

4861.

APPROVAL, BONDS OF AKRON CITY SCHOOL DISTRICT,  
SUMMIT COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, November 4, 1935.

*Industrial Commission of Ohio, Columbus, Ohio.*

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4862.

APPROVAL, BONDS OF MASSIE TOWNSHIP RURAL SCHOOL  
DISTRICT, WARREN COUNTY, OHIO, \$21,000.00 (UN-  
LIMITED).

COLUMBUS, OHIO, November 4, 1935.

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

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4863.

TAX LEVY—PERIOD OF LEVY NOT EXTENDED WHEN  
OMITTED ONE YEAR IF APPROVED BY ELECTORATE.

**SYLLABUS:**

*Where the question of the levy of a tax outside the limitation of Section 2 of Article XII of the Ohio Constitution for the construction or acquisition of a permanent improvement for a period of five years was submitted by a subdivision to a vote of the electors and the required majority voted in favor thereof, the fact that such additional levy was omitted in one or more years during said five year period would not extend the period during which such levy may be made.*

COLUMBUS, OHIO, November 5, 1935.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN :—This acknowledges receipt of your communication which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

The board of education of the Cleveland City School District submitted, at the November election, 1930, the proposal of .5 mill levy on the property of the district for the purpose of constructing and improving buildings. The levy was voted, and under resolution of the board the levy was made for a period of five years and was placed upon the duplicate for 1930 and 1931, and on the duplicate of 1932 at the reduced rate of .3 instead of .5. In 1933 the levy was omitted entirely, and was again placed on the duplicate for 1934.

QUESTION: Inasmuch as the levy was only made on the duplicates for four years, may it now be made upon the duplicate of 1935?"

Section 5625-15, General Code, authorizes the adoption of a resolution by the legislative authority of a subdivision finding it necessary to levy a tax outside the limitation of Section 2 of Article XII of the Ohio Constitution for any of the purposes set forth in said section. Said section also provides in part:

"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."

Section 5625-17, General Code, reads in part as follows:

"Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto, setting out the purpose, the proposed increase in rate, and the number of years during which such increase shall be in effect and the time and place of holding the election.

The form of the ballots cast at such election shall be:

'A tax for the benefit of (name of subdivision) .....  
for the purpose of (purposes stated in the resolution) .....  
at a rate not exceeding.....mills for ..... (life of in-  
debtedness or number of years the levy is to run).'

The resolution, the notice of election and the ballot must state the number of years the extra levy is to run,—in other words, the period during which the subdivision seeks authority to levy this tax. If the requisite vote is cast in favor of such a levy, the legislative authority of a subdivision is authorized but not required to make such levy. A smaller levy may be made than the rate specified or the levy may be entirely omitted in one or more of the years within such period. Such omission in one or more years during the period the levy is to run would not, in my opinion, extend the period in which the subdivision is authorized to make such a levy. This is made clear by Section 5625-18, General Code, which reads as follows:

“If the majority of the electors voting on a levy for the current expenses of schools or sixty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation during the period and for the purposes stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution; provided further, that if such levy is for the payment of charges on debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation, the taxing authority of said subdivision shall levy outside of the ten mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof.”

In other words, the election provided for by these statutes which results favorably to such a levy simply authorizes the legislative authority to levy an additional rate not exceeding the rate stated in the resolution in any one or more years during, but not beyond, the period specified in said resolution.

Consequently, I am of the opinion that where the question of the levy of a tax outside the limitation of Section 2 of Article XII of the Ohio Constitution for the construction or acquisition of a permanent improvement for a period of five years was submitted by a subdivision to a vote of the electors and the required majority voted in favor thereof, the fact that such additional levy was omitted in one or more years during said five year period would not extend the period during which such levy may be made.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*