

2622.

APPROVAL, BONDS OF CITY OF SPRINGFIELD, OHIO, IN AMOUNT OF \$9,620 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, November 23, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2623.

APPROVAL, BONDS OF CITY OF SPRINGFIELD, OHIO, IN AMOUNT OF \$46,560 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, November 23, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2624.

APPROVAL, BONDS OF VILLAGE OF FAYETTEVILLE, OHIO, IN AMOUNT OF \$5,000 TO ERECT WORKS FOR SUPPLYING ELECTRICITY.

COLUMBUS, OHIO, November 23, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2625.

BOARD OF EDUCATION—SUBMITS PROPOSITION FOR EXTRA TAXES IN YEARS 1921, 1922 AND 1923 UNDER FAVOR OF HOUSE BILL NO. 34 (109 O. L. 307)—RECEIVES ONLY MAJORITY VOTES OF ELECTORS—BOARD NOT AUTHORIZED TO MAKE LEVY OUTSIDE FIFTEEN MILL LIMITATION.

Where a board of education submits to the electors of the district a proposition for extra taxes in the years 1921, 1922 and 1923 under favor of House Bill No. 34 (109 O. L. 307), and the proposition so submitted fails to receive the affirmative votes of sixty per cent of the electors voting thereon, but does receive a majority of the votes of such electors, the board of education is not authorized to make any levy outside of the fifteen mill limitation provided for by section 5649-5b of the General Code.

COLUMBUS, OHIO, November 26, 1921.

HON. PHIL. H. WIELAND, *Prosecuting Attorney, Mt. Gilcad, Ohio.*

DEAR SIR:—In your letter of recent date you state that at the recent regular election the board of education of Edison Village School District submit-

ted a proposition to the electors of that district, under a resolution of which the following is a copy:

"Be it resolved that the amount of taxes that may be raised by the levy of taxes at the combined maximum rate authorized by section 5649-5b of the General Code and within all limitations imposed by law on tax rates within said Edison Village School District will be insufficient, and that it is expedient to levy taxes in excess of said limitations in the years of 1921-1922-1923. Therefore, be it resolved that the question of removing from tax limitations a tax of three mills for the period of three years, to-wit, 1921-1922-1923 be submitted to the voters of said district at the November election 1921, and that a copy of this resolution be certified to the deputy state supervisors of elections of Morrow county, Ohio."

The ballots used at that election were as follows:

"For the levy of three mills for the years 1921, 1922 and 1923.
Against the levy of three mills for the years 1921, 1922 and 1923."

You further state that the proposition so submitted received the favorable votes of a majority of the electors but not sixty per cent thereof. You ask what the effect of the election is.

You also submit a statement of the tax rates in the various taxing districts in Morrow county, showing that the rate in Edison school district for all purposes is 17.90 mills.

The law question involved in your inquiry is raised by the provisions of section 4 of the act known as House Bill No. 34, approved May 14, 1921, (109 Ohio Laws, 307). For it is clear that the action of the board of education and the electors described by you was taken under this act, which provides the means, through a popular vote, of making an additional tax levy in the years 1921, 1922 and 1923. Section 3 of that act requires that full effect may be given to the vote so taken if sixty per cent of the electors voting on the proposition vote affirmatively. Section 4, however, provides as follows:

"If the proposition submitted to the electors of a taxing district under this act fails to receive the approval of the electors in the manner required by the preceding section, but a majority of the electors voting thereon vote in favor thereof, the preceding section shall in no respect apply, but such election shall have the same effect as if held under sections 5649-5 and 5649-5a of the General Code, *as defined in section 5649-5b of the General Code*, on the proposition of levying additional taxes at the rate of not exceeding three mills for a period of three years; but nothing in this section shall so apply as to reduce the number of mills which the electors of such taxing district may have, prior to the holding of such election, authorized to be levied for any year within such three-year period, by vote under such sections of the General Code referred to herein, nor the number of years for which such electors may have so authorized additional levies to be made by such vote."

Section 5649-5b of the General Code, referred to in said section 4, is the section which imposes what is known as the fifteen mill limitation. It is in the following words:

"Sec. 5649-5b. If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate for and during the period provided for in such resolution, but in no case shall the combined maximum rate for all taxes levied in any year in any county, city, village, school district, or other taxing district, under the provisions of this and the two preceding sections and sections 5649-1, 5649-2 and 5649-3 of the General Code as herein enacted, exceed fifteen mills."

However, the levies which may be made by a board of education in pursuance of the vote of the electors under sections 5649-5 and 5649-5a of the General Code, also referred to in said section 4, are not limited by section 5649-5b alone, but are specially provided for by section 5649-4, as follows :

"Sec. 5649-4. For the emergencies mentioned in sections forty-four hundred and fifty, forty-four hundred and fifty-one, fifty-six hundred and twenty-nine, and 7630-1 of the General Code, and for local school purposes authorized by a vote of the electors under the provisions of sections 5649-5 and 5649-5a of the General Code, to the extent of three mills for such school purposes, the taxing authorities of any district may levy a tax sufficient to provide therefor irrespective of any of the limitations of this chapter."

That is to say, the effect of an ordinary election under sections 5649-5 and 5649-5a of the General Code upon the question of additional school levies is to authorize such levies to be made outside of all limitations to the extent of three mills. So that if this effect can be claimed for the majority vote had in the Edison village school district by reason of the provisions of section 4 of House Bill 34, above quoted, the result would be substantially the same as if the proposition had received the affirmative votes of two-thirds of the electors voting on the proposition.

This would probably be the case if the words "as defined in section 5649-5b of the General Code" were not in said section 4 of House Bill 34. That is to say, that section does not provide simply that a majority vote on the proposition authorized by the act in general to be submitted shall have the same effect as if the election had been held under sections 5649-5 and 5649-5a of the General Code; if it did, one answer would have to be given to the question submitted. But the section goes on to provide that the effect which the majority vote shall have is that which an election held under sections 5649-5 and 5649-5a of the General Code is to have "as defined in section 5649-5b of the General Code."

In short, the effect of a mere majority vote on the proposition authorized to be submitted by House Bill No. 34 is to authorize the making of current expense levies outside of the ten mill and interior limitations on tax rates provided for by sections 5649-2 and 5649-3a, respectively; but not to authorize any levy outside the fifteen mills; and this effect is to be given to such a vote on a proposition submitted by a board of education the same as upon a proposition submitted by any other local taxing authorities.

It is the conclusion of this department, therefore, that the only additional levy, if any, which can be made by the board of education of Edison village school district by reason of the vote that was taken is a levy which shall be subject to the fifteen mill limitation of section 5649-5b of the General Code, but not subject to the other limitations referred to. Whether this is possible

does not clearly appear from the tax rate sheet submitted by you. The mere fact that the aggregate levies already provided for mount up to 17.90 mills does not establish the conclusion that there is not room for such a levy. There are now rather numerous levies that are not subject to any of the limitations. Part of the state levy is in this situation; and certain county road levies are likewise immune from the limitations. In the absence of a statement as to just what levies, other than the state educational building fund levy, the state department of public welfare building fund levy, and the state highway improvement fund levy, are outside of the fifteen mill limitation and enter into the total of 17.90 mills above referred to, this department cannot say that the election is to have no effect whatever. All that can be said on the facts submitted is that it does not have the effect of authorizing any levy to be made outside of the fifteen mill limitation that would otherwise be subject thereto.

If the school district in question had submitted the proposition under sections 5649-5 and 5649-5a of the General Code, the majority vote which such proposition received would have sufficed; the mistake made consisted in proceeding under the wrong statute.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2626.

ROADS AND HIGHWAYS—WHERE COUNTY COMMISSIONERS IMPROVE SECTION OF INTER-COUNTY HIGHWAY—VILLAGE STREET FORMS PART OF SUCH HIGHWAY—MAY APPROPRIATE LANDS WITHIN VILLAGE FOR PURPOSE OF RE-ADJUSTMENT OF HIGHWAY—PLANS APPROVED BY DIRECTOR OF HIGHWAYS AND PUBLIC WORKS.

County commissioners, in undertaking the improvement of a section of inter-county highway under authority of sections 6906 to 6954 G. C., may, when a village street forms part of the line of such highway, appropriate lands within the corporate limits of the village for the purpose of a re-alignment of the highway. By reason of section 1203 G. C. plans for the proposed improvement should receive the approval of the Director of Highways and Public Works.

COLUMBUS, OHIO, November 26, 1921.

HON. E. STANTON PEARCE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—You have recently made request of this office for an opinion upon a question which may be stated as follows:

Inter-county highway No. 7 passes through the village of Stratton, Ohio. The county commissioners desire to improve that part of the highway passing through said village, and they find that proper construction requires the securing of new right of way through the village, because the highway as at present located has been in part washed away by the Ohio river. The village will give its consent to the making of the improvement by the county commissioners. May the county commissioners appropriate real estate within the corporate