

2100.

LEVY OUTSIDE TEN MILL LIMITATION—IF AUTHORIZED BY LAW—BUDGET COMMISSION UNDER SECTION 5625-23 G. C. MUST APPROVE—CANNOT REFUSE TO APPROVE OR MODIFY.

SYLLABUS:

The Budget Commission must, under the provisions of Section 5625-23, approve the request of a taxing district for a levy outside the ten mill limitation if it finds that the proposed levy is authorized by law. Having determined that a proposed levy is in fact authorized by law, the Budget Commission cannot refuse to approve the proposed levy nor can the Commission modify it.

COLUMBUS, OHIO, March 16, 1938.

The Tax Commission of Ohio, Departments of State Building, Columbus, Ohio.

GENTLEMEN: I am in receipt of your recent communication in which you set forth the following set of facts:

The budget submitted by the Cleveland Board of Education to the Budget Commission of Cuyahoga County for the year 1938, proposed a levy of Four Hundred Seventy-One Thousand Eight Hundred Ten Dollars (\$471,810.00) outside the ten mill constitutional limitation, which amount it proposed to use for servicing bonds which were authorized or issued prior to January 1, 1931. The Board claimed that this levy is authorized outside the ten mill limitation by the provisions of Article XII, Section 2 of the Ohio Constitution, the Board's contention being that the levy is necessary to equalize the loss in revenue due to the reduction in the rate and the reduction in the amount of "taxable property" effected by laws enacted subsequent to January 1, 1931. The Budget Commission of Cuyahoga County refused to allow the levy outside the ten mill limitation on the grounds that there is sufficient millage available to the Board within the ten mill limitation to service these bonds and for operating expenses and that the only effect of allowing the levy outside the limitation would be to make more money available for operating expenses. From this ruling of the Budget Commission, the Board has appealed to your Commission as provided in Section 3628-25.

Upon this set of facts you raised the following questions:

"(1) Does the Budget Commission and the Tax Commis-

sion have the authority to determine whether a taxing subdivision can make a levy outside the ten mill limitation to the extent that they have suffered losses in revenues due to the enactment of laws passed after January 1, 1931?

(2) When a sufficient rate can be levied within the ten mill limitation to service bonds outstanding January 1, 1931, can a taxing authority compel the budget commission and the Tax Commission to make a levy outside the ten mill limitation for debt service so that a larger proportion of the millage within the ten mill limitation, as computed under paragraph D, Section 5625-23, will be available for current operating expenses?"

Before considering these questions, I believe it is necessary to review the history of the constitutional amendments involved in this discussion.

The Schedule to the 1929 Constitutional Amendment provided in part as follows:

"If the votes for the proposal shall exceed those against it, the amendment shall go into effect January 1, 1931, and original Sections 2 and 3 of Article XII of the Constitution of the State of Ohio shall be repealed and annulled; * * * and levies for interest and sinking fund or retirement of bonds issued or authorized prior to said date, shall be outside of said limitation to the extent required to equalize any reduction in the amount of taxable property available for such levies, or in the rate imposed upon such property, affected by laws thereafter passed."

The pertinent part of the Schedule to the 1933 Amendment, which amendment is now known as Section 2 of Article XII of the Ohio Constitution, is the following:

"Schedule: * * * the following enumerated levies shall not be subject to the limitation of one per cent established by such amendment: (1) all levies for interest and sinking fund or retirement of bonds issued or authorized prior to said date which are not subject to the present limitation of one and one-half per cent imposed by Section 2 of Article XII and the schedule thereto as approved by the electors of the state on November 5, 1929; * * *"

Prior to the effective date of the 1929 Amendment, all property

except that specifically exempted from taxation, was required to be taxed by uniform rule according to its true value. (See Article XII, Section 2, as in effect between November 5, 1918, until January 1, 1931.) The 1929 Amendment (effective January 1, 1931), however, changed this by providing in Section 2 that: “* * * *land and improvements* thereon shall be taxed by uniform rule according to value.” After the effective date of the amendment, to-wit: January 1, 1931, the Legislature enacted various laws classifying intangible personal property and providing for various rates of taxation for the different classes and further providing that certain kinds of tangible personal property shall be listed and assessed at only a specified percentage of their true value, to-wit: fifty, seventy and one hundred per cent. (See Sections 5366 to 5403-1 in regard to listing personal property.) It is manifest that this legislation reduced “the rate imposed upon such property.” (sic: property available for the levy.)

Furthermore, the 89th General Assembly enacted as Amended Senate Bill No. 323 (114 O. L. 714), effective June 20, 1931, Section 5325, which provides that the term “personal property” only includes tangibles and, therefore, under the terms of Section 5625-3 which authorizes levies on real and “personal property,” intangibles are not subject to levies. Obviously the effect of this legislation was to reduce the “amount of taxable property available for such levies.”

The problem involved in your first question was considered, in the light of the 1929 Amendment, by my predecessor in an opinion appearing in 1933 O. A. G., Vol. 3, page 1959, and it was therein held as is set forth in the syllabus:

“Where laws relating to taxation passed since January 1, 1931, have effected a reduction in the amount of taxable property available for levies by a school district, for interest and sinking fund or retirement of bonds issued or authorized by it prior to such date within the statutory 15-mill limitation, such limitation may be outside the fifteen mill limitation now provided for in Section 2, Article XII of the Ohio Constitution, to the extent required to equalize such reduction.”

This opinion specifically considered the reductions in the rate imposed on “taxable property” and the reductions in the tax duplicate effected by the aforementioned legislation. I believe the opinion is well supported in law and concur in its holding.

The question whether such a levy comes within the proviso in the Schedule of the 1933 Amendment was considered by my pre-

decessor in an opinion appearing 1934 O. A. G., Vol. 2, page 962. I quote with approval the last two paragraphs therefrom:

“The schedule to the present amendment does not contain a similar provision as the provision in the schedule to the former amendment above quoted, but the schedule to the present amendment contains the provision quoted in the solicitor’s letter, which in substance provides that all levies for interest and sinking fund or retirement of bonds, issued or authorized prior to January 1, 1934, which were not subject to the 15 mill limitation imposed by the former amendment and the schedule thereto, are not subject to the one per cent limitation of the present Amendment. Consequently, where prior to January 1, 1934, levies outside the 15 mill limitation for interest and sinking fund or retirement of bonds were required to equalize such reduction in the amount of taxable property available for levies for such purposes, which reduction resulted from laws passed after January 1, 1931, such levies were not subject to the 15 mill limitation imposed by the former amendment and such levies which were not subject to such limitation are expressly exempted from the one per cent limitation by the schedule to the present amendment, so long as such reduction in the amount of taxable property available for such levies continues.

Therefore, I am of the opinion that such portion of the levies for interest and sinking fund or retirement of bonds issued or authorized prior to January 1, 1931, which was required prior to January 1, 1934, to be levied outside of the former constitutional 15 mill limitation to equalize a reduction in the amount of taxable property available for such purposes, which reduction resulted from laws passed after January 1, 1931, and prior to January 1, 1934, is not subject to the present 1% limitation so long as such reduction continues.”

Your letter sets forth that the Cleveland Board of Education requested a levy to raise \$471,810.00. I have no information available at this time to ascertain whether this amount is the exact equivalent of the revenue which has been lost by reason of the removal from the tax duplicate of certain property and by the reduction in the rate of laws enacted subsequent to January 1, 1931. I have been informed, however, that the amount was computed in accordance with the formula suggested by your Commission in your bulletin

No. 490 entitled "Budget Procedure," (issued January 4, 1936.) However, assuming that it is the correct proportionate amount, I have no hesitancy in affirming the holdings of the two opinions hereinbefore cited, and coming to the conclusion that levies which were authorized outside the fifteen mill limitation by the 1929 Amendment are authorized outside the ten mill limitation by the 1933 Amendment. Of course, it is understood that such levies to raise sums equivalent to the losses caused by the reduction in the amount of taxable property may only be imposed to service bonds issued or authorized prior to January 1, 1931.

(As a matter of fact there is some doubt as to whether a taxing district has any authority to levy inside the ten mill limitation to meet service charges which are authorized to be paid by levies outside the ten mill limitation. On this point, I quote from an opinion appearing in 1932 O. A. G., Vol. 3, page 1309, in connection with the then constitutional fifteen mill limitation:

" * * * There is no authority whereby bonds payable by a levy outside of the 15 mill limitation may be paid by a levy inside the 15 mill limitation, and of course, the converse is true. * * *"

However, this question is not necessarily here invoked and I will, therefore, not attempt to resolve it).

I understand there is no question as to the facts pertaining to the appeal and that the Budget Commission found that the facts claimed by the Board, as a basis for the levy outside the ten mill limitation, were true; therefore, the only question remaining is the extent of the authority of the Budget Commission under such a situation.

The authority of Budget Commissions as to the approval of proposed budgets submitted to them is set forth in Section 5625-23 and I quote the following pertinent portion therefrom:

"The county auditor shall lay before the budget commission the annual tax budgets submitted to him under the provisions of this act, together with an estimate to be prepared by such auditor, of the amount of any state levy, the rate of any school tax levy as theretofore determined, and such other information as the budget commission may request or the state tax commission may prescribe. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the

purposes of each subdivision and other taxing units therein.

The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification.

(a) *All levies outside of the ten mill limitation.*" (Italics the writer's).

Directing your attention to the italicized portion of the quotation, I want to point out that it provides that the Budget Commission shall "ascertain that the following levies are properly authorized." This then is the first step to be taken by the Budget Commission in the determination of the proposed levy. Once the Budget Commission is satisfied as to the legal authority for the proposed levy, the said Commission has no discretion left for the statute clearly provides that if the authority for the levy has been determined, the Budget Commission "*shall approve them without modification.*" Bearing on this phase of your question is an opinion appearing in 1927 O. A. G., Vol. 3, page 2398, in which the then Attorney General said in discussing this problem: (page 2402)

"The authority granted by the above section to the budget commission is to:

1. 'Examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.'

2. 'Ascertain that the levies named in said section, "are properly authorized and if so authorized" to "approve them without modification."'

Having ascertained the total amount of taxes to be raised for the purposes of the subdivision, ascertained that the levies named are properly authorized, and approving the same, the budget commission has exhausted the authority granted under the above section, with the exception that said commission is authorized to include debt charges omitted from the budget. There is no authority granted in the above section to require that any portion of the general fund shall be expended for any particular purpose."

The levy proposed by the Cleveland Board of Education clearly fits into the classification "all levies outside of the ten mill limitation" set forth in Section 5625-23, supra, and, therefore, in my opinion the Budget Commission *must* approve the levy.

I have examined all of the other statutory provisions relative

to the powers of the Budget Commission and have failed to find any authority for the action taken by the Budget Commission of Cuyahoga County. There is nothing in the statutes pertaining to this subject which even inferentially confers upon the Budget Commission the power to refuse to approve a proposed levy outside the limitation merely because in the opinion of the Commission, the taxing authorities petitioning the same will receive ample funds from the levy within the ten mill limitation to service the bonds.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2101.

APPROVAL—BONDS CUYAHOGA COUNTY, OHIO, \$5,000.00,
PART OF ISSUE DATED AUGUST 1, 1923.

COLUMBUS, OHIO, March 16, 1938.

State Employes Retirement Board, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$5,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of Hillside Road bridge bonds in the aggregate amount of \$116,953.50, dated August 1, 1923, bearing interest at the rate of 5% per annum.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.