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BUILDING — PUBLIC — ENLARGEMENT — IMPROVEMENT—
JOINT ACTION—TOWNSHIP AND VILLAGE—ABANDONED
SCHOOL BUILDING—TAX AUTHORIZED BY VOTE OF ELEC-
TORS—CAN NOT BE USED FOR MAINTENANCE OF BUILD-
ING—SECTION 511.05 ET SEQ., RC.

SYLLABUS:

The provisions of Section 511.05 et seq., of the Revised Code, contemplate only the enlargement, improvement or erection of a public building by joint action of a township and a village located within its boundaries, and the tax authorized by vote of the electors under Section 511.06, Revised Code, is limited to such purposes and cannot be used for the maintenance of such building.

Columbus, Ohio, May 13, 1955

Hon. Charles W. Ayers, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“Martinsburg, a village in Knox County, is wholly within the township of Clay. Several years ago the territory in Clay Township and Martinsburg was transferred to and became a part of a school district partly in Licking County, which district contained the village of Utica. For a few years following this merger, the only high school maintained by the board for the district was in the village of Utica. A school for the grades was continued in the village of Martinsburg for the children of Martinsburg and Clay Township. Recently the school board has discontinued all schools in Martinsburg and all children of Martinsburg and Clay Township are transported to the Utica schools. As a part of the abandonment of the Martinsburg school, the board of education deeded to the village of Martinsburg title to the school lot and building.

“At this time, therefore, Martinsburg has a vacant school building which could be used as a community center if there were funds available for its maintenance. However, the tax duplicate of the village is so small that the village alone could not maintain it. Clay Township has no community building and could make use of this building for such purposes. Its tax duplicate is

sufficiently high that a tax levy thereon could maintain the building and acting in cooperation, the township and Martinsburg could easily renovate and maintain said building as a community center for the benefit of the citizens of Clay Township and Martinsburg.

“If it can be done legally, Martinsburg and Clay Township contemplate jointly to remodel and maintain this building as a community building for the benefits of all the citizens of the village and township.

“Section 511.05 of the Revised Code of the State of Ohio seems to provide a way whereby a township and village may cooperate in enlarging, improving or erecting a public building but the statute does not mention the maintenance of the building after the erection, enlargement and/or improvement has taken place. While as already stated, the plans of the township and village envision some minor improvements to start with, *the greater portion of the contemplated tax levy would be for the purpose of maintaining the building throughout the years.* Under the circumstances outlined, does the statute in question authorize the joint action contemplated by the Village of Martinsburg and the township of Clay?” (Emphasis added.)

I am assuming at the outset that the village has good title to the school building which it is proposed to use for a community center. The plan which you suggest would involve either the conveyance of that building by the village to the township, or at least the conveyance of an interest in the same or the dedication of such building to the intended purpose indicated in your letter. I do not see that either of these steps would exceed the powers of the village. Section 721.03, Revised Code, purports to require a municipality, if it desires to sell any property, to advertise for bids, and sell the same to the highest bidder. However, it has been held that a municipality, under its home rule powers, can disregard that provision and sell its property in such manner and upon such consideration as it deems most advantageous. *Hugger v. Ironton*, 83 Ohio App., 21; 148 Ohio St., 670.

Coming then, to the provisions of Section 511.05, Revised Code, that section reads as follows:

“The electors of a township in which a village is situated, and the electors of such village, may, if the electors of both so determine, unite in the *enlargement, improvement, or erection* of a public building.

“For such purpose, an application shall be made to and filed with the board of township trustees, signed by not less than

twenty-five resident freeholders of such township, who are not residents of the village, and an application shall also be made to and filed with the mayor of the village, signed by not less than twenty-five resident freeholders of the village.”

(Emphasis added.)

It will be observed that the initial step in this proceeding is a petition signed by electors residing in the township but outside of the village, addressed to the township trustees, and a petition signed by electors of such village, addressed to the mayor. It appears, however, that except for this petition, which for that purpose separates the village from the balance of the township, the subsequent proceedings contemplate independent action by the village on the one hand, and by the township, including the village on the other. Section 511.06, Revised Code, requires that at the next regular municipal election the proposition whether a tax shall be levied upon all the property subject to taxation in the township and village, for the “enlargement, improvement or erection of such building,” shall be submitted to a vote of the electors “of the township and village.” Section 511.07, Revised Code, provides :

“If, at an election under section 511.06 of the Revised Code, two thirds of the electors *of the township* and *of the village* voting, vote in favor of such improvement, the board of township trustees and the legislative authority of the village shall jointly take such action as is necessary to carry out complete improvement.”

(Emphasis added.)

It seems clear to me that the electors in the village would vote twice, once as electors of the village and once as electors of the township, and that in order for the proposition to be approved there would have to be two-thirds of the electors in the village voting favorably, and also two-thirds of the electors in the entire township voting favorably. The use of the phrase “electors *of the township*, and *of the village*,” seems to me to leave no room for doubt and therefore no room for construction. *Slingluff v. Weaver*, 66 Ohio St., 621.

It must be remembered that the township trustees act for the entire township, including all municipal corporations located therein, and if this project should involve not only the initial tax levy but also the necessity of a bond issue or voted tax levy, it is plain that either the tax levy or bond issue, if submitted to a vote of the electors, would be submitted to the entire township on the one hand, and to the village on the other, and the

village property owners, if these propositions were carried, would bear a double share of the burden.

As to the purpose and use of the tax that would be authorized under the provisions of Section 511.05 et seq. *supra*, it would appear that the entire plan contemplated by the law is limited to the "enlargement, improvement, or erection of a public building." That phrase is repeated several times in the statutes referred to.

Your question mainly is directed at the proposition of including in these proceedings not only the enlargement or improvement of the building, but also its maintenance. As you state in your letter, "the greater portion of the contemplated tax levy would be for the purpose of maintaining the building throughout the years." This would seem to contemplate the perpetual maintenance of the building or at least its indefinite maintenance.

This, then, becomes a matter, not of improvement, but rather of current annual expense. Provision for the annual expense of operation of the functions or business of any taxing subdivision involves annual budget making, levy of taxes and appropriation. Section 5705.28 requires every taxing authority on or before the 15th day of July in each year, to adopt a tax budget for the next succeeding fiscal year. The head of each department, board or commission entitled to participate in any appropriation, is required to file with the taxing authority an estimate of contemplated revenues and expenditures for the ensuing year. On the basis of these estimates, the taxing authority makes up and presents its budget for its operations for the next succeeding year to the budget commission, which in due time revises and adjusts the same and certifies to the subdivision the amount of the tax levy that will be required.

This seems to me to be the process by which moneys may be obtained for current operation and maintenance. Accordingly, it is my opinion that maintenance of any public building must primarily be taken care of out of the current tax levy. It is true that if the taxes that may be levied within the ten mill limitation are not sufficient, the legislative authority may submit to the electors a proposal to levy an additional tax for not to exceed five years.

In the light of the above provisions, it is my opinion that the tax authorized to be levied pursuant to the vote of the electors under the provisions of Section 511.06 of the Revised Code, cannot be applied to the cost of maintenance of such building.

Accordingly, it is my opinion and you are advised that the provisions of Section 511.05 et seq., of the Revised Code, contemplate only the enlargement, improvement or erection of a public building by joint action of a township and a village located within its boundaries, and that the tax authorized by vote of the electors under Section 511.06, Revised Code, is limited to such purposes and cannot be used for the maintenance of such building.

Respectfully,

C. WILLIAM O'NEILL

Attorney General