

"Sec. 1182-3. Each employe or appointee under the provisions of this act, * * * may be required to give bond in such sum as the director may determine. All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general. * * *" (Words in parenthesis the writer's).

Finding the above bond to have been properly executed pursuant to the above statutory provisions, I have approved the same as to form and return it herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3196.

CLASSIFIED PROPERTY TAX—NO PREFERENCE GRANTED TO PUBLIC LIBRARIES OVER POLITICAL SUBDIVISION IN DISTRIBUTION OF SAME—SECTION 5639, G. C. CONSTRUED.

SYLLABUS:

When at the time of the semi-annual settlement between the county treasurer and the county auditor of classified property tax proceeds, it is discovered that there is not sufficient amount of such proceeds to make a payment to the state of Ohio one fourth of one percent thereof and to public libraries, municipalities and county, fifty percent each of the amount allotted to them by the budget commission pursuant to the provisions of Section 5625-24, General Code, the provisions of Section 5639, General Code, do not authorize the payment to public libraries of 50 per cent of the amount set forth on such budget to the exclusion of the municipalities and the county; but rather requires that if such one fourth of one percent is set aside and paid to the treasurer of state, distribution to the public libraries, municipal corporations and the county, the amount of such receipts pro rata are without priority one over the other.

COLUMBUS, OHIO, September 12, 1934.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion concerning the following facts in question:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 5639 of the General Code, as amended in 115 O. L. 592, provides for the distribution of the undivided classified property taxes raised in the counties. It is provided that distribution shall be made to each board of public library trustees in the county which shall have qualified according to the law for participation in such fund, of fifty per cent of the amount set forth in the annual budget as allowed by the Budget Commission as receipts from this source. It further provides that the amount or

amounts so distributed, together with the fees of the auditor and treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the several municipal corporations in the county and in the territory outside of the municipal corporations therein, respectively. The section makes further provision for the distribution of certain amounts to municipal corporations throughout the county, and to the school districts of the county.

Question: At each semi-annual settlement, is a library, which has qualified to receive the undivided classified property tax, entitled to receive the fifty per cent of the amount fixed by the Budget Commission before any distribution is made to municipalities, or county, or school district; and if the collection in the county, including the municipalities therein, is not equal to fifty per cent of the amount fixed by the Budget Commission for the library, is the total amount collected to be paid to the qualified libraries, exclusive, of course, of the amount payable to the state and for the auditor's and treasurer's fees?"

Section 5639, General Code, referred to in your inquiry reads:

"At each settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury as follows:

To the state of Ohio, one-fourth of one per cent thereof, which when paid into the state treasury in the manner provided by law shall constitute a fund in addition to that provided in section 5414-19 herein enacted, for the use of the tax commission of Ohio in administering the system for the assessment of tangible and intangible personal property and shall not be used or appropriated for any other purpose.

To each board of public library trustees in the county, which shall have qualified or be qualified according to law for participation in such fund, fifty per centum of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount or amounts so distributed, together with the fees of the auditor and treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the several municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively.

To each municipal corporation in the county, one-half of such amount, out of the remainder of such undivided taxes originating therein, after making the deductions required by the first sub-paragraph of this section, as the budget commission shall have allowed as a receipt from this source; but if the budget commission shall have allowed to the board of township park commissioners of a township park district, the boundaries of which are co-extensive with or contained within the boundaries of any municipal corporation, an amount as a receipt from this source, the amount so allowed shall be deducted from the share of such municipal corporation hereunder and distributed to such board of township park commissioners and the balance only shall be distributed to such municipal corporation.

To the county, one-half of such amount, out of the remainder of such undivided taxes originating in the territory thereof, outside the limits of municipal corporations therein, as the budget commission shall have allowed as a receipt from this source; but if the budget com-

mission shall have allowed to the board of township park commissioners of a township park district, the boundaries of which are not co-extensive with or contained within those of any municipal corporation in the county, an amount as a receipt from this source, the amount so allowed shall be deducted from the share of the county hereunder and distributed to such board of township park commissioners and the balance only shall be distributed to the county.

* * *

The residue of the undivided classified property tax fund, together with the amount distributed to the county under section 5414-22 of the General Code, shall constitute the county school tax fund, and be distributed among all the school districts in the county (excepting the county school district) in the manner provided by law."

The first sub-paragraph of this section directs that one-fourth of one percent of the proceeds collected under the classified property tax shall be added to a fund consisting of four per cent of the franchise tax on domestic insurance companies and four percent of the tax on intangibles and to be paid to the state treasurer. The second sub-paragraph of such section provides that one-half of the amount set forth and determined in the annual budget and allowed by the budget commission pursuant to authority of Section 5625-24, General Code, as from classified property tax shall be paid to the public libraries of a county at the time of each semi-annual settlement of such type of taxes by the county treasurer with the county auditor and be paid from the undivided classified property taxes in the hands of the county treasurer. Such amount together with the county auditor's and county treasurer's fees, as determined by Sections 2624 and 2685, General Code, shall be deducted from the classified tax proceeds of the various subdivisions pro rata. The third sub-paragraph of such section provides, that a similar fraction of the budgeted proportion of the municipalities shall be so paid, at such time from the proportion collected therein. The fourth sub-paragraph makes similar provision with reference to the county's budgeted amount with certain deductions therefrom which are not germane to your inquiry. The residue after such deductions and distributions constitutes "the county school tax fund."

There is no specific provision in such Section 5639, General Code, as to the manner or priority of payment of such distribution except that the county school tax fund amount can not be determined until after the other tax shares have been determined.

Sub-paragraph No. 3 of such section provides that the amount to be paid to a municipal corporation shall be from the proceeds originating in or collected from the taxpayers in such subdivision after deducting therefrom one-fourth of one percent payable to the state of Ohio as set forth in sub-paragraph one of such section.

Sub-paragraph No. 4 provides that the amount payable to the county shall be paid from such funds collected within the county but without the corporate limits of all municipal corporations therein.

Sub-paragraph No. 2 provides that the amounts payable to such libraries "shall be deducted from the shares of the undivided classified property tax and originating in the several municipal corporations in the county and in the territory outside the municipal corporations."

From the language of sub-paragraph No. 2, as above quoted, it is not clear what meaning is intended to be given thereby. In Section 5625-24, General Code, the budget commission is given authority as follows:

“ * * * The budget commission shall also have authority to fix the amount of proceeds of classified property taxes, collected within the county, to be distributed to each board of public library trustees which shall have qualified or be qualified as provided in section 5625-20 of the General Code for participation in the proceeds of such taxes, 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 5625-26 of the General 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 budget commission shall be guided by the estimate of the county auditor under section 5625-23 of the General 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 to the county, pursuant to section 5639 of the General Code, as the case may require.”

Such section provides that the county auditor in making his distribution of classified property tax proceeds shall be guided by the budget estimate prepared by authority of such section and that the budget commission in preparing such budget shall be guided by the provisions of Section 5639, General Code, in determining the budget amounts to be allotted to the county and municipal corporations therein. In preparing such budget the language above quoted would apparently require the budget commission, in fixing the amount to be budgeted to the county and to the various municipal corporations therein, should consider that the public libraries were to receive their financial needs proportionately from the taxes collected from all of the taxing subdivisions within the county. Assuming that the budget commission came to the conclusion that \$650,000.00 would be received from classified taxes in a certain year within the county, its budget as to such taxes might be as follows:

One fourth of one per cent to State Treasury	\$ 1,625.00
Public Library	100,000.00
Municipal Corporations	300,000.00
County	200,000.00
Residue to county school tax fund	48,375 00
Total	<u>\$650,000.00</u>

It might be urged that the share of the public library trustees is to be deducted pro rata from the shares of the intangible tax budgeted to the county and to the municipal corporations therein at the time of the distribution of such tax. As I have already pointed out, the budget commission, in determining the amount to be budgeted to the county and to the municipal corporations therein, has already taken into consideration the fact that the public libraries' needs will be paid from the classified tax funds collected within the county and is reflected in the amounts budgeted to the various subdivisions. Is it probable that the legislature intended

to have the amount of the public libraries deducted and set aside from the funds to be collected in the various subdivisions of a county at the time of the computation of the shares of the county, the various municipalities and various public libraries at the time of the preparation of the budget of classified property tax and again when distribution is made of such receipts i. e., after having allotted such sum to the public libraries and having excluded the county and municipal corporations therefrom, again deduct the amount so set aside to such libraries from the shares thus determined to belong to the county and the various municipal corporations? If such be the intent of the legislature and the estimate of taxes were all collected, it would be necessary to make distribution somewhat as follows rather than "in compliance with the budget":

One fourth of one per cent to State Treasury	\$ 1,625.00
Public Libraries	100,000.00
Municipal Corporations ($\$300,000\text{-}\frac{3}{5}$ of \$100,000)	240,000.00
Counties ($\$200,000\text{-}\frac{2}{5}$ of \$100,000)	160,000.00
Residue to county school fund	148,375.00
Total	\$650,000.00

Such interpretation would cause the distribution of \$240,000.00 to the municipalities rather than the \$300,000.00 fixed by the budget commission, \$160,000.00 to be distributed to the county rather than the \$200,000.00 fixed by the budget commission and would cause to be distributed to the county school tax fund \$100,000.00 in excess of its estimated needs as determined by the budget commission. Such interpretation would of necessity lead to absurd consequences or great inconvenience. As stated by Owen, J. in *Moore vs. Given*, 39 O. S. 661, 663:

"It is the duty of courts in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd consequences, injustice or great inconvenience, as none of these can be presumed to have been within legislative intent.

That the law does not require vain, absurd or impossible things of men is one of its favorite maxims; and it is the plain duty of the courts, in the interpretation of a statute, unless restrained by the rigid and inflexible letter of it, to lean strongly to that view which will avoid absurd consequences, injustice and even great inconvenience; for none of these can be presumed to have been within legislative intent."

The interpretation of a statute is governed or depends upon its purpose, its operation and its effect. To use the language of the court in the case of *Hill vs. Micham*, 116 O. S. 549, 552-553:

"The construction of a statute depends upon its operation and effect and not upon the form that it may be made to assume, and unless restrained by the letter of the statute it will be given a construction which will avoid absurd consequences, injustice or inconvenience which could not have been within the legislative intent."

The object of all judicial interpretation of statutes is well stated by Crew, C. J. in the case of *Buckman, Aud. vs. State*, 81 O. S. 171, 178-179:

"The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law making body which enacted it, and the mere literal interpretation ought not to prevail, if apparently opposed to the intention of the legislature enacting it, unless the language employed therein is so plain and unambiguous as to imperatively require it. In Lewis' Sutherland Statutory Construction, Section 376, the rule is stated as follows: 'While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificial to a literal interpretation of such words. Words or clauses may be enlarged or restricted to effectuate the intention or to harmonize them with other expressed provisions. Where general language construed in a broad sense would lead to absurdity, it may be restrained. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense they are intended to be used as they are found in the act. The sense in which they were intended to be used furnishes the rule of interpretation, and this is to be collected from the context; and a narrower or more extended meaning is to be given according to the intention thus indicated'."

From the language of the last sentence of the second sub-paragraph of Section 5639, General Code, as above quoted, if it were to be construed alone, it is not clear what the exact intention of the legislature was. If the legislature intended the interpretation to be given as above discussed, it would cause an affirmative answer to be given to your inquiry, for the distributions to the county and to the municipalities could not be made until after the deduction for public libraries had been made. Such interpretation, however, would require a padding of the figures and great inconvenience for no useful purpose, if the needs of the county and municipalities are to be met as determined from the budget commission from this source i. e., that the budget figures as to such items would have to be padded to such extent that they were to be subsequently reduced.

It is a fundamental rule of statutory interpretation that the meaning of a statute is to be gathered from the statute as a whole and not from isolated passages. *State vs. Rouch*, 47 O. S. 478, 485; *Powell vs. State ex rel. Fowler*, 84 O. S. 165, 167. Upon consideration of the provisions of Section 5625-24, General Code, which specifically state that the county auditor shall be guided by the budget estimate in making his distribution and bearing in mind the provisions of Section 5639, General Code, it would appear that the purpose of the last sentence of the second sub-paragraph of such Section 5639, General Code, was inserted for the purpose of making clear the legislative intent that the fund paid to the public libraries should not be deducted from the funds collected in any particular subdivision, i. e., if there are five municipalities in a county in two of which intangible tax proceeds were not collected, the public library could not receive the proportionate amount which should have been paid or allotted to the public library from the proceeds which should have been collected from such subdivision from the counties and other municipal corporations' tax proceeds which have been paid. Such construction gives effect not only to the provisions of Section 5625-24, General Code, but also to the provisions of Section 5639, General Code. It is the duty of the court in the interpretation of statutes to give effect if possible to each and every part of an act of the legislature and a court has no right to read out of a statute that which is contained therein or read into a statute that which is not contained therein. See *Stanton vs. Realty Co.*, 117 O. S. 345, 349; *Sling-*

tuff vs. Weaver, 660 O. S. 621; *Smith vs. Bock*, 119 O. S. 101, 103. If such is the proper interpretation of such section, it would necessarily follow that there is no language in Section 5639, General Code, which would grant preferences to any subdivision as to the distribution of such proceeds except that the one fourth of one per cent payable to the treasurer of state by virtue of the provisions of the first sub-paragraph of such section and the fees to the county treasurer and county auditor by virtue of Sections 2624 and 2685, General Code, would be preferred over all other distributions and likewise the funds payable to the county school tax fund would be subsequent in priority of payment to those of all other taxing subdivisions.

The legislative history would indicate that such was the intention of the legislature for when Senate Bill No. 30, as enacted by the 90th General Assembly at its regular session was introduced into the Senate, it made specific provision that the funds to public libraries were to be paid prior to the share to the county and to the various municipalities. While such a bill was in the process of amendment, it was amended so that the provisions in the third sub-paragraph referred to the one fourth of one per cent payable to the state treasurer rather than to the funds payable to the public libraries which have qualified to share in the classified property tax proceeds.

It is therefore my opinion, in answer to your specific question, that when at the time of the semi-annual settlement between the county treasurer and the county auditor of classified property tax proceeds, it is discovered that there is not sufficient amount of such proceeds to make a payment to the state of Ohio one fourth of one per cent thereof and to public libraries, municipalities and the county, fifty per cent each of the amount allotted to them by the budget commission pursuant to the provisions of Section 5625-24, General Code, the provisions of Section 5639, General Code, do not authorize the payment to public libraries of fifty per cent of the amount set forth on such budget to the exclusion of the municipalities and the county; but rather requires that if such one fourth of one per cent is set aside and paid to the treasurer of state, distribution to the public libraries, municipal corporations and the county, the amount of such receipts pro rata are without priority one over the other.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3197.

SALARY—JUSTICE OF THE PEACE—TOWNSHIP COTERMINOUS WITH VILLAGE—VILLAGE COUNCIL MAY ENACT ORDINANCE FIXING SALARY.

SYLLABUS:

1. *A village council has power to repeal an ordinance enacted prior to the commencement of the term of office of the justice of the peace in the township having identical boundaries with the village, which ordinance places the said office on a salary basis, after the term of office has commenced, when the justice of the peace refuses to serve, providing such repeal is effective before the justice of the peace is appointed to fill the vacancy caused by the failure of such justice of the peace to qualify.*