

1808.

FIFTEEN MILL LIMITATION—PROPOSED AMENDMENT OF SECTION 2 OF ARTICLE XII OF THE CONSTITUTION OF OHIO TO TEN MILL LIMITATION, IF ADOPTED, WILL NOT AFFECT TAX LEVIES MADE IN 1933—EFFECT OF PROPOSED AMENDMENT ON BONDS AND TAX LEVIES AUTHORIZED PRIOR TO EFFECTIVE DATE, IF ADOPTED.

SYLLABUS:

1. *If the proposed amendment of section 2 of article XII of the the Ohio Constitution is adopted, such amendment will not affect the tax levies made in the year 1933, although a portion of such taxes will not be collected until 1934.*

2. *By express provision of the schedule of the proposed amendment, all levies for the retirement of bonds issued or authorized prior to January 1, 1934, outside of the fifteen mill limitation, and all tax levies authorized prior to said date by vote of the electors outside of the fifteen mill limitation will not be subject to the limitation provided by said amendment.*

3. *All levies made after January 1, 1934, for bonds theretofore authorized or issued subject to the present fifteen mill limitation will be subject to the one per cent limitation of said proposed amendment, if adopted.*

4. *The minimum board of education levy authorized by section 5625-23, General Code, will not be affected by said proposed amendment, so long as such levy can be made within the one per cent limitation imposed by said amendment after the mandatory levies within such limitation for bonded indebtedness are made.*

COLUMBUS, OHIO, November 2, 1933.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication in which you inquire as to whether the proposed amendment of section 2 of article XII of the Constitution of Ohio, if adopted, will affect the levies made for the year 1933 and collected in December, 1933, and June of 1934.

Other inquiries have been made concerning the effect of this proposed amendment, if adopted, and I shall endeavor to cover all of the questions which have been submitted to me on this subject. The other questions are as follows:

Will the present levies which are outside the 15 mill limitation remain outside the 10 mill limitation?

Will the levy for bonds and interest within the 15 mill limitation be affected by the proposed amendment?

Will the present minimum board of education levy provided for by section 5625-23, General Code, be affected thereby?

The proposed amendment reads in part as follows:

“No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied

outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value.

Schedule: If the votes for the proposal shall exceed those against it, the amendment shall go into effect January 1, 1934, and existing section 2 of Article XII of the Constitution of the state of Ohio shall be repealed and annulled; but the following enumerated levies shall not be subject to the limitation of one per cent established by such amendment: (1) All levies for interest and sinking fund or retirement of bonds issued or authorized prior to said date which are not subject to the present limitation of one and one-half per cent imposed by section 2 of Article XII and the schedule thereto as approved by the electors of the state on November 5, 1929; (2) All tax levies provided for by the conservancy act of Ohio or the sanitary district act of Ohio, as said laws are in force on January 1, 1934, for the purpose of conservancy districts and sanitary districts organized prior to said date; (3) All tax levies authorized prior to said date by vote of the electors of any political subdivision of the state, pursuant to laws in force at the time of such vote, to be made for or during a period of years extending beyond January 1, 1934, which levies are outside of the present limitation of one and one-half per cent imposed by section 2 of Article XII and the schedule thereto as approved on November 5, 1929; and (4) All tax levies provided for by the charter of a municipal corporation pursuant to law and which were authorized prior to January 1, 1934, and are not subject to the present limitation of one and one-half per cent imposed by said section and schedule as approved on November 5, 1929."

The taxes for 1933 have been levied before the proposed effective date of said amendment, but a portion of said taxes will not be collected until after such proposed effective date. The proposed amendment provides that no property shall be *taxed* in excess of one per cent of its true value in money. Property is considered as taxed when the tax is levied. *Hinson vs. Nickerson*, 99 Neb. 517; *Gillmore vs. Dale*, 27 Utah 372. The question therefore arises as to whether such amendment, if adopted, is to be considered as being retroactive in effect or whether its operation is to be prospective only. If it is to be prospective only, then it will apply only to taxes levied after January 1, 1934. In the case of *State, ex rel., vs. Pattison*, 73 O. S. 305, the court says on page 327:

"It is a familiar rule of constitutional interpretation that a constitutional provision must be construed prospectively unless the language of the constitution is so clear and distinct as to require a different construction. * * *"

In the case of *Buckeye Churn Company vs. Abbott*, 115 O. S. 152, the court construed Amended Section 35 of article II of the Ohio Constitution. This amendment, which has to do with workmen's compensation, provided, among other things, that such compensation shall be in lieu of all other rights to compensation or damages. The effective date of that amendment was January 1, 1924. In that case the employe had filed suit against the employer for injuries received prior to the effective date of said amendment, but the case was not finally adjudicated until after said effective date. The court said:

"The court is of opinion that the amendment shows no language from which its retroactive character can be established, and unless there is language used in such amendment which discloses, either by terms or clear implication, that the same is retrospective, it will be held to be prospective in operation and that Kuhn's rights, or those of his administratrix, were not affected thereby. As was said by Fuller, C. J., in *Shreveport vs. Cole*, 129 U. S., 36, 9 S. Ct., 210, 32 L., Ed., 589:

'Constitutions as well as statutes are construed to operate prospectively only, unless, on the face of the instrument or enactment, the contrary intention is manifest beyond reasonable question.'

In the case of *Link vs. Karb*, 89 O. S. 326, the court held that amendments to the constitution taking effect January 1, 1913, did not affect the validity of a city ordinance authorizing the issuance of city bonds passed before said date, although such bonds were not sold or delivered until after such date. In the case of *New Orleans vs. L'Hote and Company*, 35 La. Ann. 1177, it was held:

"Where a tax was duly levied on a factory for the manufacture of articles of wood by the City of New Orleans, and included in the city budget for 1879, collectible in 1880, an exemption therefor cannot be claimed under article 207 of the present Constitution subsequently adopted. That article has no retroactive effect."

In the case of *State, ex rel., vs. Railway Company*, 101 Mo. 120, it was held:

"The limitation of the present constitution as to the rate of levy for taxes applied only to years subsequent to its adoption; it did not affect levies made after its adoption for years prior thereto."

In the case of *New Orleans vs. Vergnole*, 33 La. Ann. 35, the court said:

"Article 206 of the Constitution, providing that 'no political corporation shall impose a greater license tax than is imposed by the General Assembly for state purposes' was not intended to act retroactively.

The Constitution took effect from and after the first day of January, 1880.

Article 206 does not, therefore, affect the legality of the license ordinance of the City of New Orleans No. 6253, passed on the 23d day of December, 1879, under the laws then in force, and imposing certain municipal license taxes.

The same rules of construction apply to state constitutions as to the acts of the legislature.

In order that a statute should be retroactive, the intention of the lawgiver in that respect must have been expressed in clear and unambiguous terms."

In the case of *Ochland vs. Whipple*, 44 Calif. 303, the court said:

"Where taxes are levied under a law which is repealed by a subsequent act, unless it be made apparent by clear and unequivocal lan-

guage that the repealing act was intended to have a retrospective operation, it will be inferred that the intent of the legislature was that the taxes should be collected in accordance with the law in force at the time they were levied."

I find nothing in this proposed amendment which shows any intention to give it a retroactive effect, and I am of the view therefore that it will not apply to taxes that have already been levied, although such taxes will not be collected until after the effective date of said amendment, if adopted.

As to the next question, the proposed amendment expressly provides that all levies for interest and sinking fund or retirement of bonds issued or authorized prior to January 1, 1934, outside of the fifteen mill limitation, and all tax levies authorized prior to said date by a vote of the electors of any political subdivision outside of the fifteen mill limitation shall not be subject to the one per cent limitation.

I now refer to the third question. Section 11, article XII provides that no bonded indebtedness shall be incurred or renewed unless provision is made in the legislation for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity. In accordance with this section, provision must be made when the bonds are authorized for an annual levy sufficient to pay the interest and to retire the bonds. The tax is not then levied, but the levy is made annually during the life of the bonds. As was held in the case of *Link vs. Karb, supra*:

"This provision of the constitution does not require that at the time the issue of bonds is authorized there shall then be levied any specified amount or any specific rate, but it does require that provision shall then be made for an annual levy during the term of the bonds in an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity, which levy must be made annually in pursuance of the provisions of the original ordinance or resolution requiring the same. The amount necessary to be levied for the purposes specified is to be determined by the taxing officials at the time the levy is made."

The proposed amendment provides what levies shall not be subject to its provisions and it does not except from its operation levies which are to be made for the retirement of bonds authorized prior to January 1, 1934, and which have not been authorized outside of the fifteen mill limitation. Consequently, levies for the retirement of such bonds which are to be made after January 1, 1934, will be subject to the limitation of such amendment, if adopted. Whether or not this amendment, if adopted, will in this respect impair the obligation of contracts in violation of section 10 of article I of the Federal Constitution, I express no opinion. This question might possibly be dependent upon the legislative provisions which might be enacted, in the event of the adoption of this proposed amendment, for the purpose of supplanting whatever shortage might arise in the bond retirement or sinking funds of the several subdivisions as a result of this curtailment in the levy of taxes on real estate and public utilities and tangible personal property.

I come now to the last question. Section 5625-23, General Code, reads in part as follows:

"The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification.

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(c) The levy prescribed by section 7575 of the General Code, or any other school equalization levy which may be authorized.

(d) A minimum board of education levy for current expense in case the levy referred to in paragraph 'c' hereof is less than four and eighty-five hundredths mills. Such minimum board of education tax levy shall be at such rate in each school district that the sum of the levy referred to in paragraph 'c' hereof, and such minimum board of education tax levy shall be four and eighty-five hundredths mills in such district, unless the board of education requests an amount requiring a lower rate."

If the electors adopt this amendment, it will be presumed that they had in mind existing statutes dealing with tax levies. As was said in *Billings vs. Railway Company*, 92 O. S. 478, at page 486:

"It is well settled that a body adopting amendments, such as are here involved, will be presumed to have had in mind the legal status of and the course of legislation and existing statutes touching the subjects dealt with."

We have in existence sections 7575 and 5625-23, General Code, requiring certain levies for school purposes. There is no express repeal of these statutes in the proposed amendment. To be repealed by implication, these sections must be clearly inconsistent with the proposed amendment. In *Cass vs. Dillon*, 2 O. S. 607, it was held:

"The rule, that repeals by implication are not favored, is applicable to the inquiry whether any particular enactment has ceased to be in force on account of repugnancy to the new constitution. *Ohio, ex rel. Evans, vs. Dudley*, 1 Ohio St. 437, approved.

The repugnancy which must cause the law to fall, must be necessary and obvious; if by any fair course of reasoning, the law and the constitution can be reconciled, the law must stand."

The following was held in *State vs. Cameron*, 89 O. S. 214:

"1. Under the general policy of our law as well as the schedule accompanying the new constitution of 1912, all statutes then in force consistent with such new constitution remain in force, and all repugnant statutes are repealed by implication.

2. Repeals by implication are not favored, and before a statute is so repealed the repugnancy must be necessary and obvious, and if by any fair course of reasoning the law and constitution can be reconciled the law must stand. (*Cass vs. Dillon*, 2 Ohio St., 608, approved and followed.)"

I am of the view that these statutes are not so obviously and necessarily inconsistent with the proposed amendment as to be repealed by implication if the amendment is adopted. Of course, if it is impossible to make such levies within the one per cent limitation after first taking care of all levies for bonded indebtedness which are within such limitations, then the constitutional limitation will prevail.

Specifically answering the inquiries discussed, I am of the opinion that:

1. If the proposed amendment of section 2 of article XII of the Ohio Constitution is adopted, such amendment will not affect the tax levies made in the year 1933, although a portion of such taxes will not be collected until 1934.

2. By express provision of the schedule of the proposed amendment, all levies for the retirement of bonds issued or authorized prior to January 1, 1934, outside of the fifteen mill limitation, and all tax levies authorized prior to said date by vote of the electors outside of the fifteen mill limitation will not be subject to the limitation provided by said amendment.

3. All levies made after January 1, 1934, for bonds theretofore authorized or issued subject to the present fifteen mill limitation will be subject to the one per cent limitation of said proposed amendment, if adopted.

4. The minimum board of education levy authorized by section 5625-23, General Code, will not be affected by said proposed amendment, so long as such levy can be made within the one per cent limitation imposed by said amendment after the mandatory levies within such limitation for bonded indebtedness are made.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1809.

APPROVAL, BONDS OF HOLLOWAY VILLAGE SCHOOL DISTRICT,
BELMONT COUNTY, OHIO—\$4,280.00.

COLUMBUS, OHIO, November 2, 1933.

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

1810.

APPROVAL, BONDS OF GROVER HILL RURAL SCHOOL DISTRICT,
PAULDING COUNTY, OHIO—\$5,600.00.

COLUMBUS, OHIO, November 2, 1933.

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

1811.

LORAIN MUNICIPAL COURT—ELECTORS OF BROOKSIDE TOWNSHIP
MAY NOT VOTE FOR JUDGE AND CLERK THEREOF AT NOVEMBER
7, 1933, ELECTION—JURISDICTION THEREOF DISCUSSED

SYLLABUS:

The electors of the newly created Brookside Township, formerly a part of Sheffield Township, Lorain County, do not have the right to participate in the election of a judge and clerk for the Municipal Court of Lorain in the forthcoming election.