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TAXATION—BUDGET COMMISSION—DUTY TO REDUCE AND BRING WITHIN CONSTITUTIONAL TEN MILL LIMITATION WHEN LEVIES OF COMBINED TAXING DISTRICT EXCEED.

SYLLABUS:

When by a combination of taxing districts the minimum levies prescribed by Section 5705.31 (D), Revised Code, exceed the constitutional ten mill limitation, it becomes the duty of the budget commission to reduce these levies proportionately to bring the aggregate of them within the constitutional limitation.

Columbus, Ohio, November 23, 1956

Hon. Anthony J. Bowers, Prosecuting Attorney
Allen County, Lima, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would like your opinion on the taxing rates of Lima City, Elida School District.

“Effective December, 1955, the City of Lima annexed 2.53 acres in American Township, Elida Local School District which is in Section 24 of American Township.

“Under the provisions of A. S. B. 322, amending Section 3711.06, effective September 29, 1955, that part of Elida Local School District within the territory annexed remains as a part of the Elida Local School District and cannot become a part of the Lima City School District without the approval of the State Board of Education.

“Under the provisions of paragraph ‘D’ of Section 5705.31, taxing subdivisions in existence in the years 1929 to 1933, inclusive, and in existence now, are entitled to a minimum levy within the 10 mill limitation for current expenses and debt service, which shall equal two-thirds of the average levy for current expenses and debt services allotted to the taxing subdivision within the 15 mill limitation during the last 5 years the 15 mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate.

“The rate for Allen County is 2.40, Elida Local School District, 4.30 and Lima City, 3.90. If the average minimum levies for the county and the school district, for the period 1929 to 1933, inclusive, are added to the average minimum levy of the City of Lima, the total would make 10.60 of unvoted levies which must be reduced to 10 mills. Under the constitutional and statutory provisions of the state, the total of unvoted levies cannot exceed 1% or 10 mills on each dollar of assessed valuation.

“Therefore, I would like to have your opinion in this particular matter where a combination of the districts will increase an unvoted levy from 10 mills to 10.60 mills. How should these rates be adjusted to fall within the 10 mill limitation.

“In the event that your opinion would be that as the City of Lima is annexing this territory the City of Lima’s rate would have to be reduced the .60 mills, could it be possible that the City of Lima’s rate for this particular area annexed could be 3.30 and the rest of the City could be 3.90?”

Section 5705.31, Revised Code, reads in pertinent part as follows:

“ * * * * * * * * *

“The commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve the following levies without modification:

“ * * * * * * * * *

“(D) A minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing

unit which shall equal two thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years said fifteen-mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate. If the levies required in divisions (B) and (C) of this section for said division or taxing unit equal or exceed the entire minimum levy of said subdivision as fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the commission to provide for said levies and an operating levy for said subdivision. Such additional levy shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but the operating levy for a school district shall not be reduced below a figure equivalent to forty-five per cent of the millage available within the ten-mill limitation after all the levies in divisions (B) and (C) of this section have been provided for;

“(F) Divisions (A), (B), (C), (D), and (E) are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions.

Section 5705.02, Revised Code, reads:

“The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the ‘ten-mill limitation,’ and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.”

Section 2, Article XII, Ohio Constitution, reads in part:

“No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value. * * *”

Obviously the minimum levies prescribed by Section 5705.31 (D), Revised Code, cannot exceed the constitutional ten-mill limitation. A

search of the Code does not reveal any express provision for the method of reduction of the minimum levies if and when they exceed the ten-mill limitation. It is apparent, however, that the budget commission cannot approve a levy irrespective of whether constitutional provisions are being violated.

Therefore, if, upon a combination of districts, the minimum levies exceed the ten-mill limitation, these levies will have to be decreased in some manner to come within the ten-mill limitation.

In *State, ex rel. Board of Education, v. Columbiana County Budget Comm.*, 140 Ohio St., 65, the court held that the provisions of Section 5625-23 (d), General Code, now Section 5705.31, Revised Code, in approving minimum levies is directory, not mandatory. This section was amended in 1943 to read as shown in Section 5705.31 (F), Revised Code, taking away the discretion recognized by the court in the *Columbiana case, supra*.

However, in the instant case the levies are not properly authorized since they will exceed the ten-mill limitation and therefore the budget commission cannot comply with the mandatory provisions of Section 5705.31 (F), Revised Code.

As to your suggestion that the entire reduction be made in the "mandated rate" of the City of Lima, it is my opinion that the legislature had no intention that one taxing district, such as the annexing city, suffer the entire loss occasioned by the levies exceeding the ten-mill limitation, for by the provision for reduction of such levies in Section 5705.31 (D), Revised Code, if the levies required by divisions (B) and (C) exceed the minimum levy of a subdivision, the minimum levies of other taxing units shall be reduced by the commission to provide said levies and an operating levy for the subdivision.

Section 5649-3c, General Code, 108 Ohio Laws, Pt. 2, 1305, fore-runner of Section 5703.31, Revised Code, read in part as follows:

"The auditor shall lay before the budget commissioners the annual budgets submitted to him by the boards and officers named in section 5649-3a of this act, together with an estimate to be prepared by the auditor of the amount of money to be raised for state purposes in each taxing district in the county, and such other information as the budget commissioners may request, or the tax commission of Ohio may prescribe. The budget commissioners shall examine such budgets and estimates

prepared by the county auditor, and ascertain the total amount proposed to be raised in each taxing district for state, county, township, city, village, school district, or other taxing district purposes. If the budget commissioners find that the total amount of taxes to be raised therein does not exceed the amount authorized to be raised in any township, city, village, school district, or other taxing district in the county, the fact shall be certified to the county auditor. If such total is found to exceed such authorized amount in any township, city, village, school district, or other taxing district in the county, the budget commissioners shall adjust the various amounts to be raised so that the total amount thereof shall not exceed in any taxing district the sum authorized to be levied therein. In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all the items in any such budget, but shall not increase the total of any such budget, or any item therein. The budget commissioners shall reduce the estimates contained in any or all such budgets by such amount or amounts as will bring the total for each township, city, village, school district, or other taxing district, within the limits provided by law; but if the aggregate of the items of any school district budget for purposes for which taxes subject to the limitations imposed by section 5649-3a of the General Code are to be levied would require a total levy, subject to such limitations of two mills in such districts in which all the limitations imposed by such section are operative, or of two and two-tenths mills in such districts in any part of which the township limitation therein imposed is not operative, the budget commissioners shall not reduce such items of such school district budget below an amount which would be produced by a levy in the whole district at the greater of the two rates mentioned in this section.

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The previous statute bears out the proposition that in the past there was no intention that any one taxing subdivision bear the entire loss occasioned by the mandated levies exceeding the ten-mill limitation.

In the case of State, ex rel. City of Dayton, v. Patterson, 93 Ohio St., 25, the petitioners claimed it was the duty of the budget commission to reduce the amount to be raised in proportion to the various estimates when the amounts to be raised exceeded the ten-mill limitation. Judge Newman in his opinion at pages 34 and 35 made the following observation:

“ * * * As we have seen, the budget commissioners, when they examine the budgets, have before them a full and detailed statement of the financial condition of each taxing authority in the taxing district and the data upon which the needs and re-

quirements of the taxing officers and boards are based. In the case at bar they deemed it advisable from the information at hand to reduce the estimate of the City of Dayton for corporation purposes and to leave undisturbed the estimate of the board of education. They had authority to do this. One of the purposes in having the estimates of the amount of money needed submitted in itemized form and in requiring a submission of the facts and information provided for in Section 5649-3a, is to provide a basis of calculation in the event it becomes necessary to adjust and reduce the amounts. * * *

In the Dayton case it is clear that the budget commission was acting within the limits of a clearly defined statutory discretion. No such discretion is involved in the case at hand. Rather the commission is confronted with two wholly irreconcilable mandates, one statutory, the other constitutional. Obviously the latter must prevail over the former, and the aggregate of the mandated levies reduced to constitutional limits.

How is this to be done as among the three taxing units? Quite clearly this is a situation and a problem which simply was not envisioned by the legislature and for which that agency made no provision. Such being the case it becomes necessary to apply the rule that effect being given the statute so far as that can be done within constitutional limitations. Here we must note that the statutory mandate is of equal force with respect to each of the three taxing units concerned. The mandate must be made effective as to each so far as possible without in any way preferring one over either of the other two. This can only be done, in my opinion, by requiring each to bear its proportionate share of the necessary reduction in rate, such proportion to be derived, of course, from the rate which each taxing unit would theoretically receive under the statutory formula.

You further request information as to whether the city of Lima's rate for the particular area annexed could be 3.30 and the rest of the city could be 3.90.

Section 2 of Article XII of the Ohio Constitution reads in part:

“* * * Land and improvements thereon shall be taxed by uniform rule according to value. * * *”

A tax levy is uniform in operation only if uniformly laid within the taxing district. Therefore, the city of Lima's rate could only be uniform when it was the same for the entire city and cannot be levied at 3.90 for part of the city and 3.30 for the remainder. *State, ex rel. Donahey, v.*

Edmondson, 89 Ohio St., 93, 114; Miller v. Korn, Auditor, et al., 107 Ohio St., 287, 295, 296.

In specific answer to your inquiry, it is my opinion and you are so advised that when by a combination of taxing districts the minimum levies prescribed by Section 5705.31 (D), Revised Code, exceed the constitutional ten-mill limitation, it becomes the duty of the budget commission to reduce these levies proportionately to bring the aggregate of them within the constitutional limitation.

Respectfully,

C. WILLIAM O'NEILL
Attorney General