

1. TAX—TOWNSHIP TRUSTEES NOT AUTHORIZED TO LEVY TAXES OUTSIDE OF TEN MILL LIMITATION ON ALL TAXABLE PROPERTY IN TOWNSHIP—PURPOSE TO PROVIDE PROTECTION AGAINST FIRE, PROVIDE AND MAINTAIN FIRE APPARATUS, APPLIANCES, BUILDINGS AND SITES THEREFOR FOR USE OF VOLUNTEER FIRE COMPANIES.
2. TOWNSHIP TRUSTEES—RESOLUTION—MAY SUBMIT TO VOTERS OF TOWNSHIP OR A FIRE DISTRICT THE QUESTION OF TAXATION BEYOND TEN MILL LIMITATION—PURPOSE, TO MAINTAIN FIRE APPARATUS AND APPLIANCES, BUILDINGS AND SITES THEREFOR, USE, VOLUNTEER FIRE FIGHTING COMPANY—AMOUNT MAY NOT EXCEED \$20,000.00—SECTION 5625-15 G. C.

SYLLABUS:

1. Township trustees are not authorized to levy taxes outside the ten mill limitation on all the taxable property in the township for the purpose of providing protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies.

2. Township trustees may, by a resolution in conformity with the provisions of Section 5625-15 of the General Code, submit to the voters of the township or a fire district the question of taxation beyond the ten mill limitation to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of a volunteer fire fighting company, but in no event to exceed \$20,000.

Columbus, Ohio, August 4, 1949

Hon. Leon C. McCarty, Prosecuting Attorney  
Morrow County, Mt. Gilead, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“According to Section 3298-55 of the General Code, which reads:

‘The Trustees of a Township are authorized to levy in any year or years a sufficient tax upon all the taxable property in the Township to provide protection against fire and to provide and maintain fire apparatus and appliances and

buildings and sites therefor for the use of volunteer fire companies.'

"The question which has arisen is as follows: Can the Township Trustees levy such a tax outside the ten mill limitation?"

Section 3298-55, General Code, partially quoted in your letter, reads in full as follows:

"The trustees of a township are authorized to levy in any year or years a sufficient tax upon all taxable property in the township or in a fire district, or districts, to provide protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor and sources of water supply and materials therefor, and the establishment and maintenance of lines of fire alarm telegraph and the payment of permanent, part-time or volunteer fire fighting companies to operate same."

Article XII, Section 2 of the Constitution of the State of Ohio, reads in part as follows:

"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 of 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. \* \* \* "

Section 5625-2 of the General Code reads as follows:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed ten mills of each dollar of tax valuation of such subdivision or other taxing unit, except 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 this chapter, or elsewhere in the General Code, it shall be construed to refer to, and include both the limitation imposed by this section and the limitation imposed by article XII, section 2 of the constitution."

The second branch of the syllabus in Opinion No. 4210, Opinions of the Attorney General for 1932, Vol. I, page 475, reads as follows:

"Under no circumstances may taxes be levied within a taxing district at a rate outside the limitations fixed thereon by Article XII, Section 2 of the Constitution of Ohio, unless authorization is had therefor by a vote of the people, in accordance with law."

I am fully aware that Section 2 of Article XII of the Constitution has been amended since the above cited opinion was rendered, but this amendment, adopted November 7, 1933, merely reduced the maximum tax levy without vote of the electors from one and one-half per cent to one per cent. Since 1933, this section has been unchanged and I, therefore, affirm the rule laid down by the then Attorney General as above set forth.

I wish to point out, however, that Section 5625-15, General Code, authorizes the township trustees, where the amount of taxes which may be raised within the ten mill limitation is insufficient to provide an adequate amount for the necessary requirements of the subdivision, to pass a resolution by a vote of two-thirds of all the members of their board declaring it a necessity to levy a tax in excess of the ten mill limitation. On the basis of such resolution, the township trustees may then proceed as provided for in Section 5625-17 of the General Code and submit the proposal to the electors of the township or proper fire district for their approval or disapproval of taxation beyond the ten mill limitation, keeping, however, in mind that in no event can the amount to be raised to provide for fire apparatus, appliances, buildings or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer fire fighting companies to operate the same exceed an amount of \$20,000. See Section 3298-56 of the General Code, which reads as follows:

“No bonds shall be issued by township trustees for the purpose of providing fire apparatus, appliances, buildings or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer fire fighting companies to operate the same unless approved by vote of the people in a township, a fire district or districts in the manner provided by law; and in no event in an amount exceeding \$20,000.00.”

Therefore, in specific answer to your question, I am of the opinion that township trustees are not authorized to levy taxes outside the ten mill limitation on all the taxable property in the township for the purpose of providing protection against fire and to provide and maintain fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.