

6753

TAX LEVIED BY COUNTY COMMISSIONERS — SECTION 6927 G. C. — LAST FIVE YEARS FIFTEEN MILL TAX LIMITATION WAS IN EFFECT — PURPOSE TO PAY TOWNSHIP'S PORTION OF COST OF PERMANENT ROAD IMPROVEMENT — CONSTRUCTED BY COMMISSIONERS UNDER SECTION 6907 ET SEQ., G. C. — ANTICIPATION OF COLLECTION — COUNTY BONDS ISSUED UNDER SECTION 6929 G. C. AND UNIFORM BOND LAW — SUCH TAX MAY NOT BE CONSIDERED AS A LEVY FOR TOWNSHIP CURRENT EXPENSES OR DEBT CHARGES TO COMPUTE MINIMUM TWO-THIRDS AVERAGE LEVY TO WHICH TOWNSHIP MAY BE ENTITLED — SECTION 5625-23, PARAGRAPH d, G. C.

SYLLABUS:

A tax levied by the county commissioners under Section 6927, General Code, during the last five years the fifteen mill tax limitation was in effect, for the purpose of paying the township's portion of the cost of a permanent road improvement constructed by the commissioners under Section 6907, et seq., General Code, and in anticipation of the collection of which county bonds were issued by the commissioners under authority of Section 6929, General Code, and the Uniform Bond Law, may not be considered as a levy for township current expenses or township debt charges in computing the minimum two-thirds average levy to which the township may be entitled under paragraph (d) of Section 5625-23, General Code.

Columbus, Ohio, March 16, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your letter requesting my opinion on the question whether or not a tax levied by the county commissioners under Section 6927, General Code, during the last five years the fifteen mill tax limitation was in effect, for the purpose of paying the township's portion of the cost of a permanent road improvement constructed by the county commissioners under the provisions of Section 6907, et seq., General Code, and in anticipation of the collection of which county bonds were issued by the commissioners under authority of Section 6929, General Code, and the Uniform Bond Law, may be considered as a levy for township current expenses or township debt charges in determining the minimum two-thirds average levy to which the township may be entitled under paragraph (d) of Section 5625-23, General Code.

Section 5625-23, General Code, is one of the sections of the budget law. It provides in substance that each subdivision annually shall be entitled to a minimum levy within the ten mill limitation for current expenses and debt service charges, "which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect", unless the subdivision requests an amount requiring a lower rate.

As I understand the case referred to in your letter, the county com-

missioners of one of the counties constructed a permanent road improvement under the provisions of Section 6907, General Code, and apportioned the cost between the county, the township involved, and the abutting real estate, pursuant to the provisions of Section 6919, General Code; that the commissioners, under authority of Section 6926, General Code, levied a tax upon the taxable property of the county to pay the county's portion of the cost of the improvement, and under authority of Section 6927, General Code, levied a tax upon the taxable property of the township to pay its portion of such cost; and that the commissioners, in anticipation of the collection of such taxes and the special assessments made against the abutting real estate, issued the bonds of the county for the aggregate sum necessary to pay the cost of the improvement, under authority of Section 6929, General Code, and the Uniform Bond Law, and levied a tax upon the taxable property of the county for the purpose of servicing the bonds.

Sections 6926, 6927 and 6929, General Code, respectively, read as follows:

Section 6926: "The proportion or the compensation, damages, costs and expenses of such improvement to be paid by the county shall be paid out of any road improvement fund available therefor. For the purpose of providing by taxation a fund for the payment of the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, improving, maintaining, and repairing roads under the provisions of this chapter, the county commissioners are hereby authorized to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county. Said levy shall be in addition to all other levies authorized by law for county purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force."

Section 6927: "For the purpose of providing by taxation a fund for the payment of the proportion of the compensation, damages, costs and expenses of such improvement to be paid by the township or townships interested, in which such road may be in whole or part situated, the county commissioners are hereby authorized to levy a tax not exceeding three mills in any one year upon all the taxable property of such township or townships. Such levy shall be in addition to all other levies authorized by law for township purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force."

Section 6929: "The county commissioners in anticipation of the collection of such taxes and assessments, or any part thereof, may, whenever in their judgment it is deemed necessary, and subject to the limitation of this act, issue the bonds

of the county in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement. Such bonds shall be issued and sold in the manner provided by law. The making of the special assessments hereinbefore referred to shall not be a condition precedent to the issuance of bonds under the provisions of this section, and such special assessments may be made either before bonds are issued under the provisions of this section or after the issuance of such bonds."

Section 5625-1, General Code, one of the sections of the budget law, and likewise Section 2293-1, General Code, one of the sections of the Uniform Bond Law, define "current expenses" as follows:

"'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payment of interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision."

The same two sections also define the term "debt charges" as follows:

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

It will be noted that taxes levied by the county commissioners under authority of Sections 6926 and 6927, General Code, and referred to in Section 6929, General Code, are not levied for "current expenses" or for "debt charges", as these terms are defined in the budget and uniform bond laws, but are levied for road improvement purposes, and although the commissioners may have issued bonds under authority of Section 6929, General Code, and the Uniform Bond Law in anticipation of the collection of such taxes, the bonds so issued were not township bonds, but, on the contrary, and as Section 6929, General Code, itself expressly provides, were "bonds of the county", for the payment of the principal and interest of which the commissioners levied a tax against the taxable property of the county, as required by Section II of Article XII, Ohio Constitution, and the Uniform Bond Law. Such being the case, the levy made by the commissioners under Section 6927, General Code, to pay the township's portion of the cost of the road improvement, cannot be classed as a levy either for township "current expenses" or township "debt charges."

You are therefore advised that a tax levied by the county commissioners under Section 6927, General Code, during the last five years the fifteen mill tax limitation was in effect, for the purpose of paying the township's portion of the cost of a permanent road improvement constructed by the commissioners under Section 6907, et seq., General Code, and in anticipation of the collection of which county bonds were issued by the commissioners under authority of Section 6929, General Code, and the Uniform Bond Law, may not be considered as a levy for township current expenses or township debt charges in computing the minimum two-thirds average levy to which the township may be entitled under paragraph (d) of Section 5625-23, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General