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APPROVAL, BONDS OF BRACEVILLE TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, March 29, 1927.

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

257.

VILLAGE COUNCIL—UNAUTHORIZED TO ENACT ORDINANCE, DURING CURRENT YEAR, PROVIDING FOR ADDITIONAL TAX LEVY FOR CURRENT EXPENSES—COUNTY AUDITOR WITHOUT AUTHORITY TO PLACE SAME UPON VILLAGE TAX DUPLICATE.

SYLLABUS:

A village council is unauthorized to enact an ordinance, during the current year, levying an additional tax for current expenses and the county auditor is without authority to place such additional levy upon the tax duplicate of said village for collection.

COLUMBUS, OHIO, March 30, 1927.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

“The village of Bryan being short of funds with which to operate the police department and the fire department of the village, has passed an ordinance under authority of Section 4227-3 G. C. declaring it an emergency act, and has certified this ordinance to the county auditor, authorizing him to levy a tax upon the village for the current year 1927 payable in the June installment of taxes.

The auditor has received certification of the ordinance, a copy of which is enclosed herewith, and the question is: Has the auditor authority under this section to levy this tax and has the village authority under that section to pass such an ordinance levying such a tax and so certifying it?”

The ordinance submitted is entitled

“An ordinance levying a tax upon the real and personal property listed upon the yearly tax duplicate of the village of Bryan, for the year one thousand nine hundred and twenty-six, for fixing the rate of such tax and for providing for its collection through the office of the county treasurer of Williams county, Ohio.”

The ordinance reads in part as follows:

“Whereas, the village of Bryan received no moneys from general taxa-

tion by levy for its current operating expenses for the year 1927, as its proportion of the revenues derived from taxation of real and personal property listed upon the yearly tax duplicate of the property of the village of Bryan, and that other incomes of the said village are not adequate to provide for fire and police protection and that such fire and police protection is necessary for the immediate preservation of the public peace, property, health and safety in said village, and that the village is prohibited by law from borrowing money with which to provide for the same."

And also, that there exists an emergency imperatively demanding and requiring that said ordinance should take effect and be in force immediately.

The ordinance then provides for a levy upon all of the taxable property, both real and personal, of the village of Bryan as listed for the year 1926 for said purposes, at the rate of eight-tenths of one mill on the dollar.

It is then provided that the tax so levied shall be collected in the June installment of taxes and distributed in the same manner as any other general property tax as provided by law.

The auditor of Williams county, Ohio, is to be mailed a certified copy of the ordinance, and the same shall be his authority for spreading the said tax upon the tax duplicate of said village and providing for its collection as any other general property tax.

It is then provided that this ordinance shall become null and void at twelve o'clock midnight December 31, 1927, and that it shall take effect and be in force from and after its passage, which was the seventh day of March, 1927.

Said ordinance was then certified to the county auditor, and you now inquire as to the authority of council to pass said ordinance and the authority of the county auditor to place said levy upon the tax duplicate.

It is noted in your communication that said emergency ordinance was passed under authority of Section 4227-3, General Code.

Section 4227-3, General Code, provides in part as follows:

"* * * emergency ordinances or measures necessary for the immediate preservation of the public peace, health or safety in such municipal corporation, shall go into immediate effect. Such emergency ordinances or measures must, upon a ye and nay vote, receive the vote of two-thirds of all the members elected to the council or other body corresponding to the council of such municipal corporation, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure. * * *"

It is noted that the section is supplemental to Section 4227, General Code, which provides for the authentication and recording of ordinances and when said ordinances shall take effect.

Section 4227-1 provides that ordinances and measures may be proposed by initiative petition, and the percentum required.

Section 4227-2 provides what ordinances are subject to a referendum and the percentum required on the petitions for referendum.

And Section 4227-3 follows, defining what ordinances are not subject to the referendum and providing for the passage of emergency ordinances.

But it will be noted that in none of these sections is there authority given for levying a tax.

Your communication does not state under what sections of the General Code authority is claimed for the enacting of this legislation and certifying the same to the county auditor to be placed upon the tax duplicate. The ordinance states that said village received no moneys from general taxation by levy for its current operating

expenses for the year 1927. It is therefore presumed that the combined maximum rate in said village was levied.

Section 5649-5e (f), General Code, entitled "Tax levy for general purposes; limitations, Sec. 6," provides as follows:

"The taxing authorities of any municipality may by resolution adopted by a two-thirds vote, levy annually for the general purposes of the municipality in addition to the levy for current expenses within the ten mill limitation prescribed by the General Code on the tax rate, a tax not exceeding three and a half mills upon each dollar of the taxable property of such municipality. Such levy shall be subject only to the limitations imposed by the combined maximum tax rate for all taxes by Section 5649-5b, and shall include any levies heretofore authorized by vote of the electors of the municipality under Sections 5649-5, 5649-5a and 5649-5b, and a sufficient levy under and within the provisions of Section 7908 of the General Code, to produce the amount requested from the budget commission for any municipal university. * * * The additional levy authorized as hereinbefore set forth shall be certified to the budget commission prior to the first Monday in August."

This section provides for an additional tax levy by a municipality by resolution adopted by a two-thirds vote; but it also provides that said levy shall be within the limitations prescribed therein and that said additional levy so authorized shall be certified to the budget commission prior to the first Monday in August.

It is evident that under the provisions of this section said levy authorized by a two-thirds vote of the taxing authorities in a municipality must come within the limitations prescribed in said section, and that it also must be acted upon by the budget commission prior to the first Monday in August, and therefore confers no authority upon a village council to enact legislation for an additional tax levy and have the same certified to the county auditor and placed upon the tax duplicate for collection.

I find no other section or sections of the General Code that would authorize the village council to take the action purported by said ordinance.

It is therefore my opinion that the council of the village of Bryan was unauthorized to enact and pass the ordinance passed by it March 7, 1927, purporting to levy an additional tax of eight-tenths of a mill upon all of the real and personal property in said village.

There was therefore no authority for certifying this ordinance to the county auditor, and said county auditor would be unauthorized to place said levy upon the tax duplicate for collection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

258.

COMMERCIAL CAR—DEFINITION OF—APPLICATION TO SPECIFIC CASE.

SYLLABUS:

1. *The phrase "commercial car" as used in Section 7249-1, General Code, is defined in Section 6290, General Code, and is any motor vehicle having motor power designed and used for carrying merchandise or freight, or for carrying more than seven persons, or used as a commercial tractor.*