

2980.

TAX LEVY—FORMERLY WITHIN FIFTEEN MILL LIMITATION NOT PLACED WITHOUT TEN MILL LIMITATION BY VIRTUE OF SECTION 5625-7, GENERAL CODE.

*SYLLABUS:*

*Section 5625-7, General Code, as amended by House Bill No. 9 of the Third Special Session of the 90th General Assembly does not place outside of the ten mill limitation any levies which were formerly within the fifteen mill limitation as contained in Section 2, Article XII of the Constitution, adopted November 5, 1929.*

COLUMBUS, OHIO, August 1, 1934.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your letter of recent date in which you request my formal opinion on the following question:

“Do the provisions of section 5625-7, General Code, as amended by House Bill No. 9, passed at the last special session, place outside the ten mill limitation certain levies which were formerly within the fifteen mill limitation?”

Section 5625-7, General Code, as amended, reads as follows:

“The taxing authority of any subdivision may make the following levies outside of the ten mill limitation and irrespective of all limitations on the tax rate:

(a) Tax levies for debt charges when such levies have, prior to the first day of January, 1934, been excluded by the laws of the state or by vote of the people from the limitation formerly imposed by section 5649-5b of the General Code, or from the limitation of fifteen mills formerly imposed by section 5625-2 of the General Code and by article XII, section 2 of the Constitution, and taxes authorized by the laws of the state, prior to the first day of January, 1934, to be levied outside of the limitation formerly imposed by section 5625-2 of the General Code, in anticipation of which indebtedness has been incurred; but in either instance only until said indebtedness has been paid.

(b) Tax levies which, prior to January 1, 1934, were excluded by vote of the people from the limitation formerly imposed by section 5649-5b of the General Code or from the limitation of fifteen mills formerly imposed by section 5625-2 of the General Code and by article XII, section 2 of the constitution, not exceeding the rate and the number of years authorized by such vote.

(c) Tax levies hereafter authorized outside of said ten mill limitation by a vote of the people under the provisions of law applicable thereto.”

It is obvious from a reading of the foregoing section that all of the levies therein authorized to be placed outside of the constitutional ten mill limitation were, prior to January 1, 1934, the effective date of that constitutional provision, outside of the theretofore existing constitutional fifteen mill limitation. It is elementary that the legislature had no authority to authorize any levies to be made outside of the ten mill limitation which were not expressly exempted therefrom by Section 2, Article XII of the Constitution, as amended, or by the schedule thereto, nor did the legislature attempt so to do.

The schedule of the last amendment of Section 2, Article XII of the Constitution provides that only those levies which were outside of the constitutional fifteen mill limitation theretofore in effect shall be outside of the constitutional ten mill limitation effective January 1, 1934. Section 5625-7, General Code, as amended by House Bill No. 9 of the Third Special Session of the 90th General Assembly, in conformity with such schedule, does not place outside of the ten mill limitation any levies which were formerly within the fifteen mill limitation as contained in Section 2, Article XII of the Constitution, adopted November 5, 1929.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

2981.

COUNTY LIBRARY DISTRICT—COUNTY AUDITOR FISCAL OFFICER  
 OF SUCH DISTRICT—TRUSTEES OF DISTRICT NOT ENTITLED  
 TO CUSTODY OF FUNDS.

*SYLLABUS:*

1. *The county auditor in a county in which there exists a county library district organized under the provisions of Sections 7643 et seq., of the General Code, is the fiscal officer of such district.*
2. *It is the duty of the fiscal officer of county library districts to draw warrants for the disbursement of the district funds in accordance with law.*
3. *It is not lawful to permit the trustees of a county library district organized under the provisions of Sections 7643, et seq., General Code, to have the custody of the moneys provided by law or otherwise for county district library purposes and to place them in a depository of its own choosing and disburse them upon its own orders and warrants.*

COLUMBUS, OHIO, August 1, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 5625-1, paragraph (b), General Code, defines the fiscal officer of the county library district to be the auditor of the county