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GENERAL ASSEMBLY—PROPOSED LEGISLATION GRANTING TO CITIES RIGHT TO VOTE TAX LEVIES BEYOND ONE PER CENT LIMITATION—ARTICLE XII, SECTION 2, CONSTITUTION OF OHIO—POPULATION 100,000—RELIEF EXPENDITURES — OPERATING EXPENSES — IF LITIGATED, COURTS WOULD HOLD SUCH LEGISLATION TO BE UNCONSTITUTIONAL AND VOID.

SYLLABUS:

Proposed legislation granting to cities the right to vote tax levies beyond the one per cent limitation fixed by Section 2 of Article XII, of the Constitution of Ohio, and limiting that right to cities having a population of one hundred thousand or more or to cities whose relief expenditures in 1938 were fifteen per cent or more in relation to all expenditures for current operating expenses would, if enacted by the General Assembly of Ohio, be held by the courts to be unconstitutional and void, should the matter be litigated.

COLUMBUS, OHIO, February 14, 1939.

HON. LAWRENCE A. KANE, *Chairman, Taxation Committee, Ohio Senate, Columbus, Ohio.*

DEAR MR. KANE: As Chairman of the Taxation Committee of the Ohio Senate, you have submitted for my consideration and official opinion, two questions which have arisen in connection with the consideration

by your committee of proposed legislation authorizing municipalities to vote tax levies outside the limitations fixed by the Constitution of Ohio. These questions are as follows:

- (1) Can the General Assembly constitutionally limit the right to vote extra levies to cities having a population of one hundred thousand or more?
- (2) May the General Assembly constitutionally limit the right to vote extra levies to cities whose relief expenditures in 1938 were fifteen per cent or more in relation to all expenditures for current operating expenses?

In answer to your inquiry, your attention is directed to Section 1, Article XVIII, of the Constitution of Ohio, which classifies municipalities into cities and villages, on the basis of population. This section reads as follows:

“Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.”

Legislation which would authorize cities having a population of one hundred thousand or more, or cities whose relief expenditures in 1938 were more or less than a certain fixed amount, to vote additional tax levies, necessarily involves the further classification of municipalities than that fixed by the Constitution and on a basis different than that fixed by the Constitution. In other words, such legislation first classifies cities into those having a population of one hundred thousand or more and those having less than one hundred thousand inhabitants or those which had relief expenditures during 1938 of less than a certain amount and those whose relief expenditures were greater, as the case might be, and authorizes one or the other of them to vote certain tax levies, and denies that right to the others.

Your inquiry therefore resolves itself into the question of whether or not the Legislature may lawfully classify municipalities differently than did the people upon the adoption of the constitutional provision quoted above.

On at least two occasions the Supreme Court of Ohio has given consideration to this precise question. In the case of *City of Elyria vs. Vandemark*, 100 O. S., 365, it is held as stated in the second and third branches of the syllabus, as follows:

“2. The Constitution of the state having classified municipalities on a basis of population, the Legislature is without au-

thority to make further classification thereof for the purpose of legislation affecting municipal government.

3. The provisions of Section 4250, General Code, as amended 106 Ohio Laws, 483, purporting to authorize the council in cities having a population of less than twenty thousand to merge the office of director of public safety with that of the director of public service, are in conflict with the provisions of Section 1, Article XVIII of the Constitution of Ohio."

In the course of the opinion in the above case, it is stated:

"It having been declared by the Constitution that the municipalities of the state should be classified upon the basis of population into cities and villages, it must be presumed that it was intended that there should be no further classification for the purpose of legislation affecting municipal government."

In the case of *City of Mansfield vs. Endly*, 38 O. App., 533, decided by the Court of Appeals of Richland County, the case of *City of Elyria vs. Vandemark* was followed, and it was held as stated in the syllabus:

"All legislation affecting municipal government, notwithstanding general and uniform operation, having classification of cities as basic principal, is unconstitutional.

Statute classifying cities according to population and making councilmen's salaries dependent thereon held void as violating Constitution classifying municipalities as cities or villages (Article XVIII, Sections 1 to 3, Constitution of Ohio)."

This case was carried to the Supreme Court, and that court in a per curiam opinion affirming the decision of the Court of Appeals said:

"It is ordered and adjudged by this court that the judgment in the said Court of Appeals be and the same hereby is, affirmed upon the authority of the *City of Elyria vs. Vandemark*, 100 O. S., 365."

See 124 O. S., 652.

I believe that the holdings of the Supreme Court in the cases referred to above are controlling with respect to the subject of your inquiry, and I am therefore of the opinion in specific answer to your questions that proposed legislation granting to cities the right to vote tax levies beyond the one per cent limitation fixed by Section 2 of Article XII, of the Constitution of Ohio, and limiting that right to cities having a population of one hundred thousand or more or to cities whose relief expenditures in 1938 were fifteen per cent or more in relation to all expenditures for current operating expenses would, if enacted by the General Assembly

of Ohio, be held by the courts to be unconstitutional and void, should the matter be litigated.

Respectfully,

THOMAS J. HERBERT,
Attorney General.