

4528.

APPROVAL, BONDS OF MIFFLIN TOWNSHIP RURAL SCHOOL DISTRICT, RICHLAND COUNTY, OHIO, \$956.00.

COLUMBUS, OHIO, August 9, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4529.

APPROVAL, NOTES OF REESVILLE RURAL SCHOOL DISTRICT, CLINTON COUNTY, OHIO, \$2,331.00.

COLUMBUS, OHIO, August 9, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4530.

TAX AND TAXATION—DISTRIBUTION OF PROCEEDS OF CLASSIFIED PERSONAL PROPERTY TAXES—(O.A.G. 1934, VOL. II, P. 1293, REVERSED, STATE, EX REL. VS. LUTZ, 129 O. S. 201).

SYLLABUS:

When, prior to the May settlement of the county treasurer of the proceeds of classified personal property taxes, the county treasurer has received from such source an amount greater than one-half of the taxes levied on such property, the county treasurer is required, in view of the provisions of Sections 5625-24 and 5639, General Code, to distribute such proceeds as represent one-half of such taxes in accordance with the provisions of Section 5639, General Code, and the amount in excess of such half of taxes levied should be then distributed as provided in Section 5639, General Code, as an advance distribution of the October settlement, charging such distribution against the distribution of such taxes for the second half of the year. (Opinions of Attorney General for 1934, Vol. II, page 1293, reversed—State, ex rel. vs. Lutz, 129 O. S. 201.)

COLUMBUS, OHIO, August 9, 1935.

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

GENTLEMEN:—You have requested that I reconsider Opinion No. 3116, appearing in Opinions of the Attorney General for 1934, Vol. II, page 1293, the syllabus of which is as follows:

“When prior to the May settlement of the county treasurer of taxes received from classified personal property taxes, the county treasurer has received from such source an amount greater than one half of the taxes levied on such class of property, the county treasurer is required by the provisions of Section 5639, General Code, to make distribution of such taxes to public libraries within the county in the amount of fifty percent of the amount budgeted to such public libraries by the county budget commission; any residue remaining after payment to such public libraries, municipalities and the county of fifty percent of the amount budgeted to such subdivisions by the budget commission, is payable to the county school tax fund, even though by reason of such payment the county treasurer will not be able at the time of the October settlement of such taxes to pay to such libraries, municipalities and the county, the remainder of the amount so fixed by the budget commission although all of the personal property taxes levied were paid in full.”

Your request is predicated upon a situation which has apparently arisen in Hamilton County. I quote from a letter attached which was addressed to your Bureau by the solicitor of the city of Cincinnati:

“In January, 1935, the Hamilton County Budget Commission, under authority of G. C. 5625-24 estimated the receipts of, and allocated \$2,374,169.89 of intangible tax funds among the County Library, Hamilton County and the various municipalities of the county. One half of this sum is \$1,167,084.94. For the first half yearly payment there was actually collected in Hamilton County from this tax \$1,314,729.70 or \$147,644.76 in excess of one-half of the amount allocated by the Budget Commission.

The first half yearly tax payment in Hamilton County has always been larger than the second due to the practice of the taxpayers of paying the entire year's tax in the first half year.

The question has arisen as to the duty of the county auditor and county treasurer in distributing intangible tax funds at the time of the May settlement. General Code Section 5625-24 and 5639 are involved. Shall the treasurer at this time distribute the

funds in his hands so that, after deducting the share of the Tax Commission and county auditor and treasurer, the library, the county and the municipalities, shall receive one-half of the amount allowed by the budget commission and the residue in the funds be placed in the school funds? Or, shall the intangible tax be regarded as a whole for the year 1935 and so distributed that, there being a surplus for the entire year, the library, municipalities and county shall in the entire year receive the amount allotted them by the budget commission under G. C. 5625-24 and the residue placed in the school fund?

The difference between these two methods may be clarified by illustrations drawn from the existing situation. The Village of Addyston was allowed \$37.61 by the budget commission. There was received in the first collection \$47.74. Of this sum \$23.00 represents prepayment and \$24.74 payment for the current collection. Not considering delinquencies or extensions, therefore, it would seem that the collection for the second half would amount to only \$1.74. If the village now be paid \$18.81 ($\frac{1}{2}$ of its budgetary allowance of \$37.61), and the remainder, \$17.95, be paid into the school fund, the village will receive nothing of the second settlement, as the \$1.74 remaining to be collected would be far insufficient to pay the library share and the collection fees, and the village will be short of its allowance by 50%. This is true in spite of the fact that the total collections from the intangible tax from said subdivision were practically sufficient to cover all of the estimates of the budget commission for the various purposes.

The same situation exists in practically every taxing district in Hamilton County. In the City of Cincinnati the prepaid tax amounts to \$219,859.00; Glendale \$2,093.00; Norwood \$7,440.00; St. Bernard \$2,262.00; Terrace Park \$3,159.00; Wyoming \$5,678.00; Hamilton County outside of municipalities \$7,969.00. Over the entire county the prepaid tax amounts to \$253,341.00 and not considering delinquencies or any extensions, the second collection will be short of that amount. This means a shortage of over one hundred and twenty thousand dollars to the city of Cincinnati alone (estimate of county auditor) if the procedure herein described as to Addyston be followed.

On the other hand, if the surplus funds be held until the time of the second distribution, then each taxing district will receive the amount allowed by the budget commission, at least to the extent of the amount of taxes actually collected, and the real surplus will go to the school fund."

Opinion No. 3116, *supra*, quoted from Section 5625-24, General Code, expressly provides, in substance, that the budget commission shall have authority to fix the amount of the proceeds of classified property taxes, collected in the county, to be distributed to public libraries and boards of park commissioners; the amount of proceeds of such taxes originating outside the limits of municipal corporations to be distributed to the county; the amount of the proceeds of such taxes originating within each municipal corporation to be distributed to each municipal corporation within the county. This section also expressly provides that the county auditor shall be guided by such distribution as fixed by the budget commission in distributing the undivided classified property tax fund. The opinion also quoted and strictly construed the provisions of Section 5639, General Code, which section provides that at each settlement of undivided classified property taxes the county treasurer shall distribute the moneys as tabulated at page 1294 of the opinion :

- a. To the state of Ohio, one fourth of one percent.
- b. To the public libraries of the county, fifty percent of its budget estimate.
- c. To the municipal corporations in the county, fifty percent of their budget estimates from such source, collected from such subdivision.
- d. To the county, fifty percent of its budget estimate from such source, collected from that part of such subdivision lying without the limits of municipalities.
- e. The residue to the county school tax fund."

It was recognized in the 1934 opinion, *supra*, that there was an ambiguity in the law as to distributing these moneys, in that Section 5625-24, General Code, vests in the budget commission the authority to fix the amount of the proceeds of classified property taxes which should be received by the public libraries, park commissioners and municipalities, while Section 5639 contains express provisions for distributing the entire amount collected at any semi-annual settlement without providing any definite rule for distribution predicated upon a collection in excess of half of such annual taxes. The language of the opinion upon which the conclusion was based appears on page 1296 as follows:

"It would appear from this language that the amount of the county school tax fund is indefinite, i. e., it is not determined by the budget commission but consists of the residue or remainder of two taxes after certain other distributions have been made. Section 5639, General Code, apparently required a complete distribution of the proceeds of the classified property tax at each of the semi-annual settle-

ments of the county treasurer. Each settlement between the county treasurer and the county auditor is of all tax receipts received from the tax sources forming the subject matter of the settlement since the last semi-annual settlement. In view of the specific provisions of such Section 5639, General Code, it would appear to me that your inquiry should be answered in the negative.

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Since it is possible to carry Section 5639, General Code, into effect according to its letter, I do not feel that such express requirement of law can be altered by interpretation, whether or not I agree with its policy or effect. *Allison vs. Stevens*, 23 O. App, 259; *Board of Ed. vs. Boal*, 104 O. S. 482."

At the time of the rendition of the foregoing opinion, this office did not have the benefit of any judicial expression upon the matter of the interpretation of Section 5639, General Code, and in accordance with its practice, in the absence of judicial authority authorizing any departure from the letter of the statute, a strict construction of this section was followed. Since the rendition of this opinion, the Supreme Court has construed Section 5639, General Code, in the decision of the case of *State, ex rel. vs. Lutz*, 129 O. S. 201, the syllabus of which is as follows:

"1. An unauthorized paragraphing of an amendment will not be permitted to obscure the meaning or distort the language of an otherwise clear and practicable statute.

2. Under the provisions of amended Section 5639, General Code (115 Ohio Laws, 592), qualified public libraries are entitled to priority over municipal corporations, the county and school districts in the semi-annual distribution of the undivided classified property tax fund in the county treasury."

While the question of law decided by the Supreme Court in the foregoing case is not pertinent here, the case is nevertheless authority for a deviation from the strict letter of Section 5639, General Code, under proper circumstances.

Departing then from the letter of this section and construing this statute upon consideration of its operation and effect in harmony with Section 5625-24, General Code, it is my judgment that there is justification for departing from the conclusions reached in Opinion No. 3116, supra. The Supreme Court said in the case of *Hill vs. Micham*, 116 O. S. 549 (552, 553):

"While we have been unable to find any decision exactly in point upon the facts in this case, it has heretofore been laid down

by this court as a general proposition that the construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume. *Butzman vs. Whitbeck*, 42 Ohio St., 223. It has also been held that 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 the legislative intent. *Moore vs. Given*, 39 Ohio St., 661."

I do not think that it may be said that it was contemplated by the legislature that the express statutory power of the budget commission as contained in Section 5625-24, General Code, to determine the amounts which shall be received by libraries and municipalities, may be at will usurped or set aside by the taxpayers, depending upon whether or not they might decide to pay more than half of the year's classified property taxes at the time of the collection of the first half of such taxes. Yet this is precisely the effect of a strict construction of Section 5639, supra, which this office heretofore felt obliged to follow prior to the decision of the Supreme Court of the case of *State, ex rel. vs. Lutz*, supra.

The question of the proper distribution of the proceeds of classified personal property taxes under the circumstances here under consideration is further complicated by the fact that there is no express provision for the distribution of amounts collected in excess of fifty per cent of the annual taxes. Some method must, however, be followed if Sections 5639 and 5625-24, General Code, are to be harmonized and the consequences hereinabove indicated avoided. It is my opinion that such excess amounts collected at the time of the collection of such first half year's taxes should be distributed in accordance with the provisions of Section 5639, General Code, at the time of the distribution of such first half year's collections, but upon the basis of the method provided for distributing the second half year's collections. It appears to me that this practice may be justified upon consideration of the fact that these excess payments are in fact the second half year's collections which taxpayers may see fit to pay in advance and should be so distributed.

Summarizing, it is my opinion that when, prior to the May settlement of the county treasurer of the proceeds of classified personal property taxes, the county treasurer has received from such source an amount greater than one-half of the taxes levied on such property, the county treasurer is required, in view of the provisions of Sections 5625-24 and 5639, General Code, to distribute such proceeds as represent one-half of such taxes in accordance with the provisions of Section 5639, General Code, and the amount in excess of such half of taxes levied should be then distributed as provided in Section 5639, General Code, as an advance distribution of the October settlement,

charging such distribution against the distribution of such taxes for the second half of the year.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4531.

APPROVAL, CONTRACT FOR GENERAL WORK FOR PROJECT KNOWN AS T. B. COTTAGE SERVICE LINES, DAYTON STATE HOSPITAL, DAYTON, OHIO, \$62,918.00, UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MARYLAND, SURETY—GREEN AND SAWYER COMPANY OF LIMA, OHIO.

COLUMBUS, OHIO, August 9, 1935.

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

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and the Green and Sawyer Company of Lima, Ohio. This contract covers the construction and completion of Contract for General Work for a project known as T. B. Cottage and Service Lines, Dayton State Hospital, Dayton, Ohio, in accordance with Item No. 1 of the form of proposal, dated July 17, 1935. Said contract calls for an expenditure of sixty-two thousand nine hundred eighteen dollars (\$62,918.00).

You have submitted the certificate of the Director of Finance, to the effect that there are unencumbered balances legally appropriated, in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that said board has released funds for this project, in accordance with Section 1 of House Bill No. 69 of the Second Special Session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the United States Fidelity and Guaranty Company of Baltimore, Maryland, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day