

Huron—267—Bellevue (Part) Grade Separation
W. P. G. M. 664-C

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6038.

TAX AND TAXATION—TAXES LEVIED BY CONSERVANCY
SUBDISTRICT NOT SUBJECT TO LIMITATION OF SEC-
TION 2, ARTICLE XII OF CONSTITUTION.

SYLLABUS:

If a conservancy district has been organized prior to 1934, and after January 1, 1934, a subdistrict is formed wholly within such district, the taxes levied by such subdistrict as provided for by the conservancy act of Ohio are not subject to the limitation of Section 2 of Article XII of the Constitution.

COLUMBUS, OHIO, September 5, 1936.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio:*

DEAR SIR: I acknowledge receipt of your communication in which you have submitted to me the following questions:

“1. If a conservancy district has been organized prior to 1934 and subsequent thereto and after January 1, 1934, a subdistrict is formed wholly within such district, are the taxes levied by such subdistrict exempt from the provisions of the ten-mill limitation of the Ohio Constitution by reason of the exemption inserted in the schedule of the said amendment relative to taxes levied by conservancy districts organized before January 1, 1934?

2. By the decision of the Supreme Court of Ohio as reported in 92 O. S., 215, are not the taxes levied by a conservancy district to be regarded as assessments? If regarded as assessments, how are such assessments levied against a municipal corporation, to be paid by such municipality? Out of bond retirement? Or out of general fund? Is it to be regarded as a fixed debt charge? Or as an item of operating expense or expenditure?

3. Would this levy of the conservancy district or subdis-

tract against a municipality, fall, as to payment, under the provisions of subsection (b) of Section 5625-23 of the General Code of Ohio, so as to compel consideration of such levy before allocation of remainder of available levy to various taxing subdivisions? Would such levy be considered in this connection as a levy of the municipality or as a levy of the conservancy district or subdistrict?

4. If it be considered as a levy of the municipality, and the addition of this levy to other municipal bond levies brings the total required by the municipality for fixed debt charge (assuming that this is called a fixed debt charge) beyond two-thirds of the average levy for current expenses and debt services allocated within the fifteen-mill limitation to such municipality during the last five years said fifteen-mill limitation was in effect should such fact hinder, in any way, the issuance of bonds by the conservancy district or subdistrict?

5. How are the bonds issued by the conservancy district or subdistricts affected by the ruling in the Rabe case (88 O. S., 403) as to possibility of issuance under the ten-mill limitation?

6. If the levy here discussed is to be treated as an item of operating expense or expenditure, is it not to be considered that the city has other sources of revenue for its general fund than levies against real property, public utilities and tangible personal property and could it not be assumed that this tax levy or assessment of the conservancy district or subdistrict would be a fixed charge upon any revenues coming into the general fund of the municipality?"

Section 6828-63, General Code, reads as follows:

"Whenever it is desired to construct improvements wholly within or partly within and partly without any district organized under this act (G. C. Secs. 6828-1 to 6828-79), which improvements will affect only a part of said district, for the purpose of accomplishing such work, subdistricts may be organized upon petition of the owners of real property, within or partly within and partly without the district, which petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in Section 3 of this act (Sec. 6828-3) is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the same court of common pleas, and shall be accompanied by a bond as provided for in Section 4 of this act (Sec. 6828-4). All proceedings relating to the organi-

zation of such subdistricts shall conform in all things to the provisions of this act relating to the organization of districts. Whenever the court shall by its order duly entered of record declare and decree such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the directors of the district, who shall thereupon act also as directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to the provisions of this act (G. C. Secs. 6828-1 to 6828-79); except that in appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds, in the levying of assessments or taxes, and in all other matters affecting only the subdistrict, the provisions of this act shall apply to this subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

The board of directors, board of appraisers, chief engineer, attorney, secretary and other officers, agents and employees of the district shall, so far as it may be necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administrative expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered, such division to be made by the board of directors with an appeal to the court establishing the district. This section shall not be held to prevent the organization of independent districts for local improvements under other laws within the limits of a district organized under this act, as provided in Sections 59 and 60 of this act."

The schedule to Section 2 of Article XII of the Constitution provides in part that:

"The following enumerated levies shall not be subject to the limitation of one per cent established by such amendment:
* * * (2) All tax levies provided for by the conservancy act of Ohio or the sanitary district act of Ohio, as said laws are in force on January 1, 1934, for the purpose of conservancy districts and sanitary districts organized prior to said date; * * *."

Section 6828-63 was in force on January 1, 1934. The first question, therefore, is whether levies made by the board of directors of a conservancy district organized prior to January 1, 1934, for a subdistrict

therein which was formed after January 1, 1934, are levies for the purposes of such conservancy district within the meaning of the above provision of said schedule and therefore exempted from the limitation of said Section 2.

The purpose of this statute is to permit a portion of the district to be subdivided for the purpose of constructing improvements which will affect only that portion of the district and which would otherwise be constructed by the district and subjecting the property only of that portion of the district to the levy of taxes or assessments to pay for such local improvements. The services required for such improvements of the subdistrict are performed by the board of directors and employes of the district the same as though the district were making such improvements. It is simply a subdistrict for convenience in making purely local improvements. The statute provides that in certain matters affecting only the subdistrict "the provisions of this act shall apply to this subdistrict as though it were an independent district," and that "the organization of independent districts for local improvements" shall not be prevented, clearly showing that a subdistrict is not in fact an independent district but simply a part of the district theretofore organized. Since the improvements are made for a part of the district, the levies therefore in my opinion are levies provided by the conservancy act for the purpose of such district within the meaning of the schedule to Section 2 of Article XII.

I realize that in some instances a part of a subdistrict may include territory outside of the district as originally organized. However, additional territory may also be included in a district which was not in the district as originally organized but that in my opinion would not make levies for such district subject to said constitutional limitation, even if said annexation took place after January 1, 1934.

Answering your first question, therefore, I am of the opinion that if a conservancy district has been organized prior to 1934, and after January 1, 1934, a subdistrict is formed wholly within such district, the taxes levied by such subdistrict as provided for by the conservancy act of Ohio are not subject to the limitation of Section 2 of Article XII of the Constitution.

In view of the answer to this question, it is unnecessary to answer the other questions which you have submitted. When an assessment is made against a municipality, it is the duty of its taxing authority to set forth in its tax budget the amount thereof. Opinions of the Attorney General for 1934, Vol. I, page 28. Such tax levied by a municipality to pay such assessment is a special tax (Opinions of the Attorney General for 1934, Vol. I, page 289), and being outside of the limitation of Section 2 of Article XII must, if properly authorized, be approved by the budget commission (Section 5625-23, General Code.) The attorney General's

opinions referred to relate to sanitary districts but as the statutes involved with reference to sanitary districts and conservancy districts are similar, said opinions are applicable to conservancy districts.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6039.

APPROVAL.—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$15,000.00.

COLUMBUS, OHIO, September 8, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

6040.

APPROVAL.—BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$30,000.00.

COLUMBUS, OHIO, September 8, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

6041.

APPROVAL—ABSTRACT OF TITLE, ETC., TO LAND IN
WAPAKONETA, AUGLAIZE COUNTY, OHIO—ROBERT W.
REA AND HELEN CURLEY REA.

COLUMBUS, OHIO, September 10, 1936.

HON JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of a recent communication from your department with which there is submitted for my examination and approval an abstract of title, warranty deed form, contract encumbrance record No. 1528 and Controlling Board certificate relating to the proposed purchase by the state of a parcel of land in the city of