Here, again, we find a provision which constitutes evidence, slight in itself, to be sure, but significant, in addition to what has already been referred to, as disclosing the legislative mind. Clearly, the legislature would scarcely have gone to the trouble of making this provision had it supposed that a vote taken under section 5649-5 of the General Code prior to the passage of the act were to be effective to obtain the benefits of section 5649-4, without any action on the part of the electors after the act might go into effect.

It is to be admitted that the act is silent so far as express provision is concerned, and thus is open to an interpretation in order to arrive at the answer to your second question. It is also to be admitted that the evidences of legislative intention are not convincing, though they all point in the one direction. I think, however, that we may fairly add to them the thought that the fifteen mill limitation of the Smith one per cent law so-called has, as all citizens of Ohio know, acquired such a unique position in legislation as to give rise to a presumption against giving a liberal interpretation to any legislation affecting its application. In other words, I think it is only proper to give a strict interpretation, where such interpretation is as possible as the opposite liberal one would be, to legislation dealing with the fifteen mill limitation.

For these reasons, then, the opinion of this department is that a levy for school purposes authorized by the electors under sections 5649-5 and 5649-5a of the General Code prior to 1920 may not be made to any extent outside of the limitation of section 5649-5b of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1105.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS NOT AUTHORIZED TO PROCURE INSURANCE ON AUTOMOBILE TRUCKS TURNED OVER TO STATE BY FEDERAL GOVERNMENT.

1. *County commissioners who have received from the state highway commissioner automobile trucks turned over to the state by the federal government, are not authorized at this time to procure insurance on said trucks against their loss or damage.*

Whether state highway commissioner is authorized by section 1190-2 *G. C. (Amended substitute Senate Bill No.* 105, *effective May* 20, 1920) *to require county commissioners to procure such insurance—Quaere.*

2. *County commissioners have no authority to procure insurance on behalf of the county against loss which may accrue to it in the use of automobile trucks, through injuries to the person or property of third persons; cost of defending claims and suits; first aid expense, etc.*

COLUMBUS, OHIO, March 29, 1920.

HON. WALTER W. BECK, *Prosecuting Attorney, Lisbon, Ohio.*

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

"The commissioners of Columbiana county have received from the state highway department several federal trucks which are to be used in the improvement of state and county roads. It is the opinion of the

writer that these trucks cannot be insured by the county commissioners in the counties to which they are assigned and that any money expended in the way of premiums for that purpose would be illegal.

In view of the fact that the county commissioners of Columbiana county are about to insure several of these trucks we would like to have your opinion on this subject in view of the fact that trucks have been sent into practically every county in the state.

They propose to insure these trucks against fire, liability for bodily injuries or death; liability for damage to property of others; damage to assured's own automobiles; defense of claims and suits; first aid expense, loss if any payable to the county commssioners and the state highway department as their interests may appear."

The trucks to which you refer are automobile trucks turned over by the United States government to the state of Ohio. The arrangement was entered into, so far as the state is concerned, through its state highway commissioner. Personal conference with that officer discloses that the federal government in turning over the trucks laid down the condition that they were to be used in road work. No particular conditions other than the one named were fixed by the federal government; but it is the understanding of the state highway commissioner that the trucks remain the property of the federal government and must be returned to it should it make request. The federal government when delivering the trucks did not attach any condition calling for insurance against loss or damage of the trucks through fire, theft or otherwise.

The general assembly, through the passage of an act known as amended substitute Senate Bill No. 105, approved February 18, 1920, and filed in the office of the secretary of state February 19, 1920, has taken cognizance of the situation created by the receipt of the trucks in question by the state highway commissioner. Section 1190-1, as appearing in said act, provides for the housing, care and use of such trucks by the state highway commissioner.

Section 1190-2, appearing in the same act, reads as follows:

"The state highway commissioner shall be authorized to lease to the county commissioners of any county, upon such terms, rentals and conditions as to him may seem proper, surplus automobiles, motor trucks, road machinery, equipment, and supplies received from the federal government, and also any and all parts necessary or incidental to the proper maintenance and equipment of such automobiles, trucks and machinery, when in the judgment of the state highway commissioner, such articles are not required in the prosecution of any work then being carried on under the direct control of the state highway department. The county commissioners of any county shall be authorized to execute any and all such leases as to them shall seem proper, and shall provide suitable places for housing and storing such automobiles, trucks, road machinery and equipment, and shall keep such automobiles, trucks, machinery and equipment in reasonable repair. Any expense incurred by the county commissioners in carrying out the provisions of this section shall be paid from the road repair fund or other road funds of the county."

While said act, because of its being subject to the referendum provisions of the constitution, will not in any event become effective until May 20, 1920, it is understood that the state highway commissioner, because of the great demand for the trucks throughout the state for use in spring road work, has delivered part of them to various counties without awaiting express statutory authority to do so.

We must assume, however, that the county commissioners, where they have received the trucks from the state highway commissioner, whether he be considered either an agent for the federal government or as an officer of the state of Ohio in delivering the trucks, have at best no more power with reference to the trucks than is given them by section 1190-2; for it is perfectly clear that the trucks are not in any true sense the property of the county, and therefore do not come within such general provisions of statute as might be thought to furnish authority for the doing of certain things in connection with care of the county's property. Since the federal government imposed no condition as to insurance, and the state highway commissioner has not undertaken to impose on the commissioners any such requirement, and since furthermore said section 1190-2 which deals specifically with the trucks in question as distinguished from property of the county in an ordinary sense, does not expressly confer authority on the county commissioners to insure the trucks against loss or damage, it follows that the county commissioners are without authority to procure such insurance.

Of course, as has been noted, said section 1190-2 is not yet in effect, but it is evident that if said section when, and if, it shall become effective, will not confer power on the commissioners to procure insurance, so much the less have they any such power at this time.

It is to be noted that said section 1190-2 authorizes the state highway commissioner to lease the surplus trucks, etc., to the county commissioners "upon such terms, rentals and conditions as to him may seem proper." It may be that when, and if, said section 1190-2 becomes effective, the state highway commissioner will desire to insert in the leases a condition requiring the county commissioners to insure the trucks. Whether said section confers power on the commissioner to make such requirement, and whether the county commissioner will be authorized to comply with it if made, are questions that need not now be passed upon in answering your inquiry.

It appears from your letter that your commissioners have had in mind not only the matter of insurance against loss or damage of the trucks themselves, but loss which might accrue to the county through the use of the trucks, such as damage claims for injuries to the person and property of third persons; cost of defending claims and suits, first aid expenses, etc. Of course these latter forms of insurance would not depend upon the ownership of the trucks, but rather upon the possession and use of them.

You are advised that no express statutory authority has been found for any such forms of insurance; neither is there any provision which by implication or inference might give rise to such authority. It must be remembered in that connection that the county would practically be vacating certain of its public functions if it turned over to an insurance company the matter of paying or contesting claims, defending suits, etc. Certainly the county may not be put in such an attitude through action of its officers, unless the legislature first makes express provision to that end.

Respectfully,
JOHN G. PRICE,
Attorney-General.