abolished by Act 102 O. L. 433, the power to make the levy mentioned in section 2530 G. C. was transferred from the board of infirmary directors to the county commissioners. Since the levy was originally authorized to be made by a board other than the county commissioners, it would seem that the original purpose of that section was to provide for a sort of emergency levy over and above the levy for the care of the poor which was authorized by sections 5627 and 5630 to be included within the county levy of three mills described in section 5630.

However, the so-called Smith law providing for limitations upon taxes was enacted in 1911, and that law specifically provided, among other things, that the aggregate of all taxes for county purposes "shall not exceed in any one year three mills." It would thus seem that whatever may have been the original purpose of section 2530 G. C., the county commissioners upon the passage of the Smith law were stripped of authority to exceed the three mill limitation for the purposes of making the levy named in section 2530 G. C. (See Sec. 5649-3a, G. C.)

What has just been said may not be strictly in point as to your inquiry, since your question goes to the point of whether the levy mentioned in section 2530 G. C. may exceed the general limitations of ten mills and fifteen mills but, of course, it is plain that if the levy mentioned in section 2530 cannot be placed outside the three mill limitation, so much the less is there any reason for supposing that it may be placed outside the ten and fifteen mill limitation.

Coming directly to your question, it is to be observed that section 2530 G. C. does not in itself contain any provision exempting the levy therein mentioned from the ten and fifteen mill limitation; nor has any provision for such exemption been found elsewhere in the statutes. The exemptions mentioned in section 5649-4 G. C. do not refer directly or indirectly to the levy mentioned in section 2530 G. C.

Hence, the conclusion is inevitable that the levy mentioned in section 2530 G. C. must be made within the ten or fifteen mill limitation.

You make mention of the requirements of section 3140 G. C. which are to the effect that the state board of health may require the removal of tubercular patients from county infirmaries (now known as county homes) to be cared for at a hospital or institution devoted to the treatment of tuberculosis, in which event the cost of removal and cost of maintenance becomes a charge against the county. However, there is nothing in said section 3140 or related sections to indicate provision for a tax outside of tax limitations to meet the situation described in said section 3140.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2060.

COURT HOUSE—BUILDING COMMISSION—NOT AUTHORIZED TO CONTROL DEPOSIT OF FUND FOR ERECTION OF BUILDING—WHEN COUNTY AUDITOR MAY ISSUE VOUCHERS—APPROVAL BY FIVE MEMBERS OF BUILDING COMMISSION—PROSECUTING ATTORNEY LEGAL ADVISER OF BUILDING COMMISSION.

Sections 2333 to 2343 G. C. do not vest the building commission therein named with authority to control the deposit and investment of the fund raised by a sale of bonds for the erection of the building as to which such commission is serving. The deposit of such money is governed by sections 2715 G. C. et seq. (county depositary law).

Where a building commission is appointed in accordance with sections 2335 et seq. G. C. the county auditor may issue vouchers in payment of architect's fees and estimates for construction work only upon an order signed by five members of the building commission, and not upon the order of the board of county commissioners.

By virtue of section 2917 G. C. the prosecuting attorney is the legal adviser of the building commission mentioned in section 2333 et seq. G. C.

COLUMBUS, OHIO, May 10, 1921.

HON. FRANK L. KLOEB, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

"1. The voters of Mercer county, Ohio, authorized a bond issue of $500,000 for the purpose of erecting a new court house. Acting under authority of section 2333 G. C. and kindred sections the court of common pleas, appointed, and there were qualified four members of a building commission, who in connection with the county commissioners, constitute a building commission, and serve until its completion.

Immediately following the sale of the bonds, the board of county commissioners acting under authority of the county depositary laws, (sections 2715 to 2749 inclusive) made arrangements and did deposit $500,000 with county banks. This money was so deposited as to provide an active fund to take care of immediate requirements and an inactive fund that may be called upon when needed.

The appointive members of the building commission take the view that this fund of $500,000 is a trust fund in the hands of the building commission, to be invested if they so desire, in such manner as they may deem best. There seems to be no direct statutory provision for this assumption and there are no statutes regulating the method in which this money may, or may not, be invested or deposited.

The board of county commissioners take the view that the bonds having been issued as county bonds, signed by the county commissioners, and the auditor, acting as clerk of the board, the funds are necessarily to be treated as county funds until they are expended.

Kindly render me your opinion with reference to this question.

2. When warrants are drawn on the county auditor for the payment of the architect employed in the building of the court house, and for estimates as they become due, should these warrants be drawn by the building commission, or by the board of county commissioners?

3. Section 2917 G. C. provides that the prosecuting attorney shall be the legal adviser of the county commissioners *and all other county officers and county boards.* Under this section is the court house building commission such a county board as may require legal advice of the prosecuting attorney?"

Taking up your first question, it is to be said that sections 2333 to 2342 G. C. speak for themselves, and it is unnecessary to quote from them. It need only be said that they do not vest the building commission with authority to provide for the deposit of the building fund provided for the erection of the building as to which such commission is to serve. Hence, there is no warrant for the view of the appointive members of the building commission that the fund is a trust fund in the hands of the building commission,—the only trust impressed on the fund is that it

must be used according to law for the construction of the building named in the legislation leading to the issue of the bonds from which the fund accrued.

On the other hand, when reference is had to sections 2715 G. C. et seq., it is found that separation is not provided for as to the moneys of the county in respect to the purposes for which the moneys are to be used,—on the contrary, by the provisions of section 2715 the county commissioners are to designate a bank or banks or trust companies as inactive depositaries and as active depositaries "of the money of the county." Of course, there can be no argument on the point that the $500,000 on hands in your county for the erection of a court house is "the money of the county," and comes clearly within the purview of the county depositary laws as set out in said sections 2715 et seq. Much more might be said to the same point; but it is believed unnecessary to indulge in further discussion.

Your second question is fully answered by the terms of sections 2341 and 2342 which read respectively as follows:

> Sec. 2341. Resolutions for the adoption or alteration of plans or specifications, or award of contracts, hiring of architects, superintendent or other employes and the fixing of their compensation, the approval of bonds, and the allowance of estimates shall be in writing and require for their adoption the votes of five members of the commission, taken by yeas and nays recorded on the journal of the county commissioners. When signed by five members of the commission, the county auditor shall draw his warrant on the county treasurer for the payment of all bills and estimates of such commission."
>
> "Sec. 2342. Full and accurate records of all proceedings of the commission shall be kept by the county auditor upon the journal of the county commissioners. He shall carefully preserve in his office all plans, drawings, representations, bills of material, specifications of work and estimates of costs in detail and in the aggregate pertaining to the building."

Plainly, the county auditor is to issue warrants only in the event of the filing with him of orders signed by five members of the commission; and he is wholly unauthorized to issue such warrants upon the order of the county commissioners. This principle applies both to warrants for the payment of the architect and for estimates for the construction work of the building. The fact that records are to be kept by the county auditor on the journal of the county commissioners is merely to afford a convenient place for the keeping of such records for the inspection of the public.

As to your third question, there can be no doubt that the prosecuting attorney by virtue of section 2917 is to act as the legal adviser of the building commission. The fact that sections 2333 et seq. use the word "commission" rather than the word "board" denotes no more than a difference in words; for the building commission is in effect a special county board made up in part of the county commissioners themselves vested with special duties for a particular purpose.

Respectfully,
JOHN G. PRICE,
Attorney-General.