

4583.

TEN MILL LIMITATION—SEC. 5625-18, G. C. RELATES ONLY  
TO PAYMENT OF DEBT CHARGES INCURRED UNDER  
SEC. 5649-2, G. C. PRIOR TO REPEAL BY 87TH G. A.

*SYLLABUS:*

*Section 5625-18, General Code, as amended (116 O. L. 443), providing for a majority vote on the question of placing outside of the ten mill limitation certain levies for debt charges, relates only to levies for the payment of charges on debts which were incurred under Section 5649-2, General Code, prior to its repeal by the 87th General Assembly in 1927.*

COLUMBUS, OHIO, August 27, 1935.

HON. DONALD J. HOSKINS, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:— Your letter of recent date is as follows:

“We respectfully direct your attention to House Bill No. 437 enacted by the 91st General Assembly, amending Section 5625-18 of the General Code, and particularly to the title and to the last proviso. The title recites that it is an Act to provide for ‘transferring levies for debt purposes which now exist inside of the ten mill limitation’, etc., and the last proviso reads as follows:

‘Provided, further, that if such levy is for the payment of charges on debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation, the taxing authority of said subdivision shall levy outside of the ten mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof.’

We also direct your attention to Section 5625-2, General Code, defining or construing the term ‘ten mill limitation’, wherever said term is used in the General Code.

We respectfully request that you furnish us with your written opinion on the following questions:

1. What debt charges or bond issues are referred to and included in the expression, ‘outside of the ten mill limitation but within the fifteen mill limitation’, used in the proviso quoted above?
2. Does the quoted proviso include debt charges on bonds authorized or issued after January 1, 1934, the effective date of present section 2, Article XII, Ohio Constitution?
3. What particular form of resolution should be adopted by the taxing authority of a subdivision which desires to take advantage

of the proviso above quoted, with respect to bonds issued prior to January 1, 1925, and also with respect to bonds issued subsequent to January 1, 1925."

House Bill No. 437, 116 O. L. 443, to which you refer, amends Section 5625-18, General Code, by adding thereto the clause or proviso quoted in your letter. The entire section as amended reads as follows:

"If the majority of the electors voting on a levy for the current expenses of schools or sixty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution; provided further, that if such levy is for the payment of charges on debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation, the taxing authority of said subdivision shall levy outside of the ten mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof."

The foregoing proviso added to the section in this amendment, referring to levies for the payment of charges on "debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation" is loosely drawn. It is on its face ambiguous. Full effect may not be given to the date of limitation, January 1, 1935, prior to which the debts are apparently to have been incurred to be within this proviso, unless the portion of the clause specifying that the proviso relates only to debts outside of the ten mill limitation but within the fifteen mill limitation, is to be ignored. Stated conversely, in order to give effect to the provision that levies requiring only a majority vote are levies to provide for debts which are now payable by levies outside of the ten mill limitation but within the fifteen mill limitation, then the provision that the debt must have been incurred prior to January 1, 1935, is rendered substantially meaningless and must be ignored. Effect may not be given to both portions of this clause.

The absolute inconsistency of this provision as to "debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation", becomes apparent when it is remembered that since January 1, 1934, the effective date of the last amendment of Section 2, Article XII of the Constitution, there has been no fifteen mill limitation, either statutory

or constitutional. Obviously no debts could have been incurred during the year 1934 and "prior to January 1, 1935" outside of the ten mill limitation which could be within any fifteen mill limitation. Moreover, since the effective date of the enactment of House Bill No. 80 passed by the 87th General Assembly on April 13, 1927, known sometimes as the Uniform Budget Law, repealing former Section 5649-2, General Code, there has been no authority to incur debts outside of any ten mill limitation but within a fifteen mill limitation. Prior to 1927, Section 5649-2, General Code, authorized the issuance of bonds pursuant to authority of the electors which were payable by levies outside of the then statutory ten mill limitation but within the then statutory fifteen mill limitation. If any effect is to be given to the language of the proviso here under consideration, that it relates to the levies for the payment of charges on debts which have been incurred which are outside of the ten mill limitation but within the fifteen mill limitation, obviously the provision that such debts must have been incurred prior to January 1, 1935, is surplusage and meaningless since no debts have been authorized to be incurred payable by such levies since 1927.

It should be here stated that this office has heretofore passed upon the status of levies for bonds issued under Section 5649-2, supra, with respect to whether or not such levies are now within or without the ten mill limitation provided by Section 2 of Article XII of the Constitution, in view of the schedule thereto. I refer to an opinion appearing in *Opinions of the Attorney General for 1934*, Vol. I, page 778, the syllabus of which is as follows:

"Levies for interest and sinking fund and retirement of bonds which were issued during the period in which former Section 5649-2, General Code, was in effect, and which levies were outside of the statutory ten mill limitation and subject to the statutory limitation of fifteen mills, are now subject to the one per cent limitation of Section 2 of Article XII of the Constitution."

It is perfectly apparent, in view of what has been said, that because of the conflicting language of the proviso here under consideration, there are but three views of the matter which may be taken: Effect must be given to the provision that it relates to all debts incurred up to January 1, 1935, or that it relates only to debts payable by levies outside of the ten mill limitation and within the fifteen mill limitation, or that the proviso is so conflicting that it shall be given no effect whatever and the matter considered as though Section 5625-18, General Code, had not been amended. A determination of the position to be adopted under these circumstances requires a consideration of rules of statutory construction which have been laid down by the courts.

With respect to the matter of treating the amendment of Section 5625-18, supra, as ineffective and void of purpose, if an act may fairly be given

some significance, it is well established that the courts are not at liberty to disregard it. *State, ex rel. vs. Zanesville & M. Turnp. Rd. Co.*, 16 O. S. 308. It is said in 37 O. Jur. page 768:

“The legislature, it must be assumed, had a reasonable motive for making a material change by amendments of statutory provisions. Accordingly, the presumption is that every amendment of a statute is made to effect some purpose.”

It is my judgment that effect may be given to the amendment here under consideration and accordingly it is unnecessary to comment further upon the possibility of disregarding the same.

I shall next consider the possible construction of this amendment hereinabove indicated, that it applies to all debts incurred prior to January 1, 1935, thus reading out of the amendment the provision as to levies for such debts being outside of the ten mill limitation but within the fifteen mill limitation. Section 5625-18, supra, at the outset requires only a majority vote in the case of a levy for the current expenses of schools. It is next provided that where the vote is upon “a levy for any other purpose” a sixty-five per cent vote is required. There follows a proviso as to levies for payment of debt charges to the effect that such levies shall not exceed the amount necessary for such purposes. This is followed by the proviso here under consideration which was added by this amendment. It may be said that the new matter added to the section by the amendment contains two provisos, the first proviso being that if the levy is for payment of charges on debts incurred prior to January 1, 1935, a majority vote is all that is required and the second proviso being that if the levy is for the payment of charges on debts incurred outside of the ten mill limitation but within the fifteen mill limitation, a majority vote only is required. While the rule is not inflexible, it has been held that where there are two provisos one following another in a statute, the second modifies the first. This rule is stated in 37 O. Jur. page 787, as follows:

“As a general rule, unless the contrary intention clearly appears, a proviso is to be construed with reference to the paragraph immediately preceding that to which it is appended. Under this rule, a second proviso in a statute has been held to modify a first proviso which immediately preceded it, and not to constitute a second proviso to the enacting clause.”

In support of the foregoing text, the case of *Zumstein vs. Mullen*, 67 O. S. 382, is cited. It is my judgment that what may be termed as the second proviso in this new matter added to the section must be held to limit and qualify what may be termed the first proviso contained therein.

A somewhat analogous question was before the Supreme Court in the case of *Sawyer vs. State, ex rel. Horr*, 45 O. S. 343. In this case, the court considered as surplusage and disregarded a provision in an act creating a new judicial circuit, that an election should be held on a certain date. The syllabus is as follows:

“The act of March 21, 1887 (84 Ohio L. 240) creating a new eighth judicial circuit, and providing for three additional circuit judges, one for the new eight and two for the old sixth circuit, contained a provision that such additional judges should be elected ‘on the first Tuesday of November next,’ but provided no machinery for holding such election, nor is there any adequate machinery therefor to be found in any general provision of the statutes. Held: The clause fixing the time for the election of the new judges is surplusage, should be disregarded, and the general provisions of the statutes for the election of circuit judges, on the first Tuesday after the first Monday of November, applies to such new judgeships.”

At page 346, the court said:

“The inevitable conclusion is that if the act before us is special so far as it attempts to provide for a special election of circuit court judges, it is a vain and idle form by reason of its failure to provide any means of ascertaining and declaring the result, and must fall of its own inherent infirmity. It remains to inquire if the entire act must fall. If controlling effect is sought to be given to the fact that the language which creates the three new judgeships is that which fixes the day of election, the obvious answer is that this is not and was not intended to be an act to fix a day for holding an election. It is an act to create a new judicial circuit and three new judgeships. We find nothing in its letter so rigid or inflexible as to stand in the way of giving effect to this plain intent of the general assembly. The foregoing considerations call upon us to construe this act to be one for the creation of this new circuit, and these new judgeships, according to the unmistakable legislative intent, and that it is not necessary that we should declare that the act must wholly perish—the last extremity to which judicial construction should go—because of the palpable inadvertence in attempting to provide a day of election.”

In view of the foregoing and in specific answer to your first question, it is my opinion that Section 5625-18, General Code, as amended (116 O. L. 443), providing for a majority vote on the question of placing outside of the

ten mill limitation certain levies for debt charges, relates only to levies for the payment of charges on debts which were incurred under Section 5649-2, General Code, prior to its repeal by the 87th General Assembly in 1927, which levies are outside of the ten mill limitation and inside of the fifteen mill limitation then provided by statute.

In view of my answer to your first question, it is obvious that the quoted proviso does not include debt charges on bonds issued after January 1, 1934, nor does it include debt charges on bonds issued after the repeal of Section 5649-2 in 1927.

Coming to your third question, as to the form of resolution which should be adopted by the taxing authority in order to submit to the electors the question of voting levies on bonds issued prior to, as well as subsequent to, January 1, 1925, under this amendment of Section 5625-18, General Code, it is necessary to consider the provisions of Section 5625-15, General Code, which section provides in so far as pertinent as follows:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

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2. For the payment of debt charges on certain described bonds, notes or certificates of indebtedness of the subdivision issued subsequent to January 1st, 1925.

3. For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925.

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Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness.

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\* \* \*”

Should it be desired to submit the question of voting outside of the ten mill limitation the levies for debt charges on bonds issued subsequent to

January 1, 1925 under the provisions of Section 5625-18, as amended, such bonds must be described as to issues in accordance with paragraph 2 of Section 5625-15, supra. There would then be tabulated any bond issues dated subsequent to January 1, 1925, up to and including the effective date of the repeal of Section 5649-2, General Code, in 1927. A resolution submitting such question should, in my judgment, state that these debt charges are "outside of the ten mill limitation but within the fifteen mill limitation."

Should you desire to submit the question of voting outside of the ten mill limitation levies for debt charges on bonds issued prior to January 1, 1925, which were issued under the provisions of Section 5649-2, General Code, a separate resolution should be adopted containing a statement that such bonds are "outside of the ten mill limitation but within the fifteen mill limitation"; but in this case, in view of the provisions of paragraph 3 of Section 5625-15, supra, it is not necessary to list these specific issues. Under such circumstances, it would be sufficient to provide that the levy is for the debt charges on all bonds issued and authorized to be issued prior to January 1, 1925, which are payable by levies outside of the ten mill limitation but within the fifteen mill limitation.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4584.

APPROVAL, NOTES OF WHEELERSBURG RURAL SCHOOL DISTRICT, SCIOTO COUNTY, OHIO, \$8,131.00.

COLUMBUS, OHIO, August 28, 1935.

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

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4585.

APPROVAL, NOTES OF WASHINGTON-MONROE RURAL SCHOOL DISTRICT, GUERNSEY COUNTY, OHIO, \$2,278.00.

COLUMBUS, OHIO, August 29, 1935.

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