

3927.

HOUSE BILL No. 5—SCHOOLS ENTITLED TO HAVE 2.20 MILL AND 2.65 MILL STATE LEVY WITHIN 10 MILL LIMITATION—HAVE AVAILABLE SO MUCH OF TUITION LEVY AS MAY BE ALLOWED BY BUDGET COMMISSION—UNDER SECTION 5649-3c G. C. ADJUSTMENT OF BUDGET FOR CURRENT EXPENSES.

SYLLABUS:

1. *Under the provisions of House Bill No. 5 enacted by the Eighty-Sixth General Assembly, the schools are entitled to have the 2.20 mill and the 2.65 mill state levy within the 10 mill limitation.*

2. *The schools will also have available the one mill tuition levy between the ten and fifteen mill limitation, or so much of it as may be allowed by the budget commission.*

3. *For the purpose of adjusting the budget under section 5649-3c the average for current expenses for the three years preceding the adoption of the amendment shall be considered as within the ten mill limitation.*

COLUMBUS, OHIO, January 6, 1927.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“At the last election an amendment to the city charter was adopted giving Cincinnati home rule. On page 16 is an article establishing 6.65 mills as the tax rate for the city administration for current operating expenses. I am writing at the request of the Board of Education to obtain from you an authoritative opinion as to what effect this will have upon the revenues which may be available for the support of the schools.

First—Irrespective of this amendment, do the schools still have 2.20 and 2.65 within the ten mill limitations?

Second—Will they still have available the one mill tuition between the ten and fifteen mill limitations or so much of it as may be allowed by the Budget Commission.

Third—What part of the 6.65 made available for current expenses for city administration will come within the ten and fifteen; i. e., to make the matter specific, the average rate for current expenses for the past three years for the city of Cincinnati would be 4.85. Would a part of this come within the ten mills and the 15 mills or would it all be taken from within the ten before the budget commission began to allow the amount requested for the schools and the county.”

Section 5649-10, a part of House Bill No. 5, found in 111 Ohio Laws, page 422 provides:

“The provisions of sections 3786, 3788, 3789, 3790, 3791, 3792, 3793, 3794, 5649-2, 5649-3a, 5649-3b, 5649-3c, 5649-4, 5649-5, 5649-5a, 5649-5b, 5649-6, 5649-6a, 5649-6b, 5649-6c, 5649-6d, and 5849-7 of the General Code, and of House Bill No. 58 enacted by this session of the General Assembly, entitled “An Act to provide for the levy of taxes by local subdivisions, and amending section 5649-4 of the General Code, and repealing sections 5649-4, 5649-5, 5649-5a, 5649-6a, 5649-6b and 5649-6c of the General Code,” shall

not apply to any municipality, which by its charter or amendment thereto provides for a complete budget system of municipal receipts and expenditures, and further provides for a limitation on the total tax rate which may be levied without a vote of the people for all purposes or for current operating expenses by the legislative authority of such municipality in each year on the tax list of real and personal property."

By this section any charter municipality which by amendment to its charter provides for a complete budget system and also provides for a limitation on the total tax rate which may be levied without a vote of the people for all purpose or for current operating expenses, shall not be subject to the limitations of the so-called Smith one per cent act and any amendments thereto.

Section 5649-10b provides:

"For the purpose of calculating the limitations provided in sections 5649-2, 5649-3a, 5649-3c and 5649-5b, and of the distribution of taxes within such limitations to counties, boards of education, townships and other taxing subdivisions, the tax rate in each such municipality within any such limitation shall be deemed in each year hereafter to be the same as the average rate allowed to such municipality within such limitation for the three years next preceding the year in which a charter provision becomes effective under section 1 of this act (G. C. section 5649-10), except that if the rate actually levied by the municipality is less than such average rate, then the rate actually levied shall be considered the municipal rate for the purposes of calculating said limitations."

By this section the Budget Commission for the purposes of adjusting the budget and calculating the limitations provided under the sections mentioned therein, shall use as such basis of calculation on the part of the municipality the average rate allowed to such municipality within the limitations for the three years next preceding the year in which such charter provision becomes effective, unless the rate actually levied under such charter provision is less than such average rate and in that case the rate actually levied shall be considered for such purposes.

In answer to your first question it may be stated that this act should have no effect on the minimum levy of 2.20 mills authorized by section 5649-3c, or upon the 2.65 mills state levy for school purposes within the ten mill limitation. Neither should it affect the one mill tuition levy which is between the ten and fifteen mill limitations or so much of it as is allowed by the budget commission.

By this act the levy authorized by the charter amendment may for all intents and purposes be considered as without the Smith act limitations. The only case in which this affects any other levies is under section 5649-3c, when the budget commission attempts to adjust the levies asked by the various subdivisions due to the fact that the amounts asked by the individual subdivisions will not all come within the limitations.

As you have stated in your communication that the average rate for current expenses for the past three years for the City of Cincinnati has been 4.85 mills, in making the adjustments under section 5649-3c, the budget commission would take that figure as a basis for making the adjustments for the other subdivisions.

As by section 5649-3c the budget commission may not reduce the city school levy below 2.20 when that amount is asked for, and as the budget commission has no jurisdiction over the state levy, it is believed that the levy authorized by the city charter of the City of Cincinnati would not affect these levies for school purposes.

While it is apparent that to allow the state levy and the minimum school levy, together with the 4.85 used as a basis for the budget adjustment would total 9.70,

it is believed that the only adjustment which could be made would be in the county budget. Certainly the sections authorizing the minimum levy for school purposes and the section authorizing the state school levy are as strong as the section authorizing the average levy for three years to be taken as a basis of the city levy for purposes of adjustment.

While no part of the 6.65 mills for current expenses for the city could be considered as actually coming within the ten mill limitation, or within the fifteen mill limitation, the average levies within the ten and fifteen mills for the city would have to be taken for the purpose of adjusting the budget. And as a matter of fact if such figures are taken as a basis of adjustment levies equal to the average levies would come for all intents and purposes within the ten and fifteen mill levy, unless the actual levies made for such fiscal year were less than the average levy.

However, if the average levy for the last three years for the City of Cincinnati has been 4.85, then the school district is in no different condition under the charter amendment than it was prior to this time. For if the average levy for the City of Cincinnati, which was allowed by the budget commission was 4.85, that, together with the minimum school levy and the state levy for school purposes would amount to the same as they do under the present circumstances.

You are advised that irrespective of House Bill No. 5 the schools still have the minimum 2.20 mill and the 2.65 mill levy within the ten mill limitation. They will also have available the one mill tuition levy between the ten and fifteen mill limitations or so much of it as may be allowed by the budget commission.

The average levy for the three years preceding the adoption of the amendment for current operating expenses will be considered as within the ten mill limitation for the purpose of adjusting the budget under section 5649-3c of the General Code.

Respectfully,

C. C. CRABBE,
Attorney-General.

3928.

A PPROVAL, BONDS, CITY OF DENNISON, TUSCARAWAS COUNTY,
\$1,997.56.

COLUMBUS, OHIO, January 6, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3929.

DISAPPROVAL, BONDS, CITY OF PORTSMOUTH, SCIOTO COUNTY,
\$17,160.96.

COLUMBUS, OHIO, January 6, 1927.

Re: Bonds of City of Portsmouth, Scioto County, \$17,160.96.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN—An examination of the transcript of the foregoing issue of bonds discloses that the bonds were advertised for sale in two newspapers and in each case