

Sec. 1182-3.

" * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director, and as to legality and form by the attorney general, and be deposited with the secretary of state."

Finding said bond to have been properly executed in accordance with the foregoing sections, I have accordingly approved the same as to form, and return it herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4266.

APPROVAL, SUPPLEMENTAL RESOLUTION COVERING HIGHWAY IMPROVEMENT IN RICHLAND COUNTY.

COLUMBUS, OHIO, May 16, 1935.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted Supplemental Resolution covering extra work on Section "Shelby Bridge", S. H. 436, Richland County.

Finding said resolution in proper legal form, I have endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4267.

COUNTY AUDITOR—DUTY TO EXTEND TAX LEVY AUTHORIZED BY ELECTION PURSUANT TO AMENDED S. B. #46, 91st GENERAL ASSEMBLY ON GENERAL TAX DUPLICATE.

SYLLABUS:

1. *When a favorable vote is had on the question of making tax levies within a subdivision outside of constitutional limitations, by authority of Amended Senate Bill No. 97 of the second special session of the 90th General Assembly as amended by Amended Senate Bill No. 46 of the 91st General Assembly, the taxing authority of the subdivision is authorized to make the levy at the rate so authorized or at any lesser rate, or to make no levy at all, if it should be determined that no levy is necessary.*

2. *It is the duty of a county auditor to extend tax levies made by authority of an election held in pursuance of Amended Senate Bill No. 97 of the second special session of the 90th General Assembly as amended by Amended Senate Bill No. 46 of the 91st General Assembly, on the regular 1934 general tax duplicate for real property and public utilities taxes for collection with the first half year's collection of those taxes, if it may be reasonably done. Otherwise, all those taxes should be collected with the collection of the second half year's collection of the taxes levied on the said duplicate.*

COLUMBUS, OHIO, May 16, 1935.

HON. THOMAS G. JOHNSON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A question has arisen in our Auditor’s office in regard to the interpretation of Amended Senate Bill #97.

One of our school districts in this county voted upon the question of an additional tax levy for 1935 at a special election. This levy carried, and the Auditor wishes to know whether it is mandatory to run the newly voted tax rate upon the current duplicate. The latter part of this bill reads as follows:

‘If the majority of the electors voting on the question so submitted vote in favor of such levy, the taxing authority of the subdivision *may* forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside of the ten mill limitation on the current duplicate for the purpose stated in the resolution; and in such event, the levy shall be certified in the manner provided by section 5625-17a of the General Code and *may* be extended on the current tax list and duplicate for collection, with the taxes for the first half and/or the second half of the fiscal year 1935.’

The question with the Auditor is the word ‘*may*’, whether it is directory or mandatory.”

Amended Senate Bill No. 97, of the second special session of the 90th General Assembly (115 O. L., pt. 2, p. 279) is a temporary act the provisions of which are designed to apply to the year 1935 only. It is entitled:

“AN ACT

To authorize taxing authorities of local subdivisions to submit to the electors thereof, at a special election, the question of additional tax levies for the purposes of the year 1935, outside of the ten mill limitation, and to authorize the making of such levies if approved by majority vote.”

The act reads as follows:

“At any time prior to the thirty-first day of March, 1935, the taxing authority of any subdivision, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the subdivision for the year 1935, and that it is necessary to levy a tax in excess of such limitation for any of the purposes mentioned in section 5625-15 of the General Code, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a special election to be held at a time therein specified. Such resolution shall conform to the requirements of section 5625-15 of the General Code, excepting that said levy shall be limited to the duplicate for the current year, and that such resolution shall specify the date of holding such special election, which shall not be earlier than twenty days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that pro-

vided for in the notice of election. A copy of such resolution shall immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5625-17 of the General Code, and the provisions of said section shall govern the arrangements for the submission of such question and other matters and things with respect to such election, to which said section 5625-17 of the General Code refers, excepting that such election shall be held on the date specified in the resolution. Publication of notice of such election if made four times in one or more newspapers of general circulation in the subdivision, shall not be required to be made once a week for four consecutive weeks. If the majority of the electors voting on the question so submitted vote in favor of such levy, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside of the ten mill limitation on the current duplicate for the purpose stated in the resolution; and in such event, the levy shall be certified in the manner provided by section 5625-17a of the General Code, and may be extended on the current tax list and duplicate for collection, with the taxes for the first half and/or the second half of the fiscal year 1935.

All the provisions of the General Code insofar as they conflict with the provisions of this act are hereby suspended for the period ending December 31, 1935; otherwise they shall in no manner be impaired by the passage of this act.

The terms 'taxing authority' and 'subdivision' shall have the meanings assigned to them respectively by section 5625-1 of the General Code."

It will be observed from the title of this act, that the tax levies outside of constitutional limitations which may be authorized by the special election which the act provides for, and which necessarily, under the terms of the act must not only be authorized by resolution of the taxing authority of a subdivision enacted in 1935 but must also be held in the year 1935, are "for the purposes of the year 1935". It is provided in the body of the act that the additional levy if one should be authorized, is "limited to the duplicate for the current year."

Under laws in force at the time of the enactment of said Amended Senate Bill No. 97 "the duplicate for the current year", that is for the year 1935, is the list of names of the several persons, firms, corporations, partnerships, companies and associations in whose names real property has been listed for taxation in the several taxing subdivisions of a county, arranged in tabular form and alphabetical order, together with a description of the said lots and parcels of land so listed, and of the names of the several public utilities whose property is subject to taxation within the county similarly arranged, which list the law directs shall be prepared in duplicate by a county auditor on or before the first Monday in August annually, one copy of which, when corrected in accordance with additions and deductions made by the Tax Commission of Ohio and by the county board of revision is to be delivered to the county treasurer on or before the first day of October. (§ 2583 G. C.) This duplicate so delivered is the basis of the year's tax collection, the collection of the first half of which normally should begin on the said first day of October or as soon as the duplicate is delivered to the treasurer, and continue until the 21st day of December or until such further time as may be fixed by the county commissioners or the Tax Commission of Ohio. (§2649 G. C.)

If a levy which might be authorized by an election held in pursuance of the said Amended Senate Bill #97 be limited to the "duplicate for the current year" as the term is used in Section 2583, General Code, as above noted, the current year being 1935 of course, it would be limited to the duplicate which in the natural course of events should be prepared on or before August 1, 1935 and delivered to the county treasurer on Oc-

tober 1, 1935 and distribution of the proceeds thereof could not possibly be made in 1935 even if collections should be made strictly at the time prescribed by the statutes. Everyone, including the legislature, knows that collections of taxes are not so made. Even if they were so made, the proceeds of such a levy would not be available "for the purposes of the year 1935" as the distribution of the proceeds of what is commonly called the December collection of taxes is not made, even normally, until the following February and money cannot be borrowed in anticipation of this February settlement until after the first of January, 1936. (§2293-4, G. C.)

It is apparent that the legislature did not use the expression "duplicate for the current year" in Amended Senate Bill #97 in the sense that it is used in Section 2583, General Code, not only for the reason stated above, but also for the reason that the act provides that if a levy is authorized by election held as provided for therein, the levy shall *forthwith* be made on the "current duplicate." It would be difficult to make a levy on a duplicate not then in existence.

It is manifest that the legislature meant to authorize the levy on the duplicate then in existence, really the 1934 tax duplicate which was then *current* for tax collection purposes. All the provisions of the act point to this conclusion. The applicability of the strict statutory definition of the phrase "duplicate for the current year" as stated in Section 2583, General Code, is untenable, as the provisions of the act would in that case be unworkable for the accomplishment of the purposes for which the act was enacted.

Moreover, the act expressly provides that "all provisions of the General Code in so far as they conflict with the provisions of this act are hereby suspended for the period ending December 1, 1935." I am convinced therefore that any levies authorized by an election held in pursuance of this act should if made, be made on the duplicate in existence at the time of the levy, strictly speaking, the 1934 duplicate, and collections of the levy and distribution of the proceeds thereof made with the collection of and the distribution of the proceeds of the levies made on the 1934 duplicate.

Under the terms of the act it is provided that the levy in question "may be extended on the current tax list and duplicate for collection with the taxes for the first half and/or the second half of the fiscal year."

It is a well known fact and was at the time of the passage of this act, December 7, 1934, that the 1934 tax duplicates in practically all, if not in all the counties, had been held up for various reasons and were not delivered to the several county treasurers on October 1, 1934, as the law provides. In fact, some of them were not delivered to the county treasurer until as late as April 1, 1935, and practically none of them until after January 1, 1935, but of course those facts were not known at the time of the enactment of said Amended Senate Bill #97. It could not have been foreseen at the time of the enactment of this act just how many, if any, of these duplicates could be or would be in such a state at the time a levy might or would be made by virtue of the act, so that the said levy might be extended on the duplicate in time for the first collection of taxes thereon.

It will be observed that an election might be authorized under the provisions of this act as late as March 30, 1935, and when so authorized, might be held as late as 120 days thereafter or on or about July 27, 1935. If such an election were held and a levy authorized, it would have been presumed, at least, at the time of the passage of the act that collections of the first half of the taxes on the current duplicate would be closed and it would be impossible to extend the levy for collection with the collection of the first half of the taxes on this duplicate. That is the reason no doubt, that the legislature provided in the alternative that the levy might be extended for collection with "the taxes for the first half and/or the second half of the fiscal year."

Of course, if we are to regard the law as meaning that the levy authorized by the election to be held by virtue of this act is to be extended on what, strictly speaking, is the regular 1934 general duplicate of real property and public utilities taxes which is the only possible construction that may be placed on the terms of the act in my opinion and the first half year's collection of taxes on this duplicate had been made strictly according to law, that collection would have closed on December 21, 1934, or at such time to which it might have been extended by the county commissioners or the Tax Commission of Ohio, it probably would have been impossible in most cases to make the levy and extend it on the duplicate in time for its collection with the first half of the taxes collected on that duplicate. The collection of the second half of these taxes should normally begin on April 1, 1935 and end on June 21, 1935. (§2649 G. C.) It was well known at the time of the passage of the act that the collection of the first half of these taxes would not be made until a much later date than December 21, 1934, in most counties.

In construing a statute a court may look to the circumstances which existed at the time the statute was enacted and it may consider the general facts of common knowledge and other legislation upon the same subject. *Paine vs. Skinner*, 8 Ohio, 159; *Mannington vs. Hocking Valley Ry. Co.*, 16 O. F. D., 552; *State ex rel. Turner vs. Fassig*, 5 O. A., 479; *Janes vs. Graves*, 15 N. P. (N. S.) 193.

It is also a well recognized rule of statutory construction that in construing the terms of an act of the legislature we may look to the purpose of the act and the object to be attained by its enactment. *Terrill vs. Auchauer*, 14 O. S., 80; *Hawck vs. State*, 45 O. S., 439.

Ordinarily, the word "may" in a statute will be construed to mean "must" or "shall" when the rights of the public or third persons depend upon the exercise of the power or the performance of a duty to which it refers, and such is its meaning usually in cases where the public rights or interests are concerned, unless the context requires a different construction. *Lessees of Swazey's Heirs vs. Blackmon*, 8 Ohio, 5, 18; *Columbus, Springfield and Cincinnati Railway Company vs. Morwatt*, 35 O. S., 284; *Stanton vs. Realty Co.*, 117 O. S., 345. This rule is stated in Lewis' Sutherland Statutory Construction, Sec. 640, as follows:

"The general rule is that the word 'may' will be construed as 'shall' or as imposing an imperative duty, whenever it is employed in a statute to delegate a power, the exercise of which is important for the protection of public or private interests. Whether merely permissive or imperative depends on the intention as disclosed by the nature of the act in connection with which the word is employed and the context."

Upon consideration of the rules of statutory construction referred to above, the language of the act in question, wherein it provides that the levy may be extended on the duplicate for collection with the taxes for the first half *and/or* the second half of the fiscal year 1935, and the contemporary conditions and circumstances existing at the time of the passage of the act, I am of the opinion that it was the intention of the legislature that the levy in question should be extended on the general duplicate of real property and public utilities taxes for the year 1934 for collection with regular collection of the first half of those taxes if it could reasonably be done and if not that it should be all collected with the collection of the second half year's collection of those taxes.

With respect to the word "may" as used in that part of the act where it provides that in the event a favorable vote is had on the proposition to levy additional taxes "the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate *or at any lesser rate* outside the ten mill limita-

tion," the context clearly shows that it was not the intention of the legislature that the word "may" as there used should be regarded as mandatory.

The fact that the taxing authority may determine the rate of levy to be made within the rate authorized, clearly manifests an intention that if the taxing authority should determine that no levy was necessary, it is not required to make any. The vote, if favorable, is merely authority to make a levy if needed. It does not make the levy. In my opinion the word "may" as so used does not import the fixing of a mandatory duty.

It may be noted at this point that the said Amended Senate Bill #97 was amended by Amended Senate Bill #46 of the 91st General Assembly which latter act was passed as an emergency measure on February 5, 1935, and approved by the Governor February 6, 1935, whereupon it became immediately effective. The amendments made by this latter act have nothing to do with the question here under consideration nor with the construction of the provisions of the act with respect to the matters herein discussed.

The only change made by the amended act is with respect to the date when the special election authorized by the act may be held. The amended act provides as did the original act, that the resolution of the taxing authority calling an election may be passed at any time prior to March 31st, 1935, and shall specify the date of holding such election, and provides further, "which shall not be earlier than ten days after the adoption and certification of such resolution nor later than June 1, 1935." The other provisions of the two acts are precisely the same.

Summarizing, it is my opinion that:

1. When a favorable vote is had on the question of making tax levies within a subdivision outside of constitutional limitations, by authority of Amended Senate Bill No. 97 of the second special session of the 90th General Assembly, as amended by Amended Senate Bill No. 46 of the 91st General Assembly, the taxing authority of the subdivision is authorized to make the levy at the rate so authorized or at any lesser rate, or to make no levy at all if it should be determined that no levy is necessary.

2. It is the duty of a county auditor to extend tax levies made by authority of an election held in pursuance of Amended Senate Bill No. 97 of the second special session of the 90th General Assembly, as amended by Amended Senate Bill No. 46 of the 91st General Assembly, on the regular 1934 general tax duplicate for real property and public utilities taxes for collection with the first half year's collection of those taxes if it may reasonably be done. Otherwise, all those taxes should be collected with the collection of the second half year's collection of the taxes levied on the said duplicate.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4268.

APPROVAL, BONDS OF LAKE TOWNSHIP RURAL SCHOOL DISTRICT,
STARK COUNTY, OHIO, \$16,000 (UNLIMITED).

COLUMBUS, OHIO, May 17, 1935.

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

4269.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS
RESIDENT DISTRICT DEPUTY DIRECTOR OF HIGHWAYS—F. O.
BIEHN.