

“\* \* \* Provided, however, that any original member may be exempted from membership by filing written application for such exemption with the retirement board within three months after this act goes into effect. \* \* \*”

Your letter states that the employees allege that they neglected to file their application for exemption within the time required because their county auditor failed to notify them in time to do so.

There is no provision anywhere in the act which designates the county auditor as an agent of the retirement board; neither is it a duty imposed by law upon the county auditor to notify public employees of the statutory requirements of the retirement act.

Obviously it would be impossible for the members of the board to keep every employee informed as to his legal rights. The employee is presumed to have knowledge of these rights and he does have opportunity to become acquainted with them. Therefore, he is charged with notice and knowledge of the laws and orders of the department of which he is a member, and the neglect of the auditor cannot excuse failure to apply for exemption within the statutory period.

The statute (Section 486-33a, General Code) requires that written application for such exemption must be filed with the retirement board within three months after this act goes into effect. The board does not have the power to ignore this requirement or change the language thereof. Therefore, I am of the opinion that the retirement board has no authority to grant exemption in cases where application therefor has not been made within the three months period as required by the statute.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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862.

COUNTY TUBERCULOSIS HOSPITAL—ELECTORS OF COUNTY—FIFTY-FIVE PER CENTUM VOTE—LEVY TO SUPPLEMENT GENERAL FUND APPROPRIATION—AMENDED SENATE BILL 4, 93RD GENERAL ASSEMBLY—SPECIAL TAX LEVY—NO AUTHORITY TO CHANGE PERCENTAGE OF NECESSARY ELECTORS.

*SYLLABUS:*

1. *To carry a levy to supplement general fund appropriation for the support of a county tuberculosis hospital, not to exceed the aggregate of one mill, submitted under the provisions of Amended Senate Bill No. 4, effective May 22, 1939, fifty-five per centum of the electors voting on*

*the question so submitted, that is, the electors of the county, must vote in favor thereof.*

*2. The board of elections of a county is without authority to change the percentages of the number of electors necessary to carry a special tax levy as fixed by the legislature in Amended Senate Bill No. 4, effective May 22, 1939, and determine that a levy, to supplement general fund appropriation for the support of a county hospital, may be approved by a mere majority vote in the municipalities of a county.*

COLUMBUS, OHIO, July 7, 1939.

HONORABLE KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR: I have your letter of June 30th, requesting my opinion which reads as follows:

"There is situated in our county the Licking County Tuberculosis Sanatorium which is operated by a Board of Trustees under the supervision of the county commissioners as provided by law. The commissioners recently passed a resolution stating that it is necessary to have a levy outside of the ten mill limitation for operating expenses for the next two years, as provided by Senate Bill 4, passed May 16, 1939, by the General Assembly of Ohio and approved May 22, 1939, by the Governor of Ohio.

We desire your opinion as to what percentage of votes it will be necessary to obtain in order to carry said levy, said levy being sponsored as above stated by the board of county commissioners and will be voted on throughout the county.

Assuming that it requires a 65% vote under Senate Bill 4 in the rural districts, can the vote be broken down by the Board of Elections in order that said levy shall be considered passed in Newark City and the other municipalities of this county if said levy receives a bare majority in said municipalities, or will the levy require a strict 65% of all the votes cast, both in the county and in the municipalities?

We will appreciate very much your opinion on the above questions."

The pertinent parts of Amended Senate Bill 4, passed by the 93rd General Assembly as an emergency act and filed in the office of the Secretary of State on May 22, 1939, read as follows:

"\* \* \* If the majority of the electors voting on the question so submitted vote in favor of such levy, in case such levy is for school district purposes, or is submitted by a city prior

to December 31, 1939, for not to exceed one and one-half mills for the purpose of matching state grants for poor relief in the years 1939 or 1940 or in both such years, and in case such levy is for flood relief purposes, or to supplement general fund appropriations for support of tuberculosis hospitals, or either of them, for not to exceed an aggregate of one mill, or is submitted by a city after January 1, 1940, for not more than one and one-half mills for the purpose of matching state grants for poor relief in the year 1940, if fifty-five per centum of the electors voting on the question so submitted vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten mill limitation on the tax list for the purpose stated in the resolution, and in such event the levy shall be certified in the manner provided by section 5625-17a of the General Code, and may be extended on the current tax list duplicate for collection, with the taxes for the first half or the second half of the fiscal year 1939, or both, and in all years after the first year the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

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All provisions of the General Code in so far as they conflict with the provisions of this act are suspended for the period ending December 31, 1940; otherwise they shall in no manner be impaired by the passage of this act.

The term 'taxing authority' and 'subdivision' shall have the meanings assigned to them respectively by section 5625-1 of the General Code."

It is manifest from a reading of that part of the act above quoted that, in the case of a levy "to supplement general fund appropriations for support of tuberculosis hospitals", such levy shall be assessed and collected as required by law "if fifty-five per centum of the electors voting on the question so submitted vote in favor thereof."

While the first paragraph of your letter refers to the necessity of having a levy "outside of the ten mill limitation for *operating expenses for the next two years*", since such expenses are ordinarily and regularly payable from the general fund, the levy proposed to be made by your commissioners is clearly within the provisions of Amended Senate Bill No. 4.

In this connection, however, your attention is invited to Section 5625-9, General Code, which provides that each subdivision shall establish, among others, a "special fund for each special levy". If, therefore, the contemplated levy be approved by the electorate and assessed and col-

lected, the proceeds therefrom should be placed in a special fund and not in the general fund.

Since this proposed levy is a county levy to supplement the general fund appropriation for the support of the county tuberculosis hospital, the question as to whether or not the levy will be made must be determined by the electorate of the county. And by the express terms of Amended Senate Bill No. 4, above quoted, such levy can only be made if approved by fifty-five percentum of the electors voting on the question. This obviously means electors of the county, and there is no provision of law whereby the vote can be broken down by the board of elections, as you put it, in order that such levy may be considered as passed if the levy receives a bare majority in the municipalities of the county.

Apparently your question is prompted by the fact that a city may submit, prior to December 31, 1939, the question as to whether or not a levy not to exceed one and one-half mills for the purpose of matching state grants for poor relief in the years 1939 and 1940, or both, to the electorate of the city, in which case the levy becomes effective if a majority of the electors voting on the question so submitted vote in favor of such levy.

Specifically answering your question, it is my opinion that:

1. To carry a levy to supplement general fund appropriation for the support of a county tuberculosis hospital, not to exceed the aggregate of one mill, submitted under the provisions of Amended Senate Bill No. 4, effective May 22, 1939, fifty-five per centum of the electors voting on the question so submitted, that is, the electors of the county, must vote in favor thereof.

2. The board of elections of a county is without authority to change the percentages of the number of electors necessary to carry a special tax levy as fixed by the legislature in Amended Senate Bill No. 4, effective May 22, 1939, and determine that a levy, to supplement general fund appropriation for the support of a county hospital, may be approved by a mere majority vote in the municipalities of a county.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*