

“Neither Section 1201, G. C., nor Sections 6860 to 6878, G. C., confer power on county commissioners to purchase or appropriate land for the widening of a section of inter-county highway or main market road from forty to fifty feet.”

With reference to this opinion, it is sufficient to say that the Supreme Court has determined the law to be otherwise than as set forth in this opinion and the opinion should, therefore, be disregarded.

In view of the foregoing, specifically answering your questions, it is my opinion that:

1. By the terms of Section 1231, General Code, the Director of Highways and Public Works is authorized to co-operate with a county in the improvement of any main market road, or in the doing of any part of the work incident to such improvement, upon any basis of the division of the cost of such work between the state and the county as the director may deem just.

2. Where the Department of Highways and Public Works, with the co-operation of county commissioners, is improving a main market road by grading and widening the same, upon such terms with reference to the division of the cost and expense of such work between the state and county as have been approved by the Director of Highways and Public Works, it is the duty of the county commissioners to provide the requisite right of way.

3. In such case if the commissioners and the owners of the required land are unable to agree, the county commissioners are authorized by Section 1201, General Code, to condemn and appropriate for public use such land or property as may be necessary for the improvement, and in such a proceeding the county commissioners are the sole proper parties plaintiff.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1113.

TAX LEVY—SUPREME COURT DID NOT ORDER A TAX LEVY OUTSIDE THE 15 MILL LIMITATION TO PAY JUDGMENT AGAINST VILLAGE OF BREMEN—STATE OF OHIO, EX REL. TURNER VS. VILLAGE OF BREMEN.

SYLLABUS:

The Supreme Court in the case of State of Ohio, ex rel. Sarah H. Turner vs. The Village of Bremen, et al., did not order a tax levy to be made outside the fifteen mill limitation to pay the judgment against such village concerned in said case.

COLUMBUS, OHIO, October 5, 1927.

HON. W. S. DUTTON, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“About 12 years ago Sarah E. Turner secured a judgment against the village of Bremen, in this county, in the sum of \$3000.00. The matter has been in litigation during the said time and very recently the Supreme Court

issued a peremptory writ of mandamus ordering the village of Bremen to make a levy or to issue bonds payable according to law to pay this judgment.

The taxable valuation of the village of Bremen is \$1,700,000.00. The highest rate that the village could levy under the law would not produce sufficient money to pay both the judgment and pay the running expenses of the village. If they levy the full amount that is allowed under the law it will necessitate taking considerable money from the township schools and cause them to shorten their school year.

Would you please advise me if the budget commission of this county could levy this tax outside of the 15 mill limitation by reason of the aforesaid order from the Supreme Court? I might state that the state tax commission said that this could not be legally done."

Section 5625-2, General Code, as amended in 112 O. L., page 392, reads as follows:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'fifteen mill limitation.'"

Section 5625-7 of the General Code, provides what levies may be made outside the fifteen mill limitation and reads as follows:

"The taxing authority of any subdivision may make the following levies outside of the fifteen mill limitation and irrespective of all limitations on the tax rate:

(a) Tax levies for debt charges when such levies have, prior to the taking effect of this act, been excluded by the laws of the state or by vote of the people from the limitation imposed by Section 5659-5b, and taxes authorized by the laws of the state, prior to the taking effect of this act, to be levied outside of the limitations imposed by Section 5649-5b of the General Code, in anticipation of which indebtedness has been incurred; but in either instance only until said indebtedness has been paid.

(b) Tax levies which, prior to the taking effect of this act, were excluded by vote of the people from the limitation imposed by Section 5649-5b, not exceeding the rate and the number of years authorized by such vote.

(c) Tax levies excluded by law from the fifteen mill limitation or hereafter authorized outside of said limitation by a vote of the people under the provisions of law applicable thereto.

(d) Tax levies under the provisions of Section 7639, but not to exceed one mill of said tax shall be outside the fifteen mill limitation."

It is noted that this section does not provide for a tax levy outside the fifteen mill limitation to pay final judgments rendered against a taxing subdivision, in actions for personal injury or based upon other non-contractual obligations.

The peremptory writ of mandamus issued by the Supreme Court of Ohio in this matter does not command that a tax be levied beyond the fifteen mill limitation. In the case of *State of Ohio ex rel. Sarah H. Turner vs. The Village of Bremen, et al.*, in mandamus, No. 20,093, a writ was issued commanding that:

"Upon consideration of the record, it is ordered and adjudged that the motion for judgment on the pleadings be granted, and that the relator is entitled to a peremptory writ of mandamus as prayed for in her amended petition. Save and except for the fact that the clerk having certified the judgment to the council of the village, and having certified to the council the amount of tax necessary to provide for the payment of the judgment, it is not necessary to order the clerk to do these specific acts.

It is therefore ordered and adjudged that a peremptory writ of mandamus issue, commanding the defendant, E. J. Young, clerk of the village of Bremen, if within the limits of its funds available under the statutes for this purpose, the village is unable with due consideration of its best interests to pay the final judgment in question, to certify that fact to the village council of Bremen, and that a peremptory writ of mandamus issue commanding the council to appropriate the money to pay such judgment if any there be in the treasury of the said village available under the statutes for such purpose, or that if there is no such fund in the treasury that can be so appropriated and employed, said council be required either to levy a proper and sufficient tax according to law upon all the taxable property of the said village to pay the said judgment with the interest thereon, or that the said council enact the necessary legislation to issue bonds of the said village according to law in an amount not exceeding the amount of the judgment and carrying interest not to exceed six per cent, and that the said council issue such bonds according to law, and that a writ of peremptory mandamus issue commanding the treasurer of the said village to receive the money collected from such tax or from such bond issue for the payment of said final judgment, and disburse said fund in the manner provided by law."

It is noted that the court's order is that if there be no such funds in the treasury that can be so appropriated and employed, the village council is required either to levy a proper and sufficient tax according to law upon all the taxable property of the said village to pay the said judgment with the interest thereon, or to enact the necessary legislation to issue the bonds of the village according to law in an amount not exceeding the amount of the judgment and carrying interest not to exceed six per cent, and to issue said bonds according to law.

This order does not command or authorize the council of the Village of Bremen to levy the tax necessary to pay said judgment, outside of the fifteen mill limitation; but the order does command that said tax shall be levied "according to law." This means that the tax must be levied within the fifteen mill limitation.

Your attention is called to Section 2293-3, General Code, 112 O. L., page 365, which reads:

"When the fiscal officer of any subdivisions certified to the bond-issuing authority that, within the limits of its funds available for the purpose, the subdivision is unable to pay a final judgment or judgments rendered against the subdivision in an action for personal injuries or based on other non-contractual obligation, then such subdivision may issue bonds for the purpose of providing funds with which to pay such final judgment in an amount not exceeding the amount of the judgment or judgments together with the costs of suit in which such judgment or judgments are rendered and interest thereon to the approximate date when the proceeds of such bonds are available."

From what has been said it is my opinion that a tax levy may not be made outside the fifteen mill limitation to pay the judgment in question, and that the Supreme Court in the case of *State of Ohio ex rel. Sarah H. Turner vs. The Village of Bremen, et al.* did not so order or decree.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1114.

APPROVAL, BONDS OF THE VILLAGE OF FLUSHING, BELMONT COUNTY—\$13,182.32.

COLUMBUS, OHIO, October 5, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1115.

APPROVAL, BONDS OF THE VILLAGE OF JEWETT, HARRISON COUNTY, OHIO—\$7,000.00.

COLUMBUS, OHIO, October 5, 1927.

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

1116.

APPROVAL, BONDS OF THE CITY OF SALEM, COLUMBIANA COUNTY, OHIO—\$5,550.00.

COLUMBUS, OHIO, October 6, 1927.

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