

2. Under said section boards of education may provide by resolution for competitive bidding for school funds by all banks "conveniently located," in which event the depository contract must be awarded to the bank or banks offering the highest rate of interest and proper security.

3. In the absence of such resolution competitive bidding is not necessary under Section 7607, General Code, in order for the board to determine the bank or banks offering "the highest rate of interest."

4. Under said section all banks "conveniently located" must be given an opportunity to advise the board as to the amount of interest which they are willing to pay, the manner of notifying such banks being within the discretion of the board.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2516.

LIBRARY—EXTENDING BENEFITS OF LIBRARY SERVICE TO INHABITANTS OF COUNTIES IN WHICH PORTIONS OF SCHOOL DISTRICT LIE—PARTICIPATION IN DISTRIBUTION OF CLASSIFIED PROPERTY TAXES.

*SYLLABUS:*

1. *A board of trustees of a school district library in a school district, portions of which lie in more than one county, may in its discretion, adopt appropriate rules and regulations extending the benefits of the library service of such library to the inhabitants of each of the counties in which portions of the school district lie and thereby become qualified for participation in the proceeds of classified property taxes collected in each of the said counties.*

2. *A board of trustees of a school district library may not participate in the distribution of the classified property taxes collected within the county in which the school district or any portion thereof lies, unless the library service is extended to all the inhabitants of such county by appropriate rules and regulations adopted by the said board of trustees in pursuance of Section 5625-20, of the General Code.*

3. *Where the board of trustees of a school district library in a school district, portions of which lie in more than one county, extends library service afforded by said library to the inhabitants of each of the counties in which a portion of the school district lies, in pursuance of Section 5625-20, General Code, and thus becomes qualified to share in the proceeds of classified property taxes collected in each of the said counties, the proportionate amount of the requirements of said school district library which should be contributed by each of the said counties involved should be based upon the comparative benefits accruing to each county as determined by the extent of library service afforded to the inhabitants of the respective counties.*

COLUMBUS, OHIO, April 16, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion concerning the following:

"The Alliance School District Library has a portion of its territory in the counties of Stark, Mahoning and Columbiana, and as such has received a proportionate amount of its revenue from each.

1. Can the Board of Library Trustees, by resolution under Section 5625-20, extend the benefits of the library service to the inhabitants of Stark County only?

2. If the Board of Library trustees, by resolution under Section 5625-20, extend the benefits of the library service to those parts only of Mahoning and Columbiana Counties which are in the Alliance School District, shall Mahoning and Columbiana Counties distribute any of the proceeds of classified property taxes collected in Mahoning and Columbiana Counties respectively to the Alliance School District Library?

3. If the Board of Library Trustees of the Alliance School District Library extended the benefits of the library service to all the inhabitants of Stark, Mahoning and Columbiana Counties, and the Budget Commission of Stark County has fixed the amount of proceeds of classified property taxes to be distributed to the Alliance School District Library, on what basis shall the budget commission determine the amount which each of the three counties must contribute to the support of the library?"

School district libraries are primarily for the use of the inhabitants of the school district in which they are established. In accordance with the provisions of Section 7635, General Code, boards of education in city, village and rural school districts are empowered to provide by resolution for the establishment, control and maintenance in such districts of a public library free to all the inhabitants thereof. Section 7636, General Code, provides for the management and control of any such library when established by a board of education by a board of trustees elected by the board of education, in whose district the library has been established. Section 7639, General Code, authorizes any such board of education to levy a tax for increasing, maintaining and operating the library of not to exceed one and one-half mills, which levy shall be in addition to all other levies authorized by law, and it is provided specifically that said levy shall be "subject to no limitation on tax rates."

Said Section 7639, General Code, was enacted prior to the amendment of Section 2 of Article XII of the Ohio Constitution, effective January 1, 1931. Upon the adoption of this amendment the provision of Section 7639, General Code, to the effect that the tax levy for school district libraries should be outside of all limitations on tax rates is rendered ineffective unless the said levy should be approved by the electors of the district, in the manner provided by law.

Said Section 2 of Article XII of the Constitution of Ohio was again amended in 1933, to be effective on and after January 1, 1934, fixing the limitation of taxation for all property taxed according to value, to be one percent of its true value in money, without the approval of a popular vote.

Under the law as it exists at this time, the only property taxed according to value and by uniform rule, is land and the improvements thereon.

It follows that the only source of revenue a school district library now may have from taxes levied in pursuance of Section 7639, General Code, is what may be realized from a levy not greater than one and one-half mills to be made within the ten mill limitation fixed by said Section 2 of Article XII of the Constitution as last amended, unless a levy outside that limitation is authorized for library purposes by a vote of the electors of the district in the manner provided by law.

Any public library, the service of which is not already available to all the inhabitants of a county, may qualify for participation in the proceeds of classified property taxes in the county where the library is located, levied by virtue of Sections 5638 and 5638-1, General Code. Section 5639, General Code, provides with respect thereto:

“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 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.”

By the terms of Section 5625-20, General Code, provision is made for the adoption of a tax budget by the taxing authority of each subdivision and also for the manner by which boards of library trustees may qualify for participation in the proceeds of classified property taxes within the county in which the library is located. Said Section 5625-20, General Code, reads as follows:

“On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. The taxing authority shall include in its budget of expenditures the full amounts requested therefrom by district authorities, not to exceed the amount authorized by the law applicable thereto, if such law gives such authorities the right to fix the amount of revenue they are to receive from the subdivision. In a city in which a special levy for a municipal university has been authorized to be levied outside of the fifteen mill limitation, or is required by the charter of the municipality, the taxing authority shall include an amount not less than the estimated yield of such levy, if such amount be requested by the board of directors of the municipal university.

The board of trustees of any public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes) on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing

authority with its estimate of contemplated revenue and expenditures. In all cases in which such rules and regulations have been so certified and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board or boards of library trustees."

Section 5625-21, General Code, sets forth what the tax budget of each taxing authority shall contain. Said Section 5625-22, General Code, provides for filing copies of such tax budgets for public inspection, for a hearing thereon and for their submission to the county auditor.

Section 5625-23, General Code, provides that the auditor shall lay the said budgets filed with him before the county budget commission, together with such data and information as the budget commission may require or the state Tax Commission prescribe, and Section 5625-24, General Code, provides for adjustment and distributions of the proceeds of classified property taxes among the several taxing subdivisions of the county by the county budget commission. Said Section 5625-24, General Code, provides as follows:

"The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom. 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."

As you state, portions of the Alliance City School District lie in three dif-

ferent counties and, although but small portions of the district are in Columbiana and Mahoning Counties, there is no reason under the statute, in my opinion, why the board of trustees of this library may not adopt rules and regulations extending the library service to the inhabitants of each of the three counties, if it desires to do so. If this is done, the library may participate in the distribution of the classified property taxes of each of the three counties, or of such of the counties as the library service is extended to by appropriate rules and regulations adopted by the trustees. The statute is not mandatory, however. If the board desires to participate in the distribution of classified property taxes in Stark County only, it clearly has the right to extend its service to that county outside of the Alliance City School District, only. In that case it would not be entitled to participate in the distribution of classified property taxes for Columbiana and Mahoning Counties. Your first question should therefore be answered in the affirmative and your second question in the negative.

Inasmuch as portions of the Alliance City School District lie in three different counties, a budget adopted by the board of education of that district in pursuance of Section 5625-20, General Code, showing among other things, the needs of the trustees of the Alliance School District Library for library purposes, should be filed with the auditor of each of these counties, and by him laid before the budget commission in each of these counties, whether the library service is extended to the counties outside the school district or not. Of course, as to those counties to which library service is not extended, this budget so far as library matters are concerned, will relate to the levy only, made in pursuance of Section 7630, General Code, if, in fact, such a levy is contemplated and can be made within the ten mill limitation.

If the library service of this library is extended to the territory outside the Alliance City School District in any or all of the counties in which portions of the Alliance City School District lie, the budget filed in each county, setting forth a statement of needs for necessary current operating expenses, permanent improvements and debt charges incident to the maintenance and operation of the library should show an estimate of receipts for library purposes from the classified property tax in each of the other counties involved. If these estimates are made fairly and commensurate with the comparative library services furnished in each of the counties, little difficulty will be met in determining the proper amount to be allocated to those counties from the proceeds of classified property taxes in the several counties by the respective budget commissions in the performance of their duties with respect thereto, as set forth in Section 5625-24, General Code, which provides *inter alia*:

“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.”

Of course, in any event, the county of Stark will be required to bear the brunt from classified property taxes collected within that county, of maintaining this library, over and above the revenues accruing to the library from a possible special levy for library purposes made within the school district, if any is made. This is so because practically the entire school district which primarily will receive the great portion of the library service afforded by the library, lies in Stark County. Only comparatively small portions of this district lie in Mahoning

and Columbiana Counties and even if the service of the library is extended to Mahoning and Columbiana Counties, a comparatively small part of the service afforded by the library is likely to be utilized or needed by the inhabitants of these counties, as the territory of these counties contiguous to the Alliance City School District is not thickly settled and other library service is available to, and more convenient for, the inhabitants of the centers of population within these counties. To some extent this is true with respect to Stark County outside the boundaries of the Alliance City School District.

All these considerations have some weight in adjusting the several amounts to be contributed by each county to which library service is extended, from the classified property taxes for the support of this library. Chief consideration should be given to the fact that practically the entire Alliance City School District lies in Stark County and that under the law, there is probably no other source of revenue for the maintenance of the library than classified property taxes collected within the county or counties to which library service is extended.

No settled rule can be formulated for the guidance of budget commissions under circumstances such as this, or in any case where libraries are involved. Fixing of the amount of proceeds for classified property taxes to be distributed to boards of library trustees and the adjustments that must be made when distributing these taxes to meet the several purposes for which the taxes are levied, whether or not more than one county is involved, is an administrative problem rather than a legal one. The statute reposes that duty in the several budget commissions throughout the state but affords no definite rule for their guidance.

I am therefore of the opinion in specific answer to your questions:

1. The board of trustees of the school district library in the Alliance City School District may, in its discretion, by the adoption of appropriate rules and regulations in pursuance of Section 5625-20, General Code, extend the benefits of the service of the said library to the inhabitants of Stark County only.

2. In the event the said board of trustees does not extend the benefits of the said library service to the inhabitants of Columbiana and Mahoning Counties outside the boundaries of the Alliance City School District but to the inhabitants of Stark County only, the said board will not be permitted to participate in the proceeds of classified property taxes collected in the said Mahoning and Columbiana Counties.

3. Should the said board of trustees extend the benefits of its library service to the inhabitants of all three of the counties in which portions of the Alliance City School District lie, it may lawfully participate in the proceeds of the classified property taxes collected in the three counties. The extent of this participation in each such county should be based as nearly as possible on the comparative library service afforded to the inhabitants of the respective counties including those living in the Alliance City School District.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2517.

JUVENILE COURT—JUDGE UNAUTHORIZED TO SUSPEND EXECUTION OF SENTENCE AFTER PERSON IMPRISONED FOR VIOLATION OF SECTIONS 1654 OR 1655, GENERAL CODE.