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1. TAX LEVY, SPECIAL VOTED—TO PROVIDE DEFICIENCY IN REVENUES — GENERAL HEALTH DISTRICT — REGULAR LEVY WITHIN TEN MILL TAX LIMITATION—IN-ADEQUATE TO SUPPLY DISTRICT WITH FUNDS FOR OPERATION—SPECIAL LEVY LIMITED TO AN AMOUNT NECESSARY TO SUPPLY SUCH INSUFFICIENCY—SECTION 1261-40a GC.
2. GENERAL HEALTH DISTRICT — TRUSTEES — NO AUTHORITY TO SURRENDER FUNDS AVAILABLE TO IT WITHIN TEN MILL LIMITATION—MAY NOT OBTAIN SPECIAL VOTED LEVY COVERING ENTIRE OPERATING BUDGET FOR ENSUING FISCAL YEAR.

SYLLABUS:

1. The provision of Section 1261-40a, General Code, for a special voted tax levy is for the purpose only of providing for a deficiency in the revenues of a general health district when the regular levy within the ten mill tax limitation will not supply such district with sufficient funds for its operation, and such special levy is limited to an amount necessary to supply such insufficiency.

2. The trustees of a general health district have no authority to surrender the funds available to it within the ten mill limitation, and seek to obtain under the provisions of Section 1261-40a of the General Code, a special voted levy covering their entire operating budget for the ensuing fiscal year.

Columbus, Ohio, May 5, 1953

Hon. Howard G. Eley, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

I have before me your request for my opinion on the following question:

“Can a general health district surrender the funds available to it within the ten mill limitation and meet its entire fiscal budget from funds derived from a levy passed under Section 1261-40-(a), providing the tax duplicate of the general health district is of sufficient size to provide the health district's entire budget with a levy of less than 5/10 of one mill?”

Section 1261-40, General Code, reads in part, as follows:

“The board of health of a general health district shall, annually, on or before the first Monday of April, estimate in itemized form the amounts needed for the current expenses of such districts for the fiscal year beginning on the first day of January next ensuing. Such estimate shall be certified to the county auditor and by him submitted to the budget commissioners which may reduce any item or items in such estimate but may not increase any item or the aggregate of all items. The aggregate amount as fixed by the budget commissioners shall be apportioned by the county auditor among the townships and municipalities composing the health district on the basis of taxable valuations in such townships and municipalities. The district board of health shall certify to the county auditor the amount due from the state for the next fiscal year as provided in section 1261-39 of the General Code, which shall be deducted from the total of such estimate before an apportionment is made. * * *”

Section 1261-40a, General Code, reads in part as follows:

“If the aggregate amount necessary to meet the current expenses of the fiscal year beginning on the first day of January next ensuing, as set by the budget commissioners pursuant to section 1261-40 of the General Code, will not be forthcoming to the board of health of such district out of the district health fund because the amount of taxes to be raised during the ensuing year within the ten mill limitation will be insufficient, the board of health of the general health district shall certify the fact of such insufficiency to the county commissioners of the county in which such general health district is located who are hereby ordained to be a special taxing authority for the purposes of this section only, and notwithstanding any other provisions of law to the contrary, the board of county commissioners of any county in which a general health district is located shall be the taxing authority for such special levy outside the ten mill limitation. The county commissioners shall thereupon, at any time prior to September fifteenth of the year preceding that in which the insufficiency will exist, by vote of two-thirds of all the members of said body, declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such health district within the county, that it is necessary to levy a tax in excess of such limitation in order to provide the board with sufficient funds to meet its current expenses.

“Such resolution shall specify the amount of increase in rate which it is necessary to levy, which levy shall not exceed five-tenths of one mill, and shall be submitted to the electors of the

health district at any general election. The additional levy, if approved by the electors, shall not be for a longer period than one year. * * *”
(Emphasis added.)

It will be noted that the budget referred to in Section 1261-40 is intended to cover the amount needed for the entire expenses of the year following. The estimate is submitted by the board of health but is subject to reduction by the budget commissioners.

Section 1261-40a contemplates that the amount that will be realized by the board of health for its operation, out of the tax levy based on such revised budget, together with the state subsidy provided by Section 1241-39, General Code, may be found insufficient for its needs, by reason of the ten mill tax limitation contained in Article XII, Section 2, of the Constitution.

This insufficiency, so caused, is the sole basis for a special levy approved by the electors of the health district. And that fact, which must be found and declared by the board of health, is in my opinion, not only the basis, but also the measure of the right to secure the special levy.

It appears clear from the language of these two sections, that the only purpose of the submission of this extra levy is to *supply the deficiency* so caused; and except for that purpose there is no authority given to the board of health or to the county commissioners acting for it, to submit such a proposal to the electors. This appears to me particularly true when we consider that the procedure above outlined, covers the entire fiscal operation of the district board of health. Such board has no function except to take care of the health of the district. In that respect, it differs from the various taxing subdivisions in that their functions cover a variety of purposes and operations, including the making of improvements, etc.

By way of contrast, I turn to the statutes which authorize taxing subdivisions, generally, to provide extra finances both by the issuance of bonds and by special levies of taxes upon the approval of the electors. In Section 5625-15, General Code, we find provisions authorizing the taxing authority of any subdivision to submit a proposition to the electors for the levy of taxes outside of the ten mill limitation of the Constitution. Section 5625-15 provided in part, as follows:

“The taxing authority of any subdivision at any time prior to September 15, 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 ten mill limitation will be insufficient to provide *an adequate amount for the necessary re-*

quirements 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, * * *
- “4. For a public library * * *
- “5. For a municipal university * * *
- “6. For the construction or acquisition of any specific permanent improvement * * *
- “7. For the general construction * * * of roads and bridges in counties.
- “8. For recreational purposes, * * *” (Emphasis added.)

Here, it will be noted that the basis of the right to submit this extra levy is a finding that the taxes that may be raised within the ten mill limitation will be insufficient to provide an “adequate amount for the necessary requirements of the subdivision,” meaning evidently, all of the many functions and operations which the subdivision has a right to provide for, and which its legislative body may from time to time find desirable. This language opens the way for the taxing subdivisions to submit such proposition for a special tax outside the ten mill limitation for any of the authorized purposes, wholly irrespective of the fact that they have not presently used up the entire ten mill allowance. In other words, with the approval of the electors, any of these levies could be placed entirely outside the ten mill limitation, leaving a margin for necessary and desirable levies and expenditures within that limitation.

The extra taxes so authorized are not confined to supplying a “deficiency” in revenues otherwise available.

We turn now to the statutes relative to the issuance of bonds by the various subdivisions which might exceed the amount which a subdivision is authorized to have outstanding without a vote of the people, or might involve a tax in excess of the one mill limitation or both. We note Section 2293-19, General Code, which provides in part, as follows :

“The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution, declaring the necessity of such bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levy of a tax outside of

the limitation imposed by Article XII, section 2 of the constitution to pay the interest on and to retire the said bonds. * * *

Here it will be noted that specific authority is given to the taxing authority of any subdivision "to submit to the electors the question of issuing any bonds which said subdivision has power to issue." Such extra levy may and may not cause the amount of outstanding bonds to exceed the amount allowed by law, and may and may not immediately involve a tax in excess of the constitutional limitation, but if it does, that proposition is also submitted to the electors for their approval. Again, such submission is not confined to a "deficiency" in the revenues of the subdivision.

Your letter speaks of a "surrender" of the funds available to the board of health within the ten mill limitation. I have no means of knowing to whom or for what purpose such surrender is proposed. However, I think it safe to assert that in view of the provisions of the statutes above discussed, the board has no right to resort to the extra tax levy contemplated by Section 1261-40a of the General Code, until it has allocated to its requirements the funds provided by the regular levies, and it has been determined that there will be a deficiency.

I know of no authority whereby trustees of a health district may surrender their ordinary revenues in order to increase the amount that they may raise through a special voted levy.

In specific answer to your question it is my opinion:

1. The provision of Section 1261-40a, General Code, for a special voted tax levy is for the purpose only of providing for a deficiency in the revenues of a general health district when the regular levy within the ten mill tax limitation will not supply such district with sufficient funds for its operation, and such special levy is limited to an amount necessary to supply such insufficiency.

2. The trustees of a general health district have no authority to surrender the funds available to it within the ten mill limitation, and seek to obtain under the provisions of Section 1261-40a of the General Code, a special voted levy covering their entire operating budget for the ensuing fiscal year.

Respectfully,

C. WILLIAM O'NEILL
Attorney General