

Code, for there are no exemptions of taxable property at any rate which may be asserted as against the treasurer's power to destrain.

Section 5671 of the General Code provides *inter alia* that

"all personal property subject to taxation shall be liable to be seized and sold for taxes."

These statements answer all the questions in your letter excepting the one respecting the duty of the prosecuting attorney to represent the county treasurer in actions brought under section 5697 of the General Code. When section 5697 was originally passed as section 2859 of the Revised Statutes, the treasurer was under the necessity of employing his own counsel. *State vs. Commissioners*, 26 O. S. 364. Whether he is under such necessity at the present time or not depends upon the interpretation and application to be given to section 2917 of the General Code subsequently enacted. It provides in part as follows:

"The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve.

\* \* \* \*"

The exception mentioned by reference to section 2412 of the General Code is not applicable to the question which you submit, and it is the opinion of this department that by virtue of the second sentence of section 2917 above quoted, it is the duty of the prosecuting attorney to represent the treasurer in any civil action brought in the name of the treasurer under Section 5697 of the General Code.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

3047.

BOARD OF LIBRARY TRUSTEES—WHEN BOARD OF EDUCATION MAY  
OR MAY NOT REFUSE TO MAKE LEVY FOR LIBRARY PURPOSES—  
LIMITATIONS.

1. *The board of education is not required by section 7639 G. C. to make a tax levy sufficient to realize the amount of money certified to it by the board of library trustees, but it may in a proper case raise that amount by taxation if it can be done by a levy not exceeding one and one-half mills.*

2. *While the board of education may not arbitrarily refuse to levy a tax for library purposes when funds are needed, it has the power of finally deciding (1) the necessity for funds and (2) the amount that should be raised. And in making its decision the board should consider the certificate of the board of library trustees and treat it as making a prima facie case on both points.*

3. *The board of education, in the exercise of a sound discretion, may either increase or decrease the amount named in the certificate of the board of library trus-*

tees, if upon investigation it appears that such action is justified, subject, however, to the limitation that the tax levy to produce the amount shall not exceed one and one-half mills.

4. *When the tax levy of the board of education for library purposes does not exceed one and one-half mills, the county budget commissioners have no authority to reduce it.*

COLUMBUS, OHIO, May 1, 1922.

*State Library Board, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date relative to the levying of taxes for library purposes, was duly received, and, omitting formal parts, reads as follows:

“There has been brought to my attention the following important matter upon which your opinion is requested. Section 7639, General Code, prior to 1921 provided as follows:

‘Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy on each dollar of taxable property within such school district, in addition to all other levies authorized by law, such assessment not exceeding one and one-half mills, as shall be necessary to realize, without reduction, the sum so certified, which must be placed on the tax duplicate and collected as other taxes.’

This section was amended in the Bender act which passed April 27, 1921 (109 O. L., 237), and now reads as follows:

‘Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided.’

It may be presumed that the main purpose of the amendment was to provide for a tax levy outside of all tax limitations, as the levy mentioned in such section was modified or suspended by the subsequent enactment of the Smith One Per Cent Law. In the amended section, however, the words ‘without reduction,’ which were contained in the original section and which applied to the amount certified by the board of library trustees, were omitted. Does this omission give the board of education authority to increase or decrease the amount certified by the board of library trustees? In other words, does the section as amended make the board of education the exclusive tax levying authority for library purposes, subject neither to the request of the board of library trustees nor the subsequent action of the county budget commissioners?”

Under former section 7639 G. C., the board of education was required to make a levy sufficient to realize, without reduction, the amount of money certified to it by the board of library trustees, subject only to the limitation that the levy should not exceed one and one-half mills on each dollar of taxable property within the school district. In other words, the board was required to raise by taxation the amount certified to it by the board of library trustees, if it could be done by a levy not exceeding one and one-half mills, etc.

Under amended section 7639 G. C., however, the board of education is not now required to make a levy sufficient to realize the amount of money certified to it by the board of library trustees. It may raise by taxation the amount so certified, if it can be done by a levy not exceeding one and one-half mills, but it is not bound to do so.

What has been said does not mean that the board of education may arbitrarily refuse to raise any money at all for library purposes when funds are needed, but that such board has the power of finally deciding (1) the necessity for funds and (2) the amount that should be raised, and that in making its decision the board should take into consideration, among other things, the certificate of the board of library trustees and treat it as making a prima facie case on both points. And since there appears to be no prohibition against the board of education either increasing or decreasing the amount named in the certificate, it is believed that the board may, in the exercise of a sound discretion, either increase or decrease the amount if, after investigation, it appears that such action is justified, but subject, of course, to the limitation prescribed by the statute itself that the tax levy to produce the funds shall not exceed one and one-half mills.

You are also advised that so long as the proposed tax levy of the board of education for library purposes does not exceed one and one-half mills, it is not subject to reduction by the county budget commissioners.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3048.

DISAPPROVAL, BONDS OF DUNDAS VILLAGE SCHOOL DISTRICT,  
 VINTON COUNTY, IN AMOUNT OF \$15,000.

COLUMBUS, OHIO, May 2, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re.: Bonds of Dundas Village School District, Vinton County, in the amount of \$15,000, for the purpose of purchasing a site and erecting and equipping a three-room school building.

GENTLEMEN:—The transcript submitted in connection with the above bond issue is incomplete, containing only a copy of the resolution authorizing the issuance of said bonds. This resolution indicates that the issuance of said bonds was authorized by a vote of the electors submitted at a special election on the 7th day of February, 1922. It does not, however, contain a transcript of the proceedings showing the authorization of such an election, a copy and proof of publication of the notice thereof, a canvass of the returns of the election, or form of ballot used at the election, nor does it contain other information essential to determining the authority and validity of said bond issue.

Such transcript, however, as has been submitted clearly indicates that the board of education has not complied with the provisions of the Griswold Act in the issuance of said bonds in the following particulars:

- (1) The transcript contains no showing that the certificate as to the life of