

sixty one cents (61c), the undetermined taxes for the year 1932, and seven unpaid installments of fifty cents (50c) each of an assessment on said property for the construction of the Napoleon-Defiance I. C. H. No. 316.

Upon examination of the warranty deed tendered by A. L. Schlientz and Stephen Schlientz, both of whom are unmarried, I find that said deed has been properly executed and acknowledged by said persons above named as grantors in said deed, and that the form of this deed is such that it is sufficient to convey the above described property to the State of Ohio by full fee simple title with a covenant of warranty by said grantors and that the property is free and clear of all encumbrances whatsoever.

Encumbrance record No. 38, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and approved and the same shows that there is a sufficient balance in the proper appropriation account to pay the purchase price of the property, which purchase price is the sum of four hundred nine dollars and fifty cents (\$409.50). This encumbrance record likewise contains a recital that the purchase of this property has been approved by the board of control.

I am herewith returning with my approval said abstract of title, warranty deed and encumbrance record No. 38.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4578.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN WARREN COUNTY, OHIO.

COLUMBUS, OHIO, August 25, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

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4579.

FIFTEEN MILL LIMITATION—SUBDIVISION MAY SUBMIT TO PEOPLE QUESTION OF VOTING OUTSIDE LIMITATION—FACT SUBDIVISION ILLEGALLY LEVIED TAX IN EXCESS OF LIMITATION IMMATERIAL.

**SYLLABUS:**

*The taxing authority of any subdivision may submit to the electors the question of a tax levy outside of the fifteen mill limitation as provided in Section 5625-15,*

*et seq., General Code, notwithstanding the fact that such authority may have illegally levied a tax in excess of such limitation.*

COLUMBUS, OHIO, August 25, 1932.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"In Jackson Township, Sandusky County, Ohio, there exists a tax levy for this year for school purposes amounting to 4.95 mills, and in Scott Township there exists a levy for road purposes in the amount of 4.1 mills.

Sometime ago Jackson Township School District took a portion of Scott Township into the district and the two combined levies in that particular portion of Scott Township now amounts to nineteen and a fraction mills, which is in excess of the fifteen mill limitation but has been collected without any authorization of the taxpayers of that particular portion of Scott Township to pay the tax outside the fifteen mill limitation.

The Jackson Township School Board now desire to submit the question to the voters at the November election for the purpose of authorizing this levy outside the fifteen mill limitation. I am wondering if this can be done under the provisions of Section 5625-15, paragraph 3, of the General Code of Ohio, and if in your opinion it can be done resolutions will be prepared setting forth that it is necessary to pay debt charges on bonds issued and authorized to be issued prior to January 1, 1925. They desire to vote this levy outside the fifteen mill limitation throughout the whole school district, but the passage of the legislation will not raise the present tax rate.

Before proceeding with this, however, I would like to get your opinion as to the legality of this procedure."

Section 5625-15, General Code, provides in part as follows:

"The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

1. Current expenses of the subdivision.
2. For the payment of debt charges on certain described bonds, notes or certificates of indebtedness of the subdivision issued subsequent to January 1st, 1925.
3. For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925.

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If a tax is being levied in the subdivision which you mention in violation of the provisions of Section 2, Article XII of the Constitution and Sections 5625-2 and 5625-7, General Code, such a tax is illegal and any taxpayer of the subdivision may enjoin its collection. This fact, however, has nothing to do with the authority contained in Sections 5625-15, *et seq.*, to vote a levy outside of the

fifteen mill limitation and I know of no reason why the taxing authority may be said to be precluded from submitting such a question to the electors merely because such authority may have levied more than authorized.

Specifically answering your question, it is my opinion that the taxing authority of any subdivision may submit to the electors the question of a tax levy outside of the fifteen mill limitation as provided in Section 5625-15, et seq., General Code, notwithstanding the fact that such authority may have illegally levied a tax in excess of such limitation.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4580.

COUNTY ROAD—COUNTY COMMISSIONERS MAY ESTABLISH SUCH WITHIN MUNICIPAL LIMITS WHEN—DUTY OF COUNTY TO CONSTRUCT AND MAINTAIN BRIDGE ON SUCH ROAD—MUNICIPALITY MAY PAY PART OF COST OF SUCH BRIDGE.

*SYLLABUS:*

*Where a street within the limits of a municipality constitutes an important link between a county and state road for through traffic, the commissioners have the authority with the consent of the council of such city to establish such street as a county road.*

*Upon the establishment of such street as a county road, the duty to construct and maintain a bridge on said street would be upon the county commissioners and the municipality would be authorized to co-operate with the county commissioners in the cost of the construction of such bridge.*

COLUMBUS, OHIO, August 26, 1932.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I acknowledge receipt of a communication from your office which reads as follows:

“We are enclosing herewith a drawing, showing the location of Sixth Street in the City of Miamisburg, Oh’o, in connection with state and inter-county highways.

The bridge across Sycamore Creek on this street is in an unsafe condition, and the Commissioners of this county are contemplating the construction of a new bridge.

As the drawing shows, Sixth Street is neither on a state nor county highway, but is merely a connecting link between the two.

We respectfully request your opinion as to the authority of the County Commissioners to construct this bridge and lay out and establish a county road on Kerschner Street and Sixth Street between Main Street (Dixie Highway) and Linden Avenue (county road), providing county traffic will warrant same.

We would also appreciate your opinion as to whether or not this bridge may be constructed jointly by the County Commissioners and the municipality.”