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## CEMETERY:

1. ELECTORS, VOTERS, WHO RESIDE INSIDE CORPORATE LIMITS OF VILLAGE—SHOULD BE PERMITTED TO VOTE ON QUESTION OF TAX LEVY FOR UPKEEP OF CEMETERIES—COOLVILLE, TROY TOWNSHIP, ATHENS COUNTY.
2. PROPERTY LOCATED WITHIN CORPORATE LIMITS OF VILLAGE SHOULD BE TAXED IN SAME MANNER AS OTHER PROPERTY IN TOWNSHIP LOCATED OUTSIDE VILLAGE.
3. RESOLUTION BY TOWNSHIP TRUSTEES—NECESSARY TO SUBMIT QUESTION TO VOTE BY ELECTORS OF TOWNSHIP.

## SYLLABUS:

1. The electors (voters) residing inside the corporate limits of Coolville should be permitted to vote on the question of a tax levy for the upkeep of the cemeteries located within Troy Township.
2. The property located within the corporate limits of the village of Coolville should be taxed in the same manner as other property in Troy Township located outside the village of Coolville.
3. A resolution by the trustees of Troy Township in conformity with Section 5625-15, General Code, is all that is necessary to submit the question to a vote by the electors of Troy Township.

Columbus, Ohio, October 11, 1949

Hon. Gordon B. Gray, Prosecuting Attorney  
Athens County, Athens, Ohio

Dear Sir:

I have before me your request for my opinion which request reads as follows:

“Troy Township, Athens County, Ohio, desires to vote on a tax levy for the purpose of upkeep of their various cemeteries which are all located outside the boundary of the Village of Coolville which is located in Troy Township.

I have been asked to secure an opinion from you whether the voters residing inside the corporation limits of the Village of Coolville will be permitted to vote on this question and whether their property would be taxed for the upkeep of the cemeteries.

I have also been asked the further question whether the trustees of Troy Township and the members of the village council are both required to vote for the submission of this issue to the electors or would only a resolution by the Troy Township Trustees be sufficient.

It is desired to submit this question to the electors at the next general election. Hence we would appreciate an answer before the filing date for the submission of this question."

You have further advised me that the tax which Troy Township desires to levy will be in excess of the taxing limitation imposed by Article XII, Section 2 of the Ohio Constitution and Section 5625-2 of the General Code.

Since the tax will be in excess of the taxing limitation, I must first decide the proper procedure for the levying of a tax under such circumstances.

Article XII, Section 2 of the Ohio Constitution reads 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 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. \* \* \*"

Section 5625-2, 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."

However, the General Code of Ohio provides a method whereby an amount in excess of the ten mill limitation may be levied. Section 5625-15, General Code, provides, among other things:

“The taxing authority of any subdivision at any time prior to September 15, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

1. Current expenses of the subdivision.

\* \* \* Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness. \* \* \*

Further, Section 5625-17, General Code, provides the procedural method of placing such tax levies on the ballot and Section 5625-18 provides for the requirements as to the percent of electors needed to pass the proposed levy. Section 5625-18, General Code, reads:

“If a majority of the electors voting on a levy for the current expenses of schools or of municipal universities or sixty-five per centum of the electors voting upon a levy for any other purpose, at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the ten mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution; provided, further, that if such levy is for the payment of charges on debts incurred prior to January 1, 1935, outside of the ten mill limitation but within the fifteen mill limitation the taxing authority of said subdivision shall levy outside of the ten mill limitation such tax if a majority of the electors voting on the levy vote in favor thereof.”

It is my opinion that the tax desired to be levied by Troy Township is a tax for “current expenses” as that phrase is used in Section 5625-15, supra. The phrase “current expenses” is defined in Section 5625-1, General Code, in the following manner:

“The following definitions shall be applied to the terms used in this act: \* \* \*

(f) 'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision. \* \* \*

From the above definition it is clear to me that a tax levied by a township for the *upkeep* of its cemeteries is a tax for "current expenses" within the meaning of Section 5625-1, supra. Therefore, assuming that the procedural methods of placing the proposed levy on the ballot as provided for in Sections 5625-15 and 5625-18, General Code, are complied with, a tax in excess of the taxing limitation may be placed on the ballot by the trustees of Troy Township.

Having decided that the proposed tax may be placed on the ballot, two questions remain to be answered. First, is the property located within the corporate limits of the village of Coolville, which village is located entirely within the limits of Troy Township, subject to a tax levied by Troy Township, and, second, may the electors of the village of Coolville vote on the proposed levy?

In answer to the first question I refer you to the Opinion No. 198, Opinions of the Attorney General for 1939, in which the then Attorney General makes the following statements at page 251:

"The question as to whether a township can levy a tax on all of the taxable property located in the township, including the property in a village lying within the township, has been passed upon by a former Attorney General. In Vol. I of the Opinions of the Attorney General for the year 1924, at page 82, the first proposition of the syllabus reads as follows:

'A levy of a tax "on all the taxable property of a township" includes the property of a village within such township unless the property of the village is expressly excepted by statute from such levy.'

"In the opinion above mentioned at page 83, the then Attorney General said:

"All the taxable property in the township" includes the taxable property of a village in the township. The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or for tax-

ing purposes. Village electors vote for township officers and are often elected as such officers. In *State, ex rel. v. Ward*, 17 O. S. 543, the opinion says:

“The statutes nowhere provide, either expressly or by just implication, that on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken, but there are clear indications of a contrary legislative intent.”

“It will be noted, therefore, that it is the general rule that a township can levy a tax on all of the taxable property located in the township, including the property in a village or city located within the township, unless an exception is found in the statute providing for the tax. In the present situation, Section 4647-4, *supra*, provides that the tax shall be levied upon ‘each dollar of the taxable property in such \* \* \* township’. No exception is made exempting the property of a village or city which may be located within the township.”

Further, in Opinion No. 7038, Opinions of the Attorney General for 1944, the then Attorney General had before him a question in which two municipal corporations occupied the entire area of a township and it was contended that the township had been destroyed. The Attorney General, at page 409 of the opinion, had this to say:

“\* \* \* Accordingly, it seems clear to me that the existence of Conneaut Township has been in no wise affected, and the entire township, including the city of Conneaut and the Village of Lakeville, is still subject to control as a township by the officers who are provided by law for all townships of the state. The city of Conneaut after its incorporation continued to be a part of the township and the Village of Lakeville after its incorporation also continues to be a part of the township. Taxes which have heretofore been levied by the township authorities on property covered by the city of Conneaut and the Village of Lakeville together with taxes hereafter levied by the township authorities, are to be collected and disposed of as provided by law. \* \* \*”

From the above discussion, it is clear to me that the incorporation of a village within a township does not operate to remove the lands within the village from the jurisdiction of the township unless the corporate limits of a city or village become identical with those of a township. See Section 3512 of the General Code.

From the above statements it is clear that *all* the property located within Troy Township is subject to a tax levied by Troy Township.

In answer to your second question as to whether the voters of Coolville are entitled to vote on the proposed tax levy for the upkeep of cemeteries located in Troy Township but outside the corporate limits of Coolville, note that Section 5625-15, *supra*, at the outset states:

“The taxing authority of any subdivision \* \* \* may declare \* \* \* that it is necessary to levy a tax in excess of such (ten mill) limitation \* \* \*”.

As used in Section 5625-15 of the General Code, the word “subdivision” is defined in Section 5625-1, General Code, which definition reads:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation, township, township fire district or township waste disposal district in the state.”

Under the above definition a township is included in the statutory definition of “subdivision.” Therefore a township may declare that it is necessary to levy a tax in excess of the ten mill limitation. A careful search of the Ohio General Code fails to reveal any provision which provides that if a village is incorporated within a township the electors of said village lose their status as electors of the township in matters which are of interest to persons residing in such township. In *State ex rel. Halsey et al. v. Ward et al.*, 17 O. S. 543, the Ohio Supreme Court considered the question of whether or not electors residing within the corporate limits of a city which corporate limits were within a township lost their status as electors of the township in regard to voting for township offices. The court states the following at page 547 of the opinion:

“\* \* \* in the offices of township trustees, clerk, treasurer, justices of the peace, and constables, the electors and taxpayers of the city have, in some or in all respects, a like interest with electors outside the city limits, and are entitled to vote in the choice of them.”

Thus, the test established by the Ohio Supreme Court as to the right of electors of a municipal corporation, which corporation is located within a township, to vote for township officers is whether such electors have “in some or in all respects, a like interest with electors outside the city limits.” It is my opinion that the same test may be applied to the right

of electors of a municipal corporation, which corporation is within the limits of a township, to vote for tax levies. Clearly the electors of Coolville in our present situation do have an interest which in some or all respects is a like interest with electors outside the city limits. In answering your first question I have already decided that the property located within the corporate limits of Coolville should be subject to the proposed tax levy. Certainly the owners of such property who are also electors of Coolville have an interest in such tax. Further, Section 3448, General Code, provides :

“Upon application the township trustees shall sell at a reasonable price such number of lots as the public wants demand for burial purposes. Upon complying with the terms of sale, purchasers of lots shall be entitled to receive a deed or deeds therefor which the trustees shall execute, and which shall be recorded by the township clerk in a book for that purpose, the expense of recording to be paid by the person receiving the deed. Upon the application of a head of a family living in the township, the trustees shall make and deliver to such applicant a deed for a suitable lot for the burial of his or her family without charge, if in the opinion of the trustees, by reason of the circumstances of such family, payment therefor would be oppressive.”

Certainly in view of the Ward case, *supra*, the phrase contained in Section 3448, *supra*, which reads, “Upon the application of a head of a family living in the township” includes *all* families living within the township whether within or without the corporate limits of Coolville.

Therefore, in answer to your request, I am of the opinion that the electors (voters) residing inside the corporate limits of Coolville should be permitted to vote on the question of a tax levy for the upkeep of the cemeteries located within Troy Township. Further, that the property located within the corporate limits of the village of Coolville should be taxed in the same manner as other property in Troy Township located outside the village of Coolville and finally, that a resolution by the trustees of Troy Township in conformity with Section 5625-15, General Code, is all that is necessary to submit the question to a vote by the electors of Troy Township.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.