

1518.

SCHOOLS—WHERE ADDITIONAL LEVY SUBMITTED TO ELECTORS AT PRIMARY ELECTION HELD ON AUGUST 10, 1920, FAILED—MAY RESUBMIT QUESTION AT GENERAL ELECTION IN 1920—IF SAME CARRIES DISTRICT ENTITLED TO PARTICIPATE IN STATE RESERVE FUND.

In a school district where the question of an additional levy under the provisions of sections 5649-5 and 5649-5a G. C. was submitted to the electors at a special election held on August 10, 1920, and the authorization of such additional levy failed to receive a majority of those voting thereon, such question may be again submitted at the general election in 1920, in the manner provided in section 5649-5a, and if the question carries by a majority vote, such school district is entitled to participate in the reserve fund to be disbursed by the state superintendent of public instruction for the school year 1920-21.

COLUMBUS, OHIO, August 25, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of August 16th, in which you request the opinion of this department upon the following:

“The electors of a school district failed to authorize, at a special election held on August 10, 1920, an additional levy under the provisions of section 5649-5 and 5649-5a G. C. Can this question be voted on at the general election in November, 1920, and if the question carries, is such district entitled to participate in the \$500,000 reserve fund for the school year 1920-1921?”

The special election held on August 10, 1920, to which you refer, was authorized by the closing paragraph of section 3 of House Bill 615, appearing on page 1313, 108 O. L., Part II, and reading as follows:

“In the year 1920, the question authorized to be submitted to the electors of a school district by sections 5649-5 and 5649-5a of the General Code, *may be so submitted* at an election to be held on the second Tuesday in August of such year, with like effect, for all purposes, as regards levies on the duplicate made out in the year 1920, *as if submitted at the regular election* for said year.”

It will be noted that the language of the above paragraph says:

“may be so submitted * * * on the second Tuesday in August of such year, with like effect * * * as regards levies on the duplicate * * * as if submitted at the regular election in said year.”

No where in the paragraph does it appear that the submission of this question on the second Tuesday in August would prevent the re-submission of such question at the regular election in November, as provided in the original statute itself (5649-5 and 5649-5a), where such question had failed in such August election.

The paragraph simply gives to boards of education a prior opportunity as regards 1920 to submit the question to which the paragraph refers. Reference should

therefore be made to the main section itself, that is, section 5649-5a, which reads in part as follows:

“Such proposition shall be submitted to the electors of such taxing district *at the November election* that occurs more than twenty days after the adoption of such resolution.”

This section is the permanent law upon this subject and provides that it shall be submitted at the November election, and the inference is that this question could not be submitted at any special election, because of the mentioning of the November election, unless, however, as regards some particular year, certain legislative enactments might cover that year, as appears in the closing paragraph of section 3 of House Bill 615, which authorized this question to be submitted in the year 1920 at an election held in August of that year, if the board of education cared so to do. Inasmuch as there is no prohibition in such paragraph 3 against holding this election under section 5649-5a at the November election, the language appearing in section 5649-5a itself would govern, and the question of an additional levy for school purposes, provided for in section 5649-5 and 5649-5a, General Code, may be submitted at the November election in 1920, even though such proposition was submitted at the August election in 1920 and failed.

Your second question is, if the question carries at the November election, is such district entitled to participate in the \$500,000 reserve fund for the school year 1920-1921?

The manner of disbursement of the reserve fund in the state common school fund by the superintendent of public instruction, is covered in section 7595 and section 7596 of the General Code, and attention is invited to the closing sentence of the latter section, which reads in part as follows:

“* * * or if the electors of the district do not approve the additional levy so submitted, *the district shall not participate in such reserve.*”

It must therefore be held that the converse of this sentence is true, that if the additional levy so submitted is approved, then the district may participate in such reserve, and this would apply to the school year 1920-21, where such approval was had at the general election in November, 1920.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1519.

APPROVAL, BONDS OF DELAWARE COUNTY, OHIO, IN AMOUNT OF
\$8,700 FOR ROAD IMPROVEMENTS.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, August 25, 1920.