem only if the funds available for allocation were insufficient to meet the needs of the libraries as determined by the commission. In this case, assuming that the "needs" of each library have been properly determined, then it would appear that the needs of each would have to be reduced proportionately to bring the "needs" within the funds available for allotment.

The third part of the inquiry asks: "Are public libraries of the county which are entitled to participate in the proceeds of classified property tax entitled to demand that all classified property tax be distributed to said public libraries?"

The county budget commission must by Section 5705.32, Revised Code, make allocation from classified property tax to libraries based on the "needs" of such libraries, and after such the amount remaining is to be allocated according to statute. Therefore, while under the provisions of Section 5705.32, Revised Code, and the decision of the Ohio Supreme Court in the *Dayton Library case*, *supra*, the commission must first determine the "needs" of the libraries and allocate and distribute from the

classified property tax; accordingly, the libraries cannot demand any allocation over and beyond their "needs."

However, in the distribution of the collected proceeds of the classified property taxes, the libraries have priority over the others entitled to participate in the distribution. The allotment and distribution are two distinct processes. Board of Education of Cleveland City School District, et al., v. City of Shaker Heights, et al., 137 Ohio St., 597.

In specific answer to your inquiry, it is my opinion and you are so advised that:

1. A county budget commission has authority to determine that the amounts requested by a board of library trustees and included in the budget of the taxing authority pursuant to Section 5705.28, Revised Code, actually represent the "needs" of the library.

2. A county budget commission has authority to fix the amount of classified property tax to be allocated to libraries based on the "needs" of such libraries; therefore it is not mandatory that the full amount requested be approved.

3. There being no provision for priority of any library which has qualified under Section 5705.28, Revised Code, for allocation of classified property tax, the requests from all libraries must be considered as a group.

4. Public libraries cannot demand that proceeds from classified property tax in excess of their "needs" be allocated to them. Proceeds from classified property tax in excess of the "needs" of libraries are to be allocated in accordance with Section 5705.32, Revised Code. Libraries do, however, have priority in the distribution of classified property tax proceeds.

Respectfully,

C. WILLIAM O'NEILL

Attorney General