

3902.

APPROVAL, LEASE TO TRACT OF LAND KNOWN AS WELLSTON LAKE ALMA, IN JACKSON AND VINTON COUNTIES, FOR USE AS A PUBLIC STATE PARK.

COLUMBUS, OHIO, December 30, 1931.

HON. WILLIAM H. REINHART, *Commissioner of Conservation, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an instrument, executed in triplicate, whereby the city of Wellston, Ohio, for a period of ninety-nine years, renewable forever, leases to the state of Ohio a two hundred and thirty-one acre tract of land in Jackson and Vinton Counties, state of Ohio, known as Wellston Lake Alma, for the purpose of establishing and maintaining thereon a public state park.

After examination of the lease and the documents which show the manner in which it was executed, I am of the opinion that the city of Wellston had the power and took the proper steps to make this lease under sections 3698 and 3699, General Code; that the conservation council, under section 472, General Code, had the power and took the proper steps to lease this land for a public state park; and that the instrument is executed in proper legal form. In accordance with section 472, General Code, I have therefore attached my signature to this lease as signification of my approval of its legality.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3903.

TAX LEVY—ALL PUBLIC LIBRARIES UNDER AMENDED SENATE BILL NO. 323 RECEIVE AN AMOUNT EQUIVALENT TO THE TAX LEVIED FOR SUCH PURPOSES IN YEAR 1930.

SYLLABUS:

By virtue of the provisions appearing in Section 6 of Am. S. B. 323: "To each board of public library trustees the amount of taxes levied for library purposes in the year 1930", each public library whether a municipal public library, a county public library, a township public library, a county library, a district public library or a school district public library is to receive from the distribution of taxes levied by Am. S. B. 323 an amount equivalent to the tax levied for such purpose for the tax year 1930.

COLUMBUS, OHIO, December 30, 1931.

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

GENTLEMEN:—Your recent request reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Paragraph 4 of Section 6 of Senate Bill No. 323, passed at the

recent session of the Legislature, provides for the distribution of taxes levied by Section 5638 G. C., to each board of Public Library Trustees the amount of taxes levied for library purposes in the year 1930.

Question No. 1: Does this provision apply to municipal libraries or are such libraries to participate in such taxes under the provisions of the second paragraph of said section only?

Question No. 2: Does this provision apply to county libraries and county library districts or are such libraries to participate in the Motor Vehicles Taxes under the provisions of Paragraph 1 of Section 4 of Senate Bill No. 328 only?

Question No. 3: Does this provision apply to township Public Libraries or are such libraries to participate in the Motor Vehicles License taxes under the provisions of paragraph 1 of Section 4, Senate Bill No. 328 only?"

Section 6, of Amended Senate Bill No. 323, in so far as material to the question raised by your request, reads as follows:

"The proceeds of the taxes levied by section 5638 of the General Code shall be distributed in the years 1932 and 1933 as follows:

To the state of Ohio one per centum thereof, which, when paid into the state treasury in the manner provided by law, shall constitute a fund for the use of the tax commission of Ohio in putting into effect and administering the system for the assessment of tangible and intangible personal property created by this act and shall not be used or appropriated for any other purpose.

To each municipal corporation and school district or part thereof and park district organized under section 2976-1 and succeeding sections of the General Code (hereinafter called 'park district'), or part thereof, and to sanitary districts levying taxes under the provisions of section 6602-87 of the General Code (hereinafter called 'sanitary district'), in the county, an amount equal to the proceeds of a tax at the aggregate rate levied for all the purposes of such municipal corporation (including levies for municipal universities and other municipal institutions), school district, sanitary district or park district in the year 1930 upon the motor vehicles, household goods and furnishings, pianos and musical instruments, moneys, credits, investments in stocks, bonds, joint stock companies or otherwise, and shares of bank stock or capital employed in banking, as listed and assessed for taxation in such municipal corporation or school district or part thereof, or any such park district, on the duplicate of taxable property in the county for the year 1930.

In addition thereto there shall be apportioned to each such municipal corporation and school district or part thereof, and to each park district and sanitary district, in and to which any public utility property used in operation was apportioned on the tax list and duplicate for the year 1930 a sum equal to the amount of taxes that would be produced by applying the rate for the year 1930 as herein provided, to three and four-tenths per centum of the amount of such apportionment of public utility property.

To each board of public library trustees the amount of taxes levied

for library purposes in the year 1930; to each township park district the amount of taxes levied by the board of park commissioners for park purposes in the year 1930, whether under authority of section 3432 of the General Code or under authority of section 3427-3 of the General Code."

Section 4, of Amended Senate Bill No. 328, referred to in your request, in so far as is material, reads:

"In the years 1932 and 1933 the moneys received into the treasury of a county under paragraphs 2 and 3 of section 6309-2 of the General Code as amended by this act shall, anything in said section to the contrary notwithstanding, be distributed and applied as follows:

1. There shall be distributed and paid into each of the several funds of the county, including funds created by county levies for public library purposes and by county library district levies, excepting as hereinafter provided, and into each of the several funds of each township therein, an amount which would have been produced by the rate or rates of taxation levied for the purpose of such county and township funds in the year 1930, upon the following kinds and classes of personal property as listed and assessed for taxation in said year in the county and township, to-wit: motor vehicles, household goods and furnishings, pianos and musical instruments, moneys, credits, investments in stocks, bonds, joint stock companies or otherwise, and shares of bank stock or capital employed in banking; but in making such distribution and in ascertaining such tax rates for the year 1930, such portion or percentage of any tax levied for the construction, reconstruction, resurfacing, maintaining and repair of county roads and bridges outside of the fifteen mill limitation and not anticipated by the interest, sinking fund or retirement requirements of bonds issued under section 6929 of the General Code, shall be disregarded, nor shall any distribution or payment be made to such portion of such fund."

From a casual reading of these two sections there are apparent inconsistencies in their provisions. Thus: Is it the intention of the legislature that municipal corporations shall receive for all purposes the amount of taxes they lost by reason of the removal of personal property from the duplicate through the enactment of Amended Senate Bill 323 and taxing it as provided in said act, and in addition thereto its assessment for library purposes in full by reason of the phrase, "To each board of library trustees the amount of taxes levied for library purposes in the year 1930?" Are county libraries to receive by reason of such phrase appearing in Section 6, of Amended Senate Bill 323, the full amount of the taxes which they received during the year 1930 and in addition thereto, another dividend from the tax provided by Amended Senate Bill 328?

The Supreme Court of Ohio has adopted a rule of statutory construction which should be considered in construing these acts. Said rule appears in the first branch of the syllabus of *Moore v. Given*, 39 O. S., 661:

"It is the duty of courts in the interpretation of statutes, unless restrained by the letter, to adopt that view which will avoid absurd conse-

quences, injustice or great inconvenience, as none of these can be presumed to have been within the legislative intent."

The argument is further advanced that the language appearing in Section 6 of Amended Senate Bill 323 differs from that appearing in several drafts of the bill that were discussed by the legislature, but as stated by Chief Justice Marshall, in *Stanton v. Realty Company*, 117 O. S., 345, at page 349:

"It is a general rule of interpretation of statutes that the intention of the Legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

And, as stated by Judge Johnson, in *Elmwood Place v. Schanzle*, 91 O. S., 354, at 357:

"It is equally well settled that where the words of a statute are plain, explicit and unequivocal and express clearly and distinctly the sense of the law-making body, there is no occasion to resort to other means of interpretation. In such a situation the question is not, what did the general assembly intend to enact, but what is the meaning of that which it did enact?"

We might further call attention to the language of Judge Newman, in the case of *In re Hesse*, 93 O. S., 230, at page 234:

"It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation."

In order to determine the questions raised in your request in view of the apparent conflicts and inconsistencies in these sections, it might be well to summarize the statutes by which the various library boards are created and by which they exist.

Sections 7631 to 7640-1, General Code, authorize the creation of school district libraries and provide for their management and control by creating a board of trustees. Section 7640, General Code, provides that the funds derived from taxes levied for the support and maintenance of such type of libraries shall be paid over by the county treasurer to the treasurer of the board of trustees. Such Section 7640, General Code, reads as follows:

"The proceeds of the tax levy for school district public library purposes shall be paid over by the county treasurer when collected by him as provided by law, to the treasurer of the board of library trustees, or other officer designated by such board to receive such funds, and

shall constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, when signed by the president and secretary thereof and issued for lawful purposes."

It is also well to note the provisions of Section 7639, General Code, which provide that the tax levied for such type of library is not subject to the one and one-half percent limitation or to any other statutory limitation. This section reads as follows:

"Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purpose, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided."

The recent amendment to the Constitution, Article XII, Section 2, has put the tax levied for this purpose within the so-called fifteen mill limitation. Such section, in so far as material, reads as follows:

"No property, taxed according to value, shall be so taxed in excess of one and one-half percent 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."

Sections 3620, 4004 et seq., and 4356, General Code, make provision for municipal and village libraries and provide for their government by boards of trustees. While Sections 4005-1 and 4007, General Code, purport to provide that these boards of trustees have the authority to assess and receive taxes, these sections have been repealed by implication by the legislature in its enactment of the so-called Budget Law, Section 5625-1 et seq., General Code. See Opinions of the Attorney General for 1930, page 800 and for 1931, No. 3810. There is now no provision authorizing a board of trustees of a municipal or village library to receive funds derived from taxes levied for the support of such type of library. These taxes are received by the municipality of which such libraries are a part, and paid out by the municipality for such library purpose.

County libraries are created by authority of Sections 2454 and 2456, General Code. The county commissioners are authorized to levy taxes for the benefit of such libraries, not to exceed five-tenths of a mill within the limitation. The statute makes no provision for the payment to the board of trustees of any tax funds but provides that funds derived from taxation shall remain with the county treasurer and be paid out upon the warrant of the board of trustees governing such libraries. Thus, such libraries are also governed by a board of trustees.

County library districts are authorized by Sections 7641-1 et seq. and provision is made for their maintenance by virtue of a tax within the fifteen mill limitation by the county commissioners, which funds, when collected by the tax

collecting authorities, are to remain with the county treasurer and be paid out upon the warrant of the board of trustees of such type of library.

Township libraries are authorized by Sections 3404, et seq. of the General Code, and their governing body is a board of trustees; however, no provision is contained in such statute authorizing their receipt of funds collected by the treasurer for their maintenance.

Am. S. B. 323, Section 6, requires the payment to each taxing district named thereon, to wit: each municipal corporation, each school district, each park district organized under the provisions of Sections 2976-1 et seq. and to sanitary districts levying taxes under the provisions of Section 6602-87, General Code, from the proceeds derived by means of the taxes levied pursuant to such act an amount equivalent to that which was levied for such district for the tax year 1930. However, Paragraph 5 of Section 6, contains this language:

"To each board of public library trustees the amount of taxes levied for library purposes in the year 1930."

Had such language not been used, such section would have been clear, and there would have been no room for interpretation for, since under the budget act the municipal corporation is the tax assessing authority for municipal libraries and boards of education are the assessing authorities for school district libraries such types of public libraries would clearly have received a distribution of taxes within the meaning of such language and especially in view of the fact that the legislature has inserted the language "including levies for municipal universities and other municipal institutions."

There is therefore clearly an ambiguity created by the language in such section. There is apparently nothing within the language of the act itself which will aid or determine definitely the meaning of the language used by the legislature. In Lewis' Sutherland Statutory Construction, Vol. 2, the following rule is laid down:

"The proceedings of the legislature in reference to the passage of an act may be taken into consideration in construing the act. * * * Amendments made, or proposed and defeated, may also throw light on the construction of the act as finally passed, and may properly be taken into consideration."

This rule has been applied and followed by the Ohio courts in *State ex rel. v. the Mayor, Etc. of the Village of Perrysburg*, 14 O. S., 472, and is a general principle of statutory construction.

While it is uniformly held that the debates and arguments of the legislators made while in the process of enactment of a statute can not be considered by the court in determining the meaning of a statute, it seems to be the general and uniform rule that reference may be had to the journal of the General Assembly for enlightenment as to the intention in the enactment of a bill.

Upon examination of the journal of the Senate with reference to Am. S. B. 323 as introduced we find that what is now Paragraph 5 of Section 6, read as follows:

"To each board of school district library trustees the amount of taxes

levied by the board of education for library purposes in the year 1930 outside the fifteen mill limitation;”

We further find that after such bill had been passed by the Senate, it was amended in the House, by striking out the words “of school district,” and inserting the words “public,” and by striking out the words “by the board of education” and by striking out the language “outside the fifteen mill limitation.”

If this amendment had not been made this paragraph of the act would clearly apply only to a board of school district library trustees. It must be presumed that the legislature had some purpose in this change of language and when in the original act they used the most clear language possible to limit the payment of these funds to a board of school district library trustees we can not presume that they changed this language without a purpose.

I would further call your attention to the fact that in each of the statutes referring to the various types of libraries the words “public library” are used as a generic term referring to all the types of libraries indiscriminately. I must therefore conclude that the legislature in changing this language intended a change of meaning, for it is a rule of statutory construction that when the legislature amends a statute by change of language it is presumed that the legislature intended a change in meaning to the extent of the change of language and it is a further presumption of law that legislators know the ordinary meaning of words and that when a word is used by the legislature such word is to be given its common meaning unless the context clearly shows that a different meaning was intended.

I am therefore of the opinion that the language used in such Section 6, must be construed as including all types of public libraries which have a right under the statutes to support from taxation.

Having arrived at this conclusion it will enable us to dispose of the additional ambiguity in paragraph 1, Section 4, of Am. S. B. 328 which act must necessarily be construed along with Am. S. B. 323 by reason of the fact that both of such acts are part of the same system and are in *parti materia*. Such Section 4, it is to be noted has reference only to the division of the county's portion of the funds to be received by it during the years 1932 and 1933 and while in view of the interpretation which I have made with reference to the language appearing in section 6 of Am. S. B. 328 it might be argued that such libraries, namely county public libraries and county public district libraries, will have already received the full amount of taxes which they had received for the year 1930 from the intangible tax law, they will receive an additional amount from the motor vehicle license tax proceeds. Nevertheless, where the intention of the legislature is clear the court has no power under the guise of interpretation to read anything into an act which does not appear therein or to read anything out of an act that does appear therein. I may therefore conclude that if such double payment exists it is a matter for legislative action rather than for judicial construction.

It may be that by reason of my opinion in this matter, municipal libraries, township libraries and school district libraries will receive a greater amount or proportion of taxes for the years 1932 and 1933 than they received for the year 1930. However, from the language used by the legislature, I can not say that such was not the intention of the legislature. Answering your requests specifically, it is my opinion:

1. That the language appearing in Paragraph 5 of Section 6, of Am. S. B.

223, "To each board of library trustees the amount of taxes levied for library purposes in the year 1930" is applicable to municipal libraries.

2. That such provision applies to county libraries and county library districts, regardless of the fact that such libraries may share in the motor vehicle taxes under the provisions of Paragraph 1, of Section 4 of Am. S. B. 328.

3. That this provision is applicable to township public libraries although such libraries may participate in the motor vehicle license tax under the provisions of Paragraph 1, of Section 4 of Am. S. B. 328.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3904.

APPROVAL, LEASE TO PORTION OF THIRD FLOOR OF BUILDING
LOCATED ON EAST MAIN STREET, COLUMBUS, OHIO, FOR USE
OF THE STATE LIBRARY BOARD.

COLUMBUS, OHIO, December 31, 1931

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between Lutheran Book Concern, of Columbus, Ohio, as lessor, and the State of Ohio, acting by and through yourself, as Superintendent of Public Works, for the State Library Board, as lessee. By the terms of this lease, the State is granted the use of a portion of the third floor of the building located at 55-59 East Main Street, Columbus, Ohio, for the term of one year, beginning on the first day of May, 1931, and ending on the first day of May, 1932, in consideration of the sum of one thousand eight hundred dollars (\$1,800.00).

You have also submitted encumbrance estimates, Nos. 1190 and 1193, bearing the certificate of the Director of Finance to the effect that there is legally appropriated an unencumbered balance sufficient to pay the rental for the first eight months of the lease.

There has further been submitted a certificate showing the authority of lessor's manager to enter into leases of this kind.

Finding said lease in proper legal form, I hereby approve it and am returning it, together with all papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.