

2638.

TAX AND TAXATION—SCHOOLS—BOARD OF EDUCATION—WHAT  
RESOLUTION FOR ADDITIONAL LEVIES OUTSIDE FIFTEEN MILL  
LIMITATION AND BALLOT SHOULD RECITE.

SYLLABUS:

*When a taxing authority of a subdivision has already been authorized to levy taxes for a particular purpose outside of the fifteen mill limitation imposed by Section 5625-2, General Code, and it is desired to make additional levies for the same purpose to those already authorized outside of the said limitation, the resolution providing for the submission of this additional levy to the voters and the ballot to be cast at such election should recite the entire number of mills to be levied for the purpose in question in addition to the rate that may be levied without a vote of the people, which it is proposed by the submission of said question to levy and not merely the rate in addition to that already authorized.*

COLUMBUS, OHIO, September 28, 1928.

HON. SETH PAULIN, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“Under the provisions of Section 5649-5 of the General Code of Ohio, as enacted in 111 Ohio Laws, page 345, the Board of Education of the ----- school district at the November election in 1926, submitted to the electors of said district, the proposition of levying taxes for the benefit of said school district, for the purpose of meeting the current expenses of said taxing district, not exceeding three mills for a period of five years. A majority of the electors voting on said proposition, at that time, voted in favor thereof.

The Board of Education of the ----- school district now proposes to again submit the proposition of an additional levy of two mills for a period of five years, under the provisions of Section 5625-15 of the General Code, as enacted in 112 Ohio Laws, page 397, with a view of securing additional funds by an additional levy with which to operate the schools of said district.

The precise question I have in mind is whether, by the submission of this question within the period within which the electors of said district have previously authorized the making of an additional levy, the effect is cumulative and will authorize the Board of Education to levy outside of the fifteen mill limitation a total of five mills or whether the effect of the submission of this question with a variance of one mill, will be merely to supplant the effect of the previous vote and, therefore, authorize a levy of two mills only.

I can find no provision of law prohibiting the re-submission of the question authorized to be submitted by Section 5625-5 of the General Code within the five year period, by a subdivision which has previously authorized the making of an additional levy.

I am enclosing herewith copy of the resolution proposed to be adopted by the Board of Education of the ----- School district, for an additional levy of two mills in excess of the fifteen mill limitation, and would appreciate your opinion as to whether the same is in proper form and also as to whether or not the board by the submission of this question will be authorized to make a five mill levy.”

You also enclose a copy of a resolution which has been adopted by the school board in question and under which resolution it is proposed to submit at the November

election the question of an additional levy of taxes. This enclosed resolution reads as follows:

“BE IT RESOLVED by the board of education of the .....school district, Lake County, Ohio, two-thirds of all members of said body concurring therein; that the amount of taxes which may be raised within the 15-mill limitation will be insufficient to provide an adequate amount for the necessary requirements of said school district, and that it is necessary to levy a tax in excess of such limitations for the purpose of meeting the current expenses of said school district.

BE IT FURTHER RESOLVED, that there be submitted to the electors of said school district at the November election, 1928, the proposition to increase the tax levy for the purpose of meeting the current expenses of the schools in said district, in the following amount and for the following length of time, to-wit; to increase said rate two mills above the maximum rate of taxation for a period and term of five years, said term to include the current year.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be filed with the Board of Deputy State Supervisors and Inspectors of Election of Lake County, Ohio, prior to September 15, 1928, in order that they may prepare the proper ballot for vote thereon, and

BE IT FURTHER RESOLVED, that the form of said ballot shall be:

‘A tax for the benefit of the .....School District, Lake County, Ohio, for the purpose of meeting the current expenses of .....School District, Lake County, Ohio, at the rate not exceeding two mills, for a period and term of five years.’

	FOR THE TAX LEVY
	AGAINST THE TAX LEVY

Attest:

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President.
Clerk.

By order of the Board of Education of the ..... School District, Lake County, Ohio.”

Sections 5625-2, 5625-7 and 5625-15, General Code (112 O. L. 392, 394 and 397), read in part as follows:

Section 5625-2. “The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the ‘fifteen mill limitation.’”

Section 5625-7. "The taxing authority of any subdivision may make the following levies outside of the fifteen mill limitation and irrespective of all limitations on the tax rate:

(a) \* \* \*

(b) Tax levies which, prior to the taking effect of this act, were excluded by vote of the people from the limitation imposed by Section 5649-5b, not exceeding the rate and the number of years authorized by such vote.

(c) Tax levies excluded by law from the fifteen mill limitation or hereafter authorized outside of said limitation by a vote of the people under the provisions of law applicable thereto.

(d) \* \* \*"

Section 5625-15. "The taxing authority of any subdivision at any time prior to September 15th, 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 fifteen 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. \* \* \*"

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, \* \* \*." (Italics the writer's.)

Former sections 5649-5 and 5649-5b, both of which were repealed in 1927 (112 O. L. 409), read in part as follows:

"The commissioners of any county, any board of education other than a county board of education, the legislative body of any municipality, and the trustees of any township may, at any time prior to September 15th in any year, by a vote of two-thirds of all the members of said body, declare by resolution that the amount of taxes which may be raised at the maximum rate authorized by Sections 5649-2, 5649-3a or 5649-3c or at the combined maximum rate authorized by Section 5649-5b of the General Code will be insufficient to provide an adequate amount for the necessary requirements of the taxing district in question, and that it is necessary to levy taxes in excess of said limitations either (1) for the purpose of meeting the current expenses of the subdivision \* \* \*. Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increased rate may be levied, which may or may not include the current year. \* \* \*"

Section 5649-5b. "If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate for and during the period provided for in such resolution, but in no case shall the combined maximum rate for all taxes levied in any year in any county, city, village, school district, or other taxing district, under the provisions of this and the two preceding sections and Sections 5649-1, 5649-2 and 5649-3 of the General Code as herein enacted, exceed fifteen mills."

The tax levy of three mills authorized by vote in 1926, having been submitted by authority of former Section 5649-5, General Code, was authorized to be levied outside of all tax limitations including the limitation of fifteen mills on the combined maximum rate for all purposes imposed by former Section 5649-5b, General Code, and if the current year was included within the five years for which the levy was authorized, such levy may be made for three years after 1928.

By reason of the fact that such levies are specifically excepted from inclusion within the present fifteen mill limitation, as fixed by Section 5625-2, General Code, by the terms of clause (b) of Section 5625-7, General Code, the situation, with reference to the three mill tax levy authorized by vote in 1926, which exists in the school district at the present time is that the said levy may be made outside of the present fifteen mill limitation without further action on the part of the voters.

If it should now be determined to make an additional levy of two mills for five years, including the current year, to that already authorized, the entire levy outside the fifteen mill limitation will be five mills during the years the levy authorized in 1926 continues, and two mills thereafter until and including the year 1933. The question arises as to what procedure is necessary to bring about this result.

In the case of *Faust, Auditor, vs. State ex rel.*, 103 O. S. 271, a similar question, which arose under the law then in force, was involved. In that case it appeared that in the fall of 1917 the electors of the school district of the city of Youngstown authorized a levy of one mill for a period of five years under the provisions of Section 5649-5, 5649-5a and 5649-5b, General Code, and in the fall of 1920 the electors of the same school district authorized a levy to the extent of two mills for one year under the provisions of Sections 5649-4, 5649-5 and 5649-5a, General Code. The question arose as to whether or not these two levies were cumulative. The court, after stating the proposition and noting the attempt of the Legislature to limit the taxing authorities to the levy of a tax of one per cent upon each dollar of valuation for all purposes—state, county, municipal and school—by the enactment of the so-called "Smith One Percent Law" in 1910, and noting later attempts to retain the law in name but to permit such exceptions to its application as would enable the taxing authorities to raise sufficient funds to operate the various functions of government, said:

"\* \* \* It is this indirect course of legislation with reference to taxation that has brought about a general situation, similar to the one at bar, wherein the various officials are unable to determine from the reading of the statute their power and authority thereunder; and indeed this court after a careful and exhaustive study and comparison of the statutes with reference to taxation is unable to determine with any degree of certainty the intention of the Legislature with reference thereto."

Section 5649-2, General Code, then in force provided that the aggregate amount of taxes, which might be levied on the taxable property in any county, township, municipal school district or other taxing district, should not in any one year exceed ten mills on each dollar of tax valuation of the taxable property in the district except as otherwise provided in Sections 5649-4 and 5649-5 of the General Code. Section 5649-4, General Code, at that time exempted from all tax limitations a levy for local school purposes to the extent of three mills, when the same had been authorized by vote of the electors under the provisions of Sections 5649-5 and 5649-5a of the General Code.

The court construed the term "maximum rate" as used in Section 5649-5, General Code, to include not only the ten mill levy authorized by Section 5649-2, General Code, but any other levies authorized by Sections 5649-4 and 5649-5, General Code, and held that the levy of one mill authorized by vote in 1917 and of two mills authorized in 1920 were cumulative. In this connection the court said:

"Section 5649-2, therefore, by reference, includes Sections 5649-4 and 5649-5, which leads us to the conclusion that the Legislature in the use of the term 'maximum rate' authorized by Section 5649-2 contemplated the rate fixed by the Legislature plus such rate as had been authorized by a vote of the electors under the provisions of Section 5649-5, and that the special levy authorized by the vote of the electors in 1920 was therefore cumulative and the two levies thus authorized, amounting to three mills, were special levies provided for by a vote of the electors, over which the budget commission had no control."

Although the courts determination of the construction of the words "maximum rate" was determinative of the issues involved in the case, the court said that the intention of the electors, when ascertainable, should control, and that, under the circumstances presented, the apparent intention of the voters was that the two levies should be cumulative. This is equivalent to saying that had the circumstances precluded this determination as to the intent of the voters a different result might have been reached. The language of the court in this respect is as follows:

"That it was the intention of the electors that these two special levies should be cumulative is apparent from the fact that the authorized levies are for different durations of time, the one being for five years and the other for but one, and from the further fact that if not cumulative the special levy voted in 1920 would not authorize the board of education to raise any more money than it was already authorized to raise. Since the Legislature by Section 5649-5 placed the responsibility for the authorization of an additional levy up to three mills upon the electors, it would seem that the intention of the electors where ascertainable should control.

We have no trouble in arriving at the conclusion that it was the intention of the electors that these special levies should be cumulative."

It will be observed that under the former law the resolution authorizing the vote on additional tax levies, which former Section 5649-5, General Code, directed to be adopted, was required to specify that the amount of taxes which might be raised at the "maximum rate" authorized by Sections 5649-2, 5649-3a and 5649-3c (which the court said included levies authorized by Sections 5649-4 and 5649-5) was insufficient to meet the needs of the district and that it was desired to make additional levies, whereas the present statute, Section 5625-15, provides that the resolution shall state that taxes, which may be raised within the *fifteen mill limitation*, are inadequate for the needs of the subdivision and that it is necessary to levy a tax *in excess of such limitation*. The statute further provides that the resolution shall specify *the amount of increase in rate* which it is necessary to levy.

It is apparent to my mind, that the words *in excess of such limitation* refer to the fifteen mill limitation only, and the words *amount of increase in rate which it is necessary to levy* as used in the statute, refer to the amount of increase over and above the fifteen mill limitation which the resolution has already recited is insufficient to meet the taxing subdivision's need.

The question arises as to just what is meant by "fifteen mill limitation." The "fifteen mill limitation" as defined by Section 5625-22, General Code, is the limitation which provides that the aggregate amount of taxes, which may be levied in any one year shall not exceed fifteen mills on each dollar of valuation *except taxes specifically authorized to be levied in excess thereof*. This would seem to carry the same meaning as that given to the words "maximum rate" in former Section 5649-5, General Code, by the Supreme Court in the Youngstown case, *supra*. If this construction be proper, it includes the levy of 1926 here under consideration, inasmuch as such levy was spe-

cifically authorized to be levied in excess of fifteen mills by the terms of Section 5625-7 (b). Yet by the terms of said Section 5625-7 (b) levies, such as the levy of 1926, which was excluded by a vote of the people from the limitations imposed by Section 5649-5b prior to the taking effect of the act of which Section 5625-7, is a part, are in specific language said to be *outside of the fifteen mill limitation*.

Again in Section 5625-15, General Code, which provides that the submission of additional tax levies, such as the levy of two mills for five years proposed by your district to be submitted at the November election, speaks of them as being in "excess of such limitation" (meaning the fifteen mill limitation) and states further that the resolution authorizing the submission of the levy shall declare that the amount of taxes which may be raised "within the fifteen mill limitation" will be insufficient to provide an adequate amount for the necessary requirements of the subdivision.

The inevitable conclusion to my mind is, the the words "except taxes specifically authorized to be levied in excess thereof" as used in Section 5625-2, General Code, may not be construed to mean such taxes as may be raised by a levy authorized by vote of the people by authority of Section 5625-15 et seq., and that therefore the term "fifteen mill limitation" as used therein should not be construed to mean the same as "maximum rate," as used in Section 5649-5, General Code, was construed to mean by the Supreme Court in the Youngstown case, *supra*.

As stated by the Supreme Court in the Youngstown case, *supra*, it would seem that the intention of the electors when ascertainable, should control. If the proposition for the levy of an additional two mills is submitted at the November election under a resolution, such as you have enclosed with your inquiry, and carries, I am doubtful whether it may be said that the intention of the electors that these two special levies should be cumulative is apparent from the fact that the authorized levies are for different durations of time, one being for five years from 1926, and the other for five years from 1928, or from the further fact that, if not cumulative, the special levy authorized in 1928, would not authorize the board of education to raise any more money during the years the first levy is in effect than it is already authorized to raise.

It is apparent that the intention of the voters will be more readily ascertainable if the resolution and the ballot provided for by Section 5625-15, General Code, advises them of the exact status of all prior special levies authorized for the same purpose. If that be done there can be no question after the election is over as to what the intention of the voters was when they expressed that intention at the polls. It at least would obviate all uncertainty about the matter.

For that reason I believe it to be the better practice to recite in a resolution drawn by authority of Section 5625-15, the exact status of all special levies then existent, which had previously been authorized for the same purpose, and state therein what the new additional rate will be and during what years it may be levied. These facts should also be stated on the ballot for the information of the voters. While the statute prescribes a form of ballot it need not be strictly followed. It is stated in 20 Corpus Juris, 120, that:

"The general rule with reference to the submission of propositions is that where the ballot is free from ambiguity neither a lack of absolute precision nor the use of surplusage will vitiate the election."

See also 10 American and English Encyclopedia of Law, 725; In Re: South Charleston Election Contest, 3 O. N. P. (N. S.) 373.

In my opinion the intent of the law is that the voters should be apprised, by the proceedings providing for the election, of the entire number of mills of taxation for the particular purpose over and above the rate which may be levied without vote of the people, and the years during which it is proposed to make such a levy, which an affirmative vote on the proposition submitted, will authorize