

1245.

BOARD OF COUNTY COMMISSIONERS—PUBLIC FUNDS—EXPENDITURES FOR ADVERTISING ELECTIONS — TAX LEVY.

SYLLABUS:

A board of county commissioners, in expending public funds for advertising an election upon a question of a tax levy outside of constitutional limitations, is limited to the publication of a notice of such election provided by Section 5625-17, General Code, and public funds may not be expended to pay the cost of other advertisements showing the necessity of such levy.

COLUMBUS, OHIO, September 28, 1937.

HON. WILLIAM A. AMBROSE, *Prosecuting Attorney, Youngstown, Ohio.*

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

“By resolution duly passed by the Board of County Commissioners of Mahoning County, there likely will appear upon the ballot, at the coming election, the question of a two mill levy for poor relief for the years 1938 and 1939.

There is some apprehension felt by the Commissioners that unless there is some advertising done to show the necessity of this levy that it will not carry. The money which will be raised if the levy carries is absolutely necessary to carry on relief during the years mentioned. The importance of the levy carrying becomes self-evident.

I am writing to inquire if it will be legal for the County Commissioners to make any expenditure out of county funds to carry on a campaign of education and advertising, to the end that the levy would carry, or would it be possible for a person to be employed by the relief organization, whose duties would be confined to advertising and working to secure a favorable vote on the same?”

The only statutory authority for publication of notice of an election upon the question of levying a tax outside of the constitutional ten mill limitation is that contained in Section 5625-17, General Code, which provides that such notice shall be published in a newspaper of general circulation in the subdivision once a week for four consecu-

tive weeks prior to such election. The section further provides what the notice so published shall contain.

The courts have repeatedly held that in determining the question of the power of a board of county commissioners to spend the taxpayers' money for any given purpose, the authority so to do must be conferred by the legislature and in case of doubt in any given case the question is resolved against the expenditure and, as stated by the courts, in favor of the public. This principle is so well established a citation of the numerous authorities in support thereof is deemed unnecessary. It is sufficient to refer to the language of the Supreme Court in *State, ex rel. vs. Menning*, 95 O. S. 97, wherein the court said at page 99:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

There is no question but that a reasonable expenditure of public funds to advertise the necessity of a tax levy in certain cases would be perhaps a proper and in some instances even a laudable purpose, but, as has been stated by this office, it is a lawful rather than a laudable purpose that justifies the expenditure of the taxpayers' money. The remedy in the instant case is obviously with the legislature.

Specifically answering your inquiry, it is my opinion that a board of county commissioners, in expending public funds for advertising an election upon a question of a tax levy outside of constitutional limitations, is limited to the publication of a notice of such election provided by Section 5625-17, General Code, and public funds may not be expended to pay the cost of other advertisements showing the necessity of such levy.

Respectfully,

HERBERT S. DUFFY,

Attorney General.