

3782.

SCHOOL DISTRICT—VOTE TO PARTICIPATE IN STATE EDUCATIONAL EQUALIZATION FUND AT NOVEMBER ELECTION—SUCH LEVIES LISTED FOR COLLECTION AFTER FEBRUARY SETTLEMENT.

SYLLABUS:

In a school district where the question of participation in the state educational equalization fund, and the making of additional tax levies within the district, so that it may qualify for such participation, was submitted to the electors of the district at the November election in 1931, in accordance with Section 5625-18a, General Code, and a favorable vote was had on the said proposition, the additional levies so authorized shall be extended on the tax list for collection after the February settlement in 1932, and collected at the next tax collection period thereafter.

COLUMBUS, OHIO, November 23, 1931.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“In the school districts in which the electors have voted affirmatively on the proposition required to be submitted to them by Section 5625-18a to 5625-18c inclusive of the General Code, the question has arisen as to whether the taxing authority can make the necessary levy and certify it to the county auditor to be extended on the tax list for collection during the December, 1931, collection of taxes.”

Your inquiry relates to the levying of taxes outside the fifteen mill limitation in school districts that apply for participation in the state educational equalization fund created by Section 7595, General Code. These districts are what are commonly called state aid districts.

In order that a school district may qualify under the law for participation in the state educational equalization fund, it is necessary that the property of the district be taxed locally, at the rates fixed by Section 7595-1, General Code. Since the adoption of amended Section 2, of Article XII of the Constitution of Ohio, effective January 1, 1931, the only way additional taxes may be levied in a school district in which the property can not be taxed within the fifteen mill limitation at the rates fixed by said Section 7595-1, General Code, is by their being authorized outside the fifteen mill limitation, by vote of the electors of the district. The pertinent parts of Section 7595 and of Section 7595-1, General Code, as amended by the 89th General Assembly (Senate Bill No. 337) read as follows:

Sec. 7595. “There shall be a state educational equalization fund for the equalization of educational advantages throughout the state. * * *

The state educational equalization fund shall be administered by the director of education, subject to the restrictions of law.”

Sec. 7595-1. “The board of education of any school district may at any time prior to July 31 of any year apply to the director of education for participation in the state educational equalization fund for the ensuing

school year. Such application shall be in such form as the director of education prescribes. Such application shall not be granted unless the property of the given district is to be taxed for the current year for the current expense of school operation at a rate of at least eight mills, and is to be taxed for the current year for all school purposes at a rate of at least nine and one-half mills, provided that in a school district having a valuation of property for the preceding year of less than twenty-five hundred dollars per child enumerated the preceding year and having a sinking fund, interest and bond retirement levy in excess of three mills, the director of education may authorize the inclusion within the foregoing rate of eight mills of all or any part of the sinking fund, interest and retirement levy in excess of three mills. Provided, however, that no such application shall be refused if the electors of such school district have, voted affirmatively on the proposition required to be submitted to them by sections 5625-18a to 5625-18c, inclusive, of the General Code, and if the board of education in making the application has levied all taxes permitted by law and under such vote of the electors. * * *

Sections 5625-18a, 5625-18b and 5625-18c, as enacted in Senate Bill No. 337 of the 89th General Assembly, read as follows:

Sec. 5625-18a. "If the board of education of any school district shall have applied to the director of education for participation in the state educational equalization fund under the provisions of section 7595-1 of the General Code for the school year 1931-1932, but cannot make tax levies sufficient to meet the requirements of such section, there shall be submitted to the vote of the electors of such district at the November election in the year 1931, the question whether the people of said district shall approve such application and authorize a tax for the current expenses of the school district outside of the fifteen mill limitation for so long a period as said district participates in said fund, the rate of such extra levy to be not greater than the average levy for the current expenses of schools, authorized by vote of the people in all districts throughout the state which do not participate in the state educational equalization fund, but in no event to exceed three mills. The board of elections of the county shall submit the question to the electors of the district in accordance with the provisions of section 5625-17 of the General Code but the form of the ballot shall be as follows:

'Shall the.....school district apply for participation in the state educational equalization fund, and levy a tax outside of the fifteen mill limitation for the current expenses of said school district in an amount equal to the average tax levy voted outside of said limitation for the current expenses of schools by all the school districts in the state of Ohio which do not participate in said fund (but in no event to exceed three mills) for such period as the district may continue to participate in said educational equalization fund.

FOR PARTICIPATION IN STATE EDUCATIONAL EQUALIZATION FUND

AGAINST PARTICIPATION IN STATE EDUCATIONAL EQUALIZATION FUND.'

Sec. 5625-18b. "If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said school district may levy a tax within such school district at such additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution or at any less rate, or for any of said years. The result of the election shall be certified immediately after the canvass by the board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection after the next succeeding February settlement; in all other years it shall be included in the annual tax budget that is certified to the county budget commission."

Sec. 5625-18c. "In any year subsequent to the year 1931, in which any school district which has not voted a levy under section 5625-18a applies to the director of education under the provisions of section 7595-1 for participation in the state educational equalization fund, the same question shall be submitted to the electors of said district at the ensuing November election in the same manner provided in section 5625-18a."

The terms of Sections 5625-18a, 5625-18b and 5625-18c, General Code, are entirely new to the law. Prior to the enactment of these sections and the recent amendment of Section 7595-1, General Code, somewhat similar provisions were made for the making of additional tax levies to permit needy school districts to participate in the state educational equalization fund. Section 7595-1, General Code, prior to its amendment, read precisely as it does now, so far as a school district applying for state aid was concerned, and the same provisions were made therein as to the extent of the tax levies in the district in order to qualify such district for such aid. No reference, of course, was made therein to voting on the proposition required to be submitted by Sections 5625-18a and 5625-18b, as these sections were not then in existence.

A method of voting additional tax levies for current expenses in a school district was formerly provided by Sections 5625-15 and 5625-17, General Code. When necessary for a district to qualify for state aid, resort was had to these sections for the voting of additional levies, and when a district failed to vote additional levies in order to bring its tax levies up to the standard set by Section 7595-1, General Code, to qualify it for state aid, the Director of Education was empowered to order necessary levies made if he found a district to be in need of such aid and its levies were not such as would permit him to extend it. Section 7596-1, General Code.

Sections 5625-15 and 5625-17, General Code, were slightly amended by the 89th General Assembly, but as amended, they still authorize school districts as well as other political subdivisions to submit to a vote the question of making tax levies outside of the fifteen mill limitation, and these sections are still applicable to such school districts as do not apply for state aid, for the purpose of securing additional tax levies.

Section 7596-1, General Code, was not changed by the 89th General Assembly. It is still in force, but its provisions authorizing the Director of Education to order tax levies made in a district when those levies have not been made, to qualify the district for state aid, is no longer enforceable so far as any levies outside of the fifteen mill limitation may be necessary, for the reason that by force of Section 2, of Article XII of the Constitution of Ohio, a

amended, no levies outside the fifteen mill limitation may be made except by favor of a popular vote.

As the law now stands, the method provided for the submission of the question of additional tax levies in a school district that applies for state aid in order to qualify that district for such state aid, in accordance with Section 7595-1, General Code, is that contained in Sections 5625-18a et seq., of the General Code. These sections did not become effective until October 14, 1931—approximately three weeks before the November election in 1931 and nearly five weeks after September 15, 1931, at which time the law provides in Section 5625-17, General Code, reference to which is made in Section 5625-18a, certification of the necessary resolution of the board of education for the submission of the question must be made to the board of elections.

I am informed, however, that many boards of education anticipated the going into effect of the provisions of Sections 5625-18a et seq., of the General Code, before the November election in 1931, and submitted the question at that election, in accordance with said statute, using the form of ballot provided for therein.

It seems to have been the clear intent of the Legislature that this should be done, inasmuch as the statute specifically provides that when application is made by a board of education of a school district for participation in the state educational equalization fund for the school year 1931-1932, but tax levies sufficient to meet the requirements of the law can not be made, the question of additional levies "shall be submitted to the vote of the electors of such district at the November election of 1931."

The districts in question, did not, prior to September 15, 1931, adopt a resolution for the submission of the proposition of an additional tax levy, and certify the same to the board of elections in accordance with the general provisions of Sections 5625-15 to 5625-18. General Code, then in force, but instead adopted their resolutions and certified them to the board of elections, as provided by Section 5625-18a, General Code, although the statute was not then in force.

In view of the manifest intention of the Legislature, as expressed by the language of Section 5625-18a, General Code, and the fact that the question was submitted and voted on in accordance with this section, after it became effective, coupled with the fact that the ballot used clearly and definitely stated the proposition to be voted on, so that the voter could not be said to have been misled, I am of the opinion that where the proposition was submitted in the manner stated and a majority of the electors voting thereon, voted in favor thereof, the taxing authority of the district may levy the tax within the school district at the required rate to permit the district to participate in the state educational equalization fund.

The levy so authorized, however, must be made in accordance with Section 5625-18b, General Code, which provides in clear and unequivocal language that such levy shall be extended on the tax list for collection "after the next February settlement." Clearly, therefore, the levy so authorized can not be collected until the next tax collection period after the February settlement in 1932.

Respectfully,

GILBERT BETTMAN,
Attorney General.