

1468.

BONDS, — VILLAGE OF ENGLEWOOD, MONTGOMERY COUNTY, \$17,000.00.

COLUMBUS, OHIO, November 22, 1939.

Retirement Board, Public Employes Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the Village of Englewood, Montgomery County, Ohio, \$17,000.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of sanitary sewer bonds in the aggregate amount of \$17,000, dated September 1, 1939, and bearing interest at the rate of 4½ per cent per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1469.

TAX LEVY—WHERE BOARD OF EDUCATION, LOCAL SCHOOL DISTRICT, FAILS AND REFUSES TO PROVIDE NECESSARY LEVIES—DUTY, COUNTY BOARD OF EDUCATION TO AUTHORIZE LEVIES—CERTIFY ACTION TO COUNTY AUDITOR—DUTY TO ACT IN SAME MANNER LOCAL BOARD SHOULD HAVE PROCEEDED—SEE SECTIONS 5625-25, 7610-1 G. C.

SYLLABUS:

When the Board of Education as the taxing authority of a local school district fails and refuses to authorize by resolution the necessary tax levies within its district to meet the needs of the district for the next ensuing fiscal year and to provide sufficient school privileges for the youth of school age in the district as certified to it by the budget commission and the county auditor in pursuance of Section 5625-25, General Code, it becomes the duty of the county board of education of the county school district by virtue of Section 7610-1, General Code, upon being advised

and satisfied with respect thereto, to authorize such levies and certify the action so taken to the county auditor in the same manner and to the same extent as should have been done by the local board.

COLUMBUS, OHIO, November 24, 1939.

HON. F. R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: This is to acknowledge receipt of your request for my opinion, which reads as follows:

“On June 26, 1939, the Board of Education of Center Township Rural School District in this county, at a regular meeting considered its regular budget for the 1939 tax year. A budget was at that meeting approved unanimously and was thereafter filed with the auditor on July 6, 1939. A copy of that budget is attached to this letter.

At a special meeting of the Center Township Rural Board of Education held August 31, 1939, a further resolution relating to this budget was passed. On August 31, 1939, the clerk of the school board handed to the auditor a letter dated August 31, 1939, a copy of which is enclosed.

On October 27, 1939, the budget commission and the auditor certified to the Board of Education their summary of the amounts required from the general property tax and the estimated tax rate showing the amount required by the subdivision to be \$5500.00 and the rate to be three mills.

At a regular meeting of the board of education held October 30, 1939, the resolution accepting the budget commission's certification and levying the tax was defeated by a vote of three to two, and no tax has been levied in the subdivision by the board of education to date.

On November 2, 1939, the Board of Education of Williams County, at a special session, passed the resolution, a copy of which, with its exhibit, is attached hereto. This resolution and exhibit were certified to the auditor by the clerk of the county board of education on November 4, 1939.

Under the facts above outlined, shall the auditor and treasurer of Williams County spread and collect the tax referred to in the resolution of the county board of education?”

It appears from your outline of the situation as it exists in Center Township Rural School District with respect to the school budget that the board of education of that district on June 26, 1939, after public hearing was had thereon as provided by law, considered and adopted a tax budget for the district for the year 1940 and later, on July 6, 1939, sub-

mitted the same to the County Budget Commission of Williams County for its consideration and for submission if and when approved by the Budget Commission to the County Auditor for his estimate of the necessary tax levy in the school district to produce the amount necessary for the needs of the district as shown by the budget commission. The budget as adopted by the board of education and submitted to the county budget commission, contained a request for \$13,325.50, for the fiscal year 1940 to be realized from a general property tax within the district within the ten mill limitation. The budget commission later approved the budget for \$5,500.00, considerably less than requested, and the county auditor estimated that a three mill levy within the ten mill limitation would be necessary in the district to produce the amount approved by the budget commission as being necessary to satisfy the needs of the district. The approval of the budget commission and the findings of the county auditor were certified to the board of education for the district under date of October 27, 1939.

After the budget had been adopted by the board of education and submitted to the budget commission, and before it was acted upon by the budget commission or the county auditor, to wit, on August 30, 1939, the board of education of the Center Township District in a special meeting adopted the following resolution by a vote of three to two:

“BE IT RESOLVED that, due to the present accumulated school operating surplus fund of Center Township Rural School Board, we recommend to the Williams County Tax Commission that no tax for the 1939 tax year be levied in Center Township for the school operating purposes.”

Upon receipt by the board of education of the certification of approval of the budget as modified by the budget commission and the accompanying certification of the county auditor of his estimate of the necessary levy to produce the amount approved by the budget commission as being necessary to meet the needs of the district in 1940, the board of education of the Center Township District met in regular session on October 30, 1939, and formally defeated the resolution accepting the budget commission's certification and the levying of the tax as established by the county auditor.

With the exception of the action of the board of education taken on October 30, 1939, refusing to levy a tax for the purpose of producing funds to meet the needs of the district as certified by the budget commission, the situation as it existed with reference to this matter was the subject of my opinion No. 1226, rendered under date of September 27, 1939, and addressed to you. In that opinion, after reciting the facts as to the adoption and submission of a tax budget and the resolution of the local board of education adopted on August 31, 1939, requesting that

no levy be made in the district for school operating purposes in 1940, it was said :

“1. When a tax budget is duly adopted by the taxing authority of a taxing subdivision or other taxing unit, all control over the same for tax rate making purposes is lost by the said taxing authority so soon as it is submitted to the county auditor in pursuance of Section 5625-22, General Code, until it receives the certification of the county budget commission made in pursuance of Section 5625-25, General Code.

2. It is the duty of the taxing authority of a taxing subdivision or other taxing unit to authorize by ordinance or resolution tax levies for said subdivision or taxing unit at rates estimated by the county auditor and approved by the county budget commission as contained in the certification by the county budget commission of its action in connection with the budget for the taxing subdivision or other taxing unit, to the said taxing authority as directed by the provisions of Section 5625-25, General Code.

3. When a board of education adopts a tax budget for its district for the next ensuing fiscal year as provided by law, and submits the same to the county auditor as directed by Section 5625-22, General Code, by the provisions of which budget needs are shown which warrant and demand the levying of a tax within the school district for school operating purposes for the next fiscal year, and later adopts and certifies to the county auditor a resolution recommending that no tax be levied in the district for the said purpose, the said resolution is of no force and effect whatever and the county auditor and county budget commission are not authorized by law to give it consideration.”

It now appears that the county board of education of the Williams County School District in a special meeting duly called for the purpose, held on November 2, 1939, after being fully advised in the premises, adopted by unanimous vote the following resolution :

RESOLUTION

“BE IT RESOLVED, by the Board of Education of the Williams County School District, Williams County, Ohio, that :

It now appearing to this Board that the Board of Education of Center Township Rural School District, Williams County, Ohio, has neglected, failed and refused to adopt a resolution accepting the amounts and rates as determined by the budget commission, and to authorize the necessary tax levies, and to certify them to the County Auditor as said Board is required by law so to do, and

It further appearing to this Board that it is both necessary and essential that taxes be levied to provide for the continuance of the schools in said Center Township Rural School District, and

This Board being fully advised and satisfied of the failure of said Board of Education of Center Township Rural School District to do and perform any of such acts, and that it is of urgent necessity that the resolution aforesaid be certified to the County Auditor, and

WHEREAS, the Board of Education of Center Township Rural School District, Williams County, Ohio, in accordance with the provisions of law has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1, 1940, and

WHEREAS, the Budget Commission of Williams County, Ohio, has certified its action thereon to the Center Township Rural School District, together with the estimate of the County Auditor of the rate each tax necessary to be levied by said Board, and what part thereof is without, and part within, the ten mill limitation, therefore, be it

RESOLVED by this Board of Education that the amounts and rates as determined by the Budget Commission in its certification to said Center Township Rural School District be and the same are hereby accepted; and be it further

RESOLVED that there be and is hereby levied on the tax duplicate of said Center Township Rural School District, the rate of each tax necessary to be levied within and without the ten mill limitation as follows; as set forth in Exhibit 1, which is hereto attached and made a part thereof and be it further

RESOLVED that the Clerk of this Board be, and he is hereby directed to certify a copy of this resolution to the County Auditor of said County for and on behalf of the Board of Education of Center Township Rural School District.

Mr. L. moved the adoption of the foregoing resolution. Mr. D. seconded the resolution, and the roll being called upon its adoption the vote resulted as follows:

L. 'yes'; D. 'yes'; S. 'yes'; D. 'yes.'

Adopted the 2nd day of November, 1939."

The legal question now presented is, whether or not the action of the county board of education in the adoption of the resolution recited above, constitutes an effective and valid levy of a three mill tax in the Center Township Rural School District for school operating purposes and

imposes on the auditor and treasurer of Williams County the duty of extending the levy on the duplicate and collecting the tax. Section 7610-1 of the General Code of Ohio, reads in part, as follows:

“If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, or to elect a superintendent or teachers, or to pay their salaries, or to pay out any other school money, needed in school administration, or to fill any vacancies in the board within the period of thirty days after such vacancies occur, the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. * * *”

From the facts as they appear, it seems clear that it is both necessary and essential that some taxes be levied in the Center Township Rural School District for school operating purposes for the year 1940, in order that sufficient school privileges be provided for all the youth of school age in the district and it was clearly the duty of the local board to make the levy of three mills to meet the requirements for the district as found and certified by the county budget commission. It follows, in my opinion that, inasmuch as the local board had failed to make this levy it became the duty of the county board under the provisions of Section 7610-1, General Code, to perform the duty which the local board should have performed and thereby to make the tax levy in accordance with the certification of the county budget commission and the county auditor, which was done by this resolution of November 2, 1939, as stated above.

I am therefore of the opinion, in specific answer to your question that, under the circumstances as stated herein, it is the duty of the auditor and treasurer of Williams County to extend a levy of three mills for school operating purposes within the ten mill limitation on the tax duplicate of the Center Township Rural School District of Williams County in the year 1940 in accordance with the resolution of the county board of education of the Williams County School District adopted on November 2, 1939, and certified to the county auditor of said county.

Respectfully,

THOMAS J. HERBERT,

Attorney General.