

to in your letter as: "Abandoned traction right of way" on Dixie Highway between Bowling Green and Perrysburg, Wood County, consisting of letters of authority to testamentary trustee, quit claim deed executed by George J. Rathbun, and affidavit of John S. Saalfield, together with certain papers which were submitted to me at the time I wrote you concerning this title on July 13, 1933. In my opinion No. 55, rendered to you under date of January 24, 1933, the following paragraph appears:

"Subject to the curing of the defect above mentioned, it is my opinion that the successor in title to William B. Taylor, Trustee, would have the right to sell parcels described in deeds Nos. 1, 2, 4, 6, 8 to 15, both inclusive, 17 to 24, both inclusive, 24a, 26 to 30, both inclusive, and 41."

From the enclosed documents, it is my opinion that such documents convey the interest of the successors of William B. Taylor, trustee, deceased, as above referred to.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2161.

BUDGET—ASSESSMENT UPON CITY BY SANITARY DISTRICT AMOUNT THEREOF MUST BE STATED IN CITY'S TAX BUDGET—ANTICIPATED REVENUES OF CITY FROM WATER DEPARTMENT MAY NOT BE ALLOWED AS REDUCTION FROM SAID AMOUNT WHEN.

SYLLABUS:

1. *Where a board of directors of a sanitary district in which a city is located has duly levied an annual assessment upon such city for the purpose of providing funds for bond retirement and interest, it is the duty of the city to set forth in its tax budget the amount of such assessment.*

2. *The budget commission of the county in which such city is located has no authority to allow, as a reduction from said amount, funds which such city certifies in its budget to be available from the funds of its water department unless such funds have first been appropriated by the taxing authority of such city for that purpose, and unless, prior to the certification by the budget commission of its action upon the budget of such city, the fiscal officers of such city have paid such funds to the county treasurer to be credited as a partial payment of such annual levy.*

3. *Where the budget commission has allowed as a reduction funds which have not been appropriated for that purpose and have not been paid to the county treasurer, and has certified its action to such city, and the city has taken no action thereon, it is the duty of such budget commission to reconsider and so revise its action on the budget of such city that such entire annual levy is included therein.*

COLUMBUS, OHIO, January 13, 1934

HON. JESSE H. LEIGHNINGER, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—Your recent communication reads in part as follows:

"The Mahoning Valley Sanitary District of the State of Ohio, in July of 1933, certified their annual levy to the County Auditor of Mahoning County, Ohio, setting forth a levy on the City of Youngstown in the amount of Eight Hundred Sixty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$868,854.93), to be collected from the City of Youngstown by the County Treasurer of Mahoning County during the December, 1933 and June, 1934 tax collection periods.

The City of Youngstown, however, by resolution of Council passed on August 11th, 1933, and being Resolution No. 37792, set forth its budget requirement in the total sum of Eight Hundred Sixty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$868,854.93), but stated that it would have available from other sources the sum of Two Hundred Thirty Thousand Dollars (\$230,000.00), leaving Six Hundred Thirty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$638,854.93) to be raised by special tax levy.

The amount which the City of Youngstown has set forth as being available from other sources is to be raised, according to the Finance Director of the City of Youngstown, from Water Department funds and does not represent any funds which are now actually available to be applied toward the payment of the levy of The Mahoning Valley Sanitary District.

Following the certification of the City of Youngstown to the Budget Commission of its budget requirements, the budget commission took cognizance of the statement of the City of Youngstown that they would have Two Hundred Thirty Thousand Dollars (\$230,000.00) available towards the payment of the levy of the Mahoning Valley Sanitary District, and made provision in the budget for the sum of Six Hundred Thirty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$638,854.93) and certified its action to the taxing authority of the City of Youngstown. However, the City of Youngstown has not yet made a levy, as is required by statute, but is awaiting the receipt of your opinion regarding this matter."

Your inquiry is, whether it is mandatory upon the County Budget Commission to levy sufficient taxes to provide a fund in the sum of Eight Hundred Sixty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$868,854.93), which has been certified by the Mahoning Valley Sanitary District as the amount required for their annual levy, and if so, whether it is mandatory upon the County Budget Commission to adjust its former action and provide in the budget of the City of Youngstown for the total levy of Eight Hundred Sixty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$868,854.93). I assume that the assessment in question has been legally levied and that there is no dispute as to the amount which the City of Youngstown should be assessed.

Section 6602-79, General Code, reads in part as follows:

"The board of directors may, if in their judgment it seems best, issue bonds not to exceed ninety per cent of the total amount of the assessments, exclusive of interest, levied under the provisions of this act, in denomination of not less than one hundred dollars bearing interest

from date at a rate not to exceed six per cent per annum, payable semi-annually, to mature at annual intervals within thirty years, commencing not later than five years, to be determined by the board of directors, both principal and interest payable at the office of the treasurer of the State of Ohio. * * * Said bonds, if bearing less than six per cent interest, may be sold below par, but they shall be sold at such a price that the total payment of principal and interest shall not be greater than would have been required, if the bonds had borne six per cent interest and had sold for par and accrued interest. * * *

It shall be the duty of said board of directors in making the annual assessment levy, as heretofore provided, to take into account the maturing bonds and interest on all bonds, and to make ample provision in advance for the payment thereof. In case the proceeds of the original tax assessment made under the provisions of this act are not sufficient to pay the principal and interest of all bonds issued, then the board of directors shall make such additional levy or levies as are necessary for this purpose, and under no circumstances shall any assessment levies be made that will in any manner or to any extent impair the security of said bonds or the fund available for the payment of the principal and interest of the same. * * *

Bonds were issued by the district under these sections and the assessment in question was levied upon the City of Youngstown for interest and bond retirement requirements.

Section 6602-82, General Code, reads in part as follows:

“* * * In the event of any failure or neglect of the board of directors of the district to determine and order an annual levy for the purpose of paying the interest and principal of any bonds pursuant to this act, it shall be the duty of the auditor of the county in which the lands subject to such assessments are situated, to make and complete a levy of the taxes or special assessments necessary for the said purpose against the lands in the said district, and each piece of property therein against which benefits shall have been appraised; any assessment so made and completed by the county auditor shall be made and completed by him in the manner hereinbefore provided for the making and completion of an assessment by the board of directors of the district, and shall have the same force and effect as a levy of assessments determined and ordered by the board of directors.”

Section 6602-87, General Code, reads in part as follows:

“Whenever under the provisions of this act (G. C. Sec. 6602-34 to 6602-106), an assessment is made or a tax levied against a county, city, village, or township, it shall be the duty of the governing body of such political subdivision, upon receipt of the order of the court which established the district, confirming the appraisal of benefits and the assessment based thereon, to receive and file the said order, and to immediately take all the legal and necessary steps to collect the same. It shall be the duty of the said governing or taxing body or persons to levy and assess a tax, by a uniform rate upon all taxable property within the

political subdivision, to make out the proper duplicate, certify the same to the auditor of the county in which such subdivision is, whose duty it shall be to receive the same, certify the same for collection to the treasurer of the county, whose duty it shall be to collect the same for the benefit of the sanitary district, all of said officers above named being authorized and directed to take all the necessary steps for the levying, collection and distribution of such tax. * * * In the event of any failure on the part of the officers of any district to qualify and act, or in the event of any resignations or vacancies in the office, which shall prevent action by the said district or by its proper officers, it shall be the duty of the county auditor and of all other officers charged in any manner with the duty of assessing, levying and collecting taxes for public purposes in any county, municipality or political subdivision in which such lands shall be situated, to do and perform all acts which may be necessary and requisite to the collection of any such assessment which may have been imposed and to the levying, imposing and collecting of any assessment which it may be necessary to make for the purpose of paying the principal and interest of the said bonds. Any holder of any bonds issued pursuant to the provisions of this act or any person or officers being a party in interest, may either at law or in equity by suit, action or mandamus, enforce and compel performance of the duties required by this act of any of the officers or persons mentioned in this act."

It is plainly the imperative duty of the directors of the district to levy sufficient assessments to take care of its bond and interest requirements, and when the assessment is levied upon a municipal corporation, it is equally mandatory that the taxing authorities of such corporation take the necessary steps to levy and collect a sufficient tax to pay the assessment. The legislature was very careful to make it plain that sufficient funds must be raised to pay the bonds that may be issued under this act. In the instant case the City of Youngstown set forth in its budget the total amount of this assessment as it was required to do, but stated therein that it would have available, from other sources, the sum of Two Hundred Thirty Thousand Dollars (\$230,000) leaving Six Hundred Thirty-eight Thousand Eight Hundred Fifty-four and 93/100 Dollars (\$638,854.93), to be raised by tax levy, but it appears that this sum of Two Hundred Thirty Thousand Dollars (\$230,000.00) represented estimated receipts from the water department and that these funds were not then actually available toward the payment of the assessment.

Section 6602-87a, General Code, reads in part as follows:

"For the purpose of payment of a portion of the amount of an assessment or assessments, annual levy or levies, of a sanitary district organized for the purpose of water supply, against any political subdivision, the council or other taxing authority of such political subdivision may appropriate any unappropriated funds of the water department of such political subdivision; * * * When funds of the water department are appropriated under the provisions of this section, they shall be set aside and shall be disbursed for such purpose exclusively in the same manner as other funds of the water department are disbursed. * * * After an annual levy upon a political subdivision has been certified to the county auditor by the board of directors, the county auditor shall there-

upon give written notification to the fiscal officers of such political subdivision. Following such notification and prior to the certification by the county budget commission of its action upon the budget of such political subdivision for the ensuing year, the fiscal officers of such political subdivision shall pay to the county treasurer the amount previously so appropriated for payment of a portion of such annual levy. The county treasurer shall receive such payment, shall properly credit the same as a partial payment of such annual levy, and shall report such payment to the county auditor who shall report it to the county budget commission for its guidance in acting upon the budget of the political subdivision. The remaining portion of such annual levy not so paid shall become due from such political subdivision and shall be collected by the county treasurer at the time that the state and county taxes are due and collected."

Section 6602-87b, General Code, provides the procedure whereby the board of directors of a district, for the purpose of providing funds for bond retirement and interest, accomplishing thereby a reduction in the amount to be collected through the annual levy, may charge additional rates for water furnished by the district to the subdivision and whereby sufficient rates may be established by such subdivision to produce sufficient revenue for the rates so charged by the district.

This section also provides:

"* * * Revenue received by the district through such additional rate or rates shall be set apart in the bond fund and shall be appropriated by the board of directors from time to time solely for the purpose of paying the principal and interest of bonds of the district. * * *

Each year in determining, ordering and levying an annual levy upon a public corporation or person within the district, as provided by section 6602-82 of the General Code, the board of directors shall credit such public corporation or persons with such amount as may have been actually paid to the district through such additional rate and not previously credited, and such credit shall apply as a reduction of the amount of such annual levy upon such public corporation or person."

Clearly under Section 6602-87a, funds to be derived from the water department of a subdivision cannot be allowed as a credit against an annual assessment levied by a sanitary district against such subdivision for bond retirement and interest purposes even though such funds may be available for such purposes until such funds are appropriated therefor and are actually paid to the county treasurer. Likewise under Section 6602-87b, additional water rates charged by a sanitary district cannot apply as a reduction of the amount of such annual assessment until such additional rates have been actually paid to the district.

Section 5625-1 defines "debt charges" as follows:

"* * *

(g) 'Debt charges' shall mean the interest, sinking fund and retirement charges on bonds, notes or certificates of indebtedness.'

Section 5625-23, General Code, provides that the budget commission shall

approve all levies for debt charges without modification and that if any debt charge is omitted from the budget, the budget commission shall include it therein.

The annual assessment levied by the Mahoning Valley Sanitary District against the city of Youngstown is, in my opinion, a levy for a debt charge and the budget commission should have included in the budget in question the entire amount levied against the City and should not have approved the reduction made by the City. The question therefore, arises as to whether the budget commission, having certified this action to the City, must reconsider its action.

The rule is that the action of boards and commissions, as well as legislative bodies, is not always conclusive and beyond recall, but such bodies are possessed of inherent power to reconsider their action and adopt, if need be, the opposite course in all cases where vested rights of others have not intervened, the power to thus act being a continuing power. *State vs. Board of Public Service*, 81 O. S., 218. As long as the City has taken no action authorizing tax levies based on the action of the budget commission, which has been certified to such City, the budget commission does not only have the power, but in my opinion, it is its duty in the instant case to reconsider and revise its action on the budget of the City so that the law is complied with.

It is my opinion, therefore, that:

1. Where a board of directors of a sanitary district in which a city is located has duly levied an annual assessment upon such city for the purpose of providing funds for bond retirement and interest, it is the duty of the city to set forth in its tax budget the amount of such assessment.

2. The budget commission of the county in which such city is located has no authority to allow, as a reduction from said amount, funds which such city certifies in its budget to be available from the funds of its water department unless such funds have first been appropriated by the taxing authority of such city for that purpose and unless, prior to the certification by the budget commission of its action upon the budget of such city, the fiscal officers of such city have paid such funds to the county treasurer to be credited as a partial payment of such annual levy.

3. Where the budget commission has allowed as a reduction funds which have not been appropriated for that purpose and have not been paid to the county treasurer, and has certified its action to such city, and the city has taken no action thereon, it is the duty of such budget commission to reconsider and so revise its action on the budget of such city that such entire annual levy is included therein.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2162.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND T. J. CONNER, OF CINCINNATI, OHIO, FOR THE CONSTRUCTION AND COMPLETION OF CONTRACT FOR HEATING AT LONGVIEW STATE HOSPITAL, CINCINNATI, OHIO, AT AN EXPENDITURE OF \$7,506.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY CORPORATION OF NEW YORK.

COLUMBUS, OHIO, January 13, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*