

3484.

TOWNSHIP TRUSTEES—MAY LEVY A DITCH TAX TO PAY COST OF
CONSTRUCTION OF TOWNSHIP DITCH.

SYLLABUS:

Township trustees may levy a ditch tax for the purpose of paying in the first instance the cost of the location and construction of a township ditch.

COLUMBUS, OHIO, June 28, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication as follows:

Sections 6603 to 6607, inclusive, of the General Code, provide for the establishment of ditches by township trustees.

Question 1. May the township trustees levy a ditch tax for the purpose of paying in the first instance the cost of the location and construction of a ditch? If not, how can the preliminary costs be provided for?

Section 6603 of the General Code is a part of chapter 5 of House Bill No. 569, found in 110 Ohio Laws, page 161-199. This section provides as follows:

“A petition for the improvement of a ditch or drain which is located wholly within a township, which does not pass into or through a municipality, which has an outlet within the township in a public watercourse, which does not benefit or damage land outside of the township, and which has not theretofore been located as a county ditch, may be filed with the clerk of such township instead of with the auditor of the county as provided in chapter one of this title. If such petition is filed with the clerk of the township, the clerk of the township shall at his office, do all things required to be done by the auditor, and the board of trustees of the township shall at their usual place of meeting do all things required to be done by the board of county commissioners in drainage improvements as is provided in chapter one of this title. The proceedings for such improvement shall be had pursuant to the provisions of chapter one of this title, and shall be governed by all the provisions of chapter one of this title, except as modified in this chapter.”

Chapter five of the Ditch Code, relating to township ditches is very brief, containing only five sections, none of which refer to a levy of tax by the township trustees for the purpose of paying the initial cost of the construction of a township ditch.

Section 6603 quoted above, in part provides:

“* * * the board of trustees of the township shall at their usual place of meeting do all things required to be done by the board of county commissioners in drainage improvements as is provided in chapter one of this title.”

Section 6492 of the General Code, found in 110 Ohio Laws, 161-189, which is a part of chapter one and relates to single county ditches, provides as follows:

"The commissioners of each county shall provide and establish a fund, to be known as the general ditch improvement fund, which shall be used as a sinking fund for all bonds issued under the provisions of this chapter. Said fund shall consist of all funds in any ditch fund at the time this act takes effect, that are not then specifically appropriated, of any taxes then or thereafter levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of, the proceeds of all bonds issued and sold under this chapter, the collections from all special assessments for benefits to property, as provided in this chapter, and such other funds as by law are or may be provided to be paid therein."

Section 6493 of the General Code, found in 110 Ohio Laws, 161-189, relating to payments from the ditch fund, in part provides as follows:

"From the general ditch improvement fund, except as otherwise provided by law, all costs and expenses of improvements under this chapter shall be paid, including contract prices of construction and the costs of locating the improvement. No warrants shall be drawn, to be paid from such fund, unless it contains a sufficient amount not otherwise specifically appropriated to pay the same."

Section 6494 of the General Code, found in 110 Ohio Laws, 161-190, provides:

"The county commissioners, if necessary, annually, at their March session, shall levy upon the grand duplicate of the county a tax not to exceed five-tenths of one mill on the dollar, sufficient to pay for the location and construction of such portions of the respective improvements located by them, which tax, when collected, shall be credited to the general ditch improvement fund."

Section 6495 of the General Code, found in 110 Ohio Laws, 161-190, provides as follows:

"The trustees of a township to which is apportioned by the commissioners a portion of the expenses of the construction of an improvement, shall levy annually upon the grand duplicate of the township, a tax sufficient to pay said apportionment, but not to exceed five-tenths of one mill on a dollar, and certify this to the auditor, on or before the fifteenth day of May in each year, until all installments are provided for."

The latter section would seem to limit the levy to the purpose of paying the township's portion of the expenses of the construction of an improvement by the county commissioners.

Nowhere can be found a section specifically authorizing the township trustees to levy a tax to pay for the initial expenses of locating and constructing a township ditch. However, we are unable to see how the township trustees could ever proceed under the authority given them to locate and construct a township ditch unless there was some means of raising money to pay for such cost of locating and constructing of the ditch.

Section 6603 of the General Code, *supra*, it is believed can be construed in connection with the other sections of the Ditch Law as authorizing the township trustees to levy a tax for the purpose of a general ditch fund to be used in paying the cost in locating and constructing a ditch.

Certainly the fact that the township trustees are authorized to locate and construct township ditches would carry the authority to levy a tax to pay the initial cost of such location and construction.

In the opinion of Judge Thurman, in *Cass vs. Dillon*, 2 Ohio St. 607, which is quoted in *Youngstown vs. National Bank*, 106 Ohio St. at page 574, we find the following:

"The constitution did not create the municipalities of the state, nor does it attempt to enumerate their powers. It recognizes them as things already in being, with powers that will continue to exist, so far as they are consistent with the organic law, until modified or repealed. Thus there is no express provision that a county may make a road or contract a debt, yet no one will doubt for a moment that it may do both. Indeed, its power to contract debt is recognized, beyond even the authority conferred by law. It is clearly assumed in section 5 of article VIII, that it may create debts to repel invasion, suppress insurrection, or defend the state in war, although no such power has ever been conferred by statute, so far as I can discover. If it can thus incur debts, it may, of course, levy taxes to pay them; notwithstanding its only express grant of the taxing power is, by section 7, article X, for 'police purposes.' The same thing may be said of townships, cities, towns and villages."

It is, therefore, my opinion that township trustees may levy a ditch tax for the purpose of paying in the first instance the cost of the location and construction of a township ditch.

Respectfully,
C. C. CRABBE,
Attorney General.

3485.

APPROVAL, SYNOPSIS TO AMENDMENT OF AN INITIATIVE
PETITION.

COLUMBUS, OHIO, June 29, 1926.

HON. C. L. KNIGHT, *The Beacon Journal, Akron, Ohio.*

DEAR SIR:—You have submitted to me under date of June 28, 1926, for my certificate under section 5175-29e of the General Code, a synopsis to be embodied in an initiative opinion, said synopsis being in the words and figures as follows:

"SYNOPSIS

By this amendment it is proposed to give to the General Assembly the right to provide by law for the nomination of all elective officers, but it preserves the right to nominate by petition, and if nominations are made by conventions, the delegates to the convention shall be chosen by the direct vote of the electors.

The delegates to the national conventions of political parties shall be chosen as now provided by the constitution."