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REPAIR—ELECTRIC WIRING AND FIXTURES, COUNTY CHILDREN'S HOME—FUNDS COLLECTED FROM SPECIAL LEVY IN EXCESS OF TEN MILL LIMITATION—SECTION 5625-15 G. C.—MAY BE USED FOR SUCH REPAIR—MAY NOT BE EXPENDED FOR PERMANENT IMPROVEMENT AS TERMS ARE DEFINED IN SECTION 5625-1 (e) G. C.

SYLLABUS:

Funds collected from a special levy in excess of the ten mill limitation pursuant to Section 5625-15, General Code, may properly be expended for the repairing of electric wiring in fixtures of a county children's home, but may not be expended for any "permanent improvement" or "improvement," as those terms are defined in Section 5625-1(e), General Code.

Columbus, Ohio, July 2, 1951

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

I have before me your request for my opinion, and reading as follows:

"This office would greatly appreciate your opinion on the following question:

"The Board of County Commissioners at the last general

election submitted to the voters of Belmont County a question of levying a tax in excess of the ten mill limitation for the benefit of Belmont County, for the purpose of providing a supplemental appropriation for the County Child Welfare Board for care and service to children in the County Children's Home, and for children otherwise in the care of said County Child Welfare Board.

"The levy was approved by the voters and now a part of said funds derived from said levy are desired to be used for the purpose of repairing of wiring and replacement, and an addition to the lighting fixtures in the Belmont County Children's Home.

"The specific question which we desire to have answered is whether the funds from said levy can be used for this purpose.

"We are enclosing a copy of the resolution adopted on the 21st day of August, 1950, by the Board of Commissioners of Belmont County."

Assuming your resolution to be valid, I interpret your question as follows:

May funds collected from a special levy above the 10 mill limit pursuant to Section 5625-15, General Code, be spent for "repairing of wiring and replacement, and an addition to the lighting fixtures in the Belmont County Children's Home?"

Section 3070-36, General Code, provides as follows:

"The Boards of county commissioners of the several counties shall, pursuant to law, levy taxes and make appropriations sufficient to enable the board (of child welfare) to perform its functions and duties hereunder."

(Words in parenthesis the writer's.)

This section was held to be mandatory in Opinion No. 1815, Opinions of the Attorney General for 1947, page 214.

The Board of County Commissioners may provide funds for the operation of a county children's home under Section 5625-5, General Code, which provides for the general county levy for current expenses or, in case the situation demands, a special levy above the ten mill limitation may be levied under Section 5625-15. This section reads in part 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:

"1. Current expenses of the subdivision.

"* * * 6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue. * * *

"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.

"Such resolution shall go into immediate effect upon its passage, and no publication of the same shall be necessary other than that provided for in the notice of election."

As is stated in Opinion No. 541, Opinions of the Attorney General for 1937, page 902:

"* * * A study of this section discloses that the resolution must itself, among other recitals, be confined to one purpose, 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. * * * This is all for the protection of the electors so that they may be informed of the proposal that will be submitted to their consideration on election day."

Your resolution "for the purpose of providing funds to supplement the general fund appropriations for dependent and neglected children under the care of the County Child Welfare Board" must therefore adhere to these specific requirements of Section 5625-15, General Code. In particular, the levy must be confined to one purpose, that is, one of the several permissible purposes mentioned in this section. Subdivision 1 specifies that such an excess levy may be laid for "current expenses of the subdivision." Since the other permissible purposes under said Section 5625-15 deal with more specific purposes, such as recreation, road building, etc., I assume that the Board of County Commissioners acted under subdivision 1 of that section. Thus, it is necessary to determine whether the contem-

plated expenditures you desire to make are "current expenses of the subdivision" as that term is used in Section 5625-15, General Code.

The specific question you submit is whether funds collected from such an excess levy under Section 5625-15, General Code, can be used for "the purpose of repairing of wiring and replacement, and an addition to the lighting fixtures in the Belmont County Children's Home?"

Section 5625-1, General Code, defines the phrase "current expenses," as follows:

"The following definitions shall be applied to the terms used in this act:

"* * * (f) 'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, *except* those for *permanent improvements*, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision." (Emphasis added.)

Section 5625-1(e), General Code, defines "permanent improvement" as follows:

"'Permanent improvement' or 'improvement' shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof, having an estimated life or usefulness of five years or more."

Having these statutory definitions in mind, we must therefore determine whether these proposed expenditures are current expenses or permanent improvements. In Opinion No. 365 Opinions of the Attorney General for 1949, page 99, it was held that the expenses of *maintaining* a hospital are included in the general classification of "current expenses of the subdivision" referred to in paragraph 1 of Section 5625-15, General Code. And in Opinion No. 1092, Opinions of the Attorney General for 1949, page 740, it was held that the *upkeep* of a cemetery was a current expense within this section of the General Code. Expenditures for poor relief were held to be current expenses under Section 5625-15, General Code. Opinion No. 3618, Opinions of the Attorney General for 1931, page 1214.

It should be noted that Section 5625-5, General Code, which provides for the *general* levy for the current expenses of the county, expressly in-

cludes "the acquisition or construction of permanent improvements." This section must be distinguished from paragraph 1 of Section 5625-15, General Code, which is limited to "current expenses" as defined in Section 5625-1, General Code. Were these funds, now in question, derived from a general levy under Section 5625-5, there would be no question as to the purposes for which they could be spent. It is by virtue of the limitations which circumscribe a special levy in excess of the ten mill limitation that we must determine the issue of whether these proposed expenditures for electrical repair and additions are within the meaning of the permissible purposes of Section 5625-15. In Opinion No. 910, Opinions of the Attorney General for 1929, page 1408, a similar question was presented. There an excess levy was voted "for the purpose of meeting current expenses" of the school district. At page 1411 it is stated thus:

"* * * As to any revenues collected under the second levy 'for current expenses' those revenues in my opinion could not be used for the erection of any building. Their use should be confined to what is generally understood to be current running expenses."

You state that you wish to *repair* electrical wiring, *replace* and *add* to the lighting fixtures of the Belmont County Children's Home. It is my opinion that any repairing can be met out of the funds designated for current expenses under paragraph 1 of Section 5625-15, General Code. Webster says that to repair is to restore to a sound or good state after decay, injury, dilapidation, or partial destruction. To the extent that your expenditures from the proceeds of this special levy in excess of the ten mill limitation are confined to this type of work, they are within the restrictions laid down by Section 5625-15 and in my opinion are valid disbursements. However, the definition of "current expenses" in Section 5625-1, General Code, expressly excludes permanent improvements. If the replacement and additions to the electrical fixtures are permanent improvements as that term is defined in Section 5625-1, General Code, then they cannot come within the permissible purpose of Section 5625-15. Again, Webster defines "improvement" as a valuable addition or betterment. If such addition has an estimated life or usefulness of five years or more, then it is a permanent improvement or improvement under Section 5625-1(e), General Code.

Accordingly, it is my conclusion that funds collected pursuant to a levy under Section 5625-15, General Code, in excess of the ten mill limi-

tation may properly be expended for the repairing of electric wiring and fixtures of a county children's home but may not be expended for any improvements to such electrical equipment or additions thereto if such improvements will have an estimated life or usefulness of five years or more.

Respectfully,

C. WILLIAM O'NEILL
Attorney General