

not in any way affect the obligation of the treasurer to proceed to collect such delinquent taxes in the manner provided by law.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

---

1930.

APPROVAL, BOND OF GOSHEN TOWNSHIP RURAL SCHOOL DISTRICT,  
TUSCARAWAS COUNTY—\$40,000.00.

COLUMBUS, OHIO, May 31, 1930.

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

---

1931.

APPROVAL, BONDS OF BOWLING GREEN TOWNSHIP, MARION  
COUNTY—\$7,600.00.

COLUMBUS, OHIO, May 31, 1930.

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

---

1932.

COUNTY COMMISSIONERS—TAX LEVY UNDER SECTION 1222, GENERAL  
CODE OUTSIDE FIFTEEN MILL LIMITATION AFTER JANUARY 1,  
1930, UNAUTHORIZED—EXCEPTION NOTED.

**SYLLABUS:**

*After January 1, 1931, the effective date of the amendment of Section 2, Article XII of the Constitution of Ohio, a levy may not be made under the provisions of Section 1222, General Code, outside of the fifteen mill limitation provided in such constitutional amendment; provided that, in the event bonds are authorized or issued under the provisions of Section 1223, General Code, in anticipation of the collection of taxes levied under Section 1222, General Code, outside the fifteen mill limitation, prior to January 1, 1931, such levy should continue to be made outside the fifteen mill limitation as long as any such bonds remain outstanding.*

COLUMBUS, OHIO, June 2, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to render this department your written opinion upon the following:

Section 1222, General Code, authorizes the county commissioners to make a levy not exceeding one and one-half mills upon all the taxable property of the county for the purposes stated in said section. It further provides that to the extent of one mill such levy may be outside of all limitations upon the tax rates. The amendment of Section 2 of Article XII of the Constitution, which will go into effect January 1, 1931, provides that no property, taxed according to value shall be so taxed in excess of one and one-half per cent, of its true value in money for all state and local purposes.

Question 1. After the effective date of the amendment, may the levy provided for in Section 1222, G. C., to the extent of one mill thereof, be outside of the limitation of fifteen mills?

Question 2. In the event that bonds are issued under the provisions of Section 1223, G. C., in anticipation of the collection of taxes levied under Section 1222, G. C., may the levy continue to be made outside of the limitation of fifteen mills to the extent necessary to pay the interest and principal of the bonds so issued and to the extent of one mill?

Question 3. In the procedure of the county commissioners to issue bonds under the provisions of Section 1223, G. C., is it necessary that the resolution authorizing the issue of bonds, be passed prior to the effective date of the Constitutional Amendment, in order that a levy may be made under Section 1222, G. C., outside of the limitation of fifteen mills to pay the same?”

Section 1222, General Code, to which you refer, provides:

“For the purpose of providing a fund for the payment of the county’s proportion of the cost and expense of cooperating with the department of highways as hereinbefore provided, the county commissioners are hereby authorized to levy a tax, not exceeding one and one-half mills, upon all taxable property of the county. Such levy shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the extent of one-half mill thereof, to the fifteen mill limitation. The remaining one mill of said levy so authorized shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount, or otherwise, by any other law or laws. The proceeds of such levy shall be used for the purpose of paying the county’s proportion of the cost and expense of any work conducted by the department of highways in cooperating with such county and also for the purposes provided in Sections 6965 to 6972, inclusive, or 6906 to 6956, inclusive, of the General Code; and the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise.

The county commissioners of any county in which less than one and one-half mills is levied in any year, under the provisions of this section, shall within the above limitations determine what part of such levy shall be subject to the fifteen mill limitation, and what part of such levy shall be outside such limitation and unrestricted by any other law or laws. A county may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section.”

While amended in other particulars by the 88th General Assembly, the provision relative to one mill of this one and one-half mill levy being outside of the fifteen mill limitation has been in effect since 1919. Section 2, Article XII of the Constitution, as effective January 1, 1931, with schedule thereof, is as follows:

"No property, taxed according to value, shall be so taxed in excess of one and one-half per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value. All bonds outstanding on the first day of January, 1913, of the State of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the first day of January, 1913, and all bonds issued for the world war compensation fund, shall be exempt from taxation, and, without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

#### SCHEDULE

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; but all levies, for interest and sinking fund or retirement of bonds issued, or authorized prior to said date which are not subject to the statutory limitation of fifteen mills on the aggregate rate of taxation then in force, and all tax levies provided for by the conservancy act of Ohio and the sanitary district act of Ohio, as said laws are in force on said date, for the purposes of conservancy districts and sanitary districts organized prior to said date, and all tax levies for other purposes authorized by the General Assembly prior to said date or by vote of the electors of any political subdivision of the state, pursuant to laws in force on said date, to be made outside said statutory limitation for and during a period of years extending beyond said date, or provided for by the charter of a municipal corporation pursuant to laws in force on said date, shall not be subject to the limitation of fifteen mills established by said amendment; 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, effected by law thereafter passed."

I am of the view that the first sentence of the above section is dispositive of your first question, assuming that it is predicated upon a situation whereby bonds have not been authorized or issued in anticipation of such levy. Such bonds may be issued under Section 1223, General Code. The general authority to make the levy provided

in Section 1222, supra, outside of the fifteen mill limitation, providing bonds have not been authorized or issued prior to January 1, 1931, in anticipation thereof, will apparently no longer exist after the effective date of this amendment.

With regard to your second and third questions, it is expressly provided in the schedule that "all levies for interest and sinking fund or retirement of bonds issued or authorized prior to January 1, 1931, which are not subject to the statutory limitation of fifteen mills on the aggregate rate of taxation then in force \* \* \* shall not be subject to the limitation established by (this) said amendment." In view of these express provisions of the schedule, it is apparent that in the event bonds are issued or authorized prior to January 1, 1931, in anticipation of the collection of taxes levied under Section 1222, the levy provided therein, insofar as it may have been made outside the fifteen mill limitation, will be unaffected by Section 2, Article XII of the Constitution as amended, so long as any of such bonds are outstanding, and such levy outside of the fifteen mill limitation may be made so long as such bonds are outstanding.

Consideration has been given to the language of this schedule wherein it is provided that "All tax levies for other purposes authorized by the General Assembly prior to said date (January 1, 1931) \* \* \* pursuant to laws in force on said date to be made outside said statutory limitation for and during a period of years extending beyond said date, \* \* \* shall not be subject to the limitation of fifteen mills established by said amendment." It may be contended that this language means that the one and one-half per cent limitation of the amendment will not affect any existing tax laws authorizing taxes to be levied outside the fifteen mill limitation, and that the amendment will be self-executing only to the extent of curbing the power of the Legislature in the adoption of any new laws for the levying of taxes outside the fifteen mill limitation without a vote and in the absence of charter provisions to the contrary. I am of the view, however, that this last quoted language of the schedule is not subject to such broad construction. Section 1222 is merely enabling in its effect and unless the county has obligated itself to levy the tax therein provided, for and during a period of years extending beyond the effective date of the amendment, as in the case when bonds have been issued under Section 1223, General Code, there is nothing in the schedule to indicate that after such date the section shall be effective.

You next raise the question as to what point the proceedings for the issuance of bonds under Section 1223 must have reached before the constitutional amendment may be said to have no effect upon the levy necessary to meet the interest and principal requirements of such bonds. Section 1223, provides in part:

"\* \* \* Prior to the issuance of such bonds the county commissioners shall provide for the levy of a tax upon all the taxable property of the county to cover any deficiency in the payment or collection of any township taxes, or any deficiency in the levy, payment or collection of any special assessments anticipated by such bonds."

Section 2293-26, General Code, being part of the Uniform Bond Act and the section relating to the resolution authorizing the issuance of bonds, provides in part:

"\* \* \* The resolution or ordinance provided for in this section shall provide for the levying of a tax sufficient in amount to pay the interest on and retire at maturity all of the bonds covered by said resolution. \* \* \*"

These statutory provisions requiring that the resolution authorizing bonds must levy a tax for the payment of such bonds are in accordance with the provisions of Section 11, Article XII of the Constitution, which are:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

It seems clear, therefore, that if the proceedings for the issuance of bonds under Section 1223 have progressed to the point where the resolution authorizing such bonds has been passed prior to January 1, 1931, a tax levy to meet their interest and principal requirements will be unaffected by the constitutional amendment here under consideration insofar as it may be outside of the fifteen mill limitation. If, however, such resolution is not passed prior to January 1, 1931, there will no longer be any authority for levying a tax to meet the interest and principal requirements of such bonds outside of the fifteen mill limitation by virtue of Section 1222.

In view of the foregoing and in specific answer to your questions, I am of the opinion that after January 1, 1931, the effective date of the amendment of Section 2, Article XII of the Constitution of Ohio, a levy may not be made under the provisions of Section 1222, General Code, outside of the fifteen mill limitation provided in such constitutional amendment; provided that, in the event bonds are authorized or issued under the provisions of Section 1223, General Code, in anticipation of the collection of taxes levied under Section 1222, General Code, outside the fifteen mill limitation prior to January 1, 1931, such levy should continue to be made outside the fifteen mill limitation as long as any such bonds remain outstanding.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

---

1933.

**CONTRACTORS—WHEN DENIED GAS REFUND ON FUEL USED IN CONSTRUCTION WORK ON A HIGHWAY—WHEN ALLOWED REFUND ON FUEL USED IN TRACTORS.**

**SYLLABUS:**

1. *Contractors are not entitled to refund of the tax paid on motor vehicle fuel which is used in construction work upon a highway regardless of whether the work is being done upon a new or old road, if the motor vehicle using such fuel was intended to be operated in whole or in part upon the highway.*

2. *Contractors are entitled to a refund of the tax paid on motor vehicle fuel used in tractors if such tractors are used in the construction of a new highway.*

COLUMBUS, OHIO, June 2, 1930.

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

GENTLEMEN:—I beg to acknowledge receipt of your letter which reads as follows:

"Recently the question has been raised in our Gasoline Tax Refund Department as to whether a road would lose its identity during the process of repairing the road bed by digging deeper, but at the same time staying within the boundary lines of the original road. This question is especially