

Note from the Attorney General's Office:

1949 Op. Att'y Gen. No. 49-1009 was modified by 1961 Op. Att'y Gen. No. 61-2145.

1009

TAX LEVY—SCHOOL DISTRICT—ADDITIONAL TAX LEVY TO BE VOTED IN NOVEMBER, 1949 ELECTION—BOARD OF EDUCATION RESOLVED TO PLACE TAX ON BOOKS FOR CURRENT YEAR—COUNTY AUDITOR REQUIRED TO CERTIFY AND COUNTY TREASURER REQUIRED TO COLLECT TAX IN DECEMBER, 1949—SECTIONS 2584, 5625-15, 5625-17a G. C.

SYLLABUS:

If a School District votes an additional tax levy in the November, 1949 election, pursuant to Section 5625-15, General Code, and the Board of Education resolves to place the tax on the books for the current year, pursuant to Section 5625-17a, General Code, the county auditor is required to certify and the county treasurer to collect said tax in December, 1949, despite the provisions of Section 2584, General Code.

Columbus, Ohio, September 27, 1949

Hon. D. Deane McLaughlin, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

I have before me your communication requesting my opinion which request reads as follows:

“Many times in the past special tax levies have been voted by various subdivisions in November and the resolutions or ordi-

nances required collection of the tax in the current year pursuant to 5625-17a. The Auditor in such cases has held his books open until after the November election and has included the extra levy in the duplicate certified to the Treasurer for collection in December.

“Ordinarily by virtue of Sec. 2584, the Auditor certifies his duplicate to the County Treasurer by October 1; and holding the books open until after the general election in November creates a hardship on the Auditor and his staff, and almost always delays the collection of the tax. On the other hand, failure to collect the first installment of a tax voted in November, in the December collection would create hardship on many school Boards who are unable to wait for said funds until the collection for the following June.

“It is my informal view that Sec. 5625-17a requires the Auditor to collect the tax in December 1949, but the Auditor desires your opinion.

“In the event that a School District votes an additional tax levy in the November 1949, election, pursuant to Sec. 5625-15, and the Board of Education resolves to place the tax on the books for the current year, pursuant to Sec. 5625-17a, is the County Auditor required to certify and the Treasurer to collect, said tax in the December 1949 collection.”

Section 5625-17a, General Code, referred to in your request reads:

“A levy voted outside of the ten mill limitation under section 5625-17 of the General Code shall be certified to the tax commission of Ohio. In the first year thereof, such levy shall be extended on the tax lists after the February settlement next succeeding such election. Provided, however, that if such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for the submission thereof, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection. In all years after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.”

Section 2584, General Code, reads:

“On or before the first Monday of August annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations and corpo-

rations in whose names personal property required to be entered on the general tax list and duplicate has been listed and assessed as shown in the preliminary and final assessment certificates in the hands of the auditor pursuant to chapter three, title one, part second, of the General Code in each township, city, village, special district, or separate school district or part of either in his county. He shall place in an appropriate column opposite each name, the aggregate value of such personal property as listed and assessed therein. On or before the third Monday of August in each year the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio and shall certify and deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's general tax list and treasurer's general duplicate of personal property for the current year."

Section 5625-17a, General Code, was effective May 7, 1941, Amended Senate Bill No. 99, 119 O. L. 179.

Section 2584, General Code, was effective for the year 1933, Amended Senate Bill No. 30, 115 O. L. 548, Section 3 at page 599.

The two sections are in conflict as to the time of the completion by the county auditor of the tax list since Section 2584, General Code, provides in part:

"* * * On or before the third Monday of August in each year the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio and shall certify and deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's general tax list * * * for the current year."

while Section 5625-17a, General Code, provides in part:

"* * * Provided, however, that if such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for the submission thereof, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection. * * *"

Obviously a great many elections at which the tax levy provided for in Section 5625-17a, General Code, is to be voted upon, will occur subsequent to "the third Monday of August", the time specified in Section 2584

of the General Code for the compiling of the tax lists by the county auditor. Since the statutes are in conflict, the further question remains: Has the legislature, by the enactment of Section 5625-17a, General Code, effective May 7, 1941, repealed by implication (since there is no expressed repeal) Section 2584, General Code, effective for the year 1933, in regard to the time at which the county auditor shall complete the computation of the general tax list for a given year?

An excellent discussion of repeal by implication is contained in 37 O. Jur. 395, Section 135 et seq. The tests for repeal by implication are contained in the following language:

“The fact that an act does not contain either a general or specific repealing clause will not prevent it from repealing a prior inconsistent act, for an act may be repealed by implication as well in direct terms. If an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates, without any repealing clause, as a repeal of the first to the extent of the irreconcilable inconsistency. Hence, it is a rule that later expressions of legislative will control where two statutes are in irreconcilable conflict. * * *”

Further, at page 400, Section 137, it is said:

“The doctrine of repeal by implication rests on the ground that the last expression of the legislative will ought to control. It results from the necessity of giving effect to the later legislation.”

Also, at page 407, Section 148, is found the following statement:

“It is well settled that a special law repeals an earlier general law to the extent of any irreconcilable conflict between their provisions; or, speaking more accurately, it operates to engraft on the general statute an exception to the extent of the conflict. * * *”

In Volume 1 of Sutherland Statutory Construction, 3rd Edition, at page 463 is found the following language:

“When a subsequent enactment covering a field of operation coterminous with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict between the two acts,

the latest legislative expression prevails, and the prior law yields to the extent of the conflict.”

From the above cited authorities it is clear that if two statutes are in irreconcilable conflict, the later enactment in point of time must control.

Are the statutes with which we are herein concerned in irreconcilable conflict? It is my opinion that they are. Under Section 2584, supra, page 3 of this opinion, the county auditor is directed in mandatory language to complete the general tax list “on or before the third Monday in August.”

Section 5625-17a, supra, page 2 of this opinion, provides in mandatory language that the county auditor “shall extend” on the tax list any tax levy which has been voted upon at an election and been certified to the county auditor in the manner provided for in Section 5625-17a.

It is obvious that many elections involving the tax levy mentioned in Section 5625-17a, General Code, could be held in November of a given year and under Section 5625-17a, the county auditor must place it on the tax list when properly certified even though requested to do so at a date subsequent to the date provided in Section 2584, supra. Therefore, it is my opinion that the statutes are in irreconcilable conflict and that the later enactment, namely Section 5625-17a, General Code, must govern.

In answer then to your specific question, I am of the opinion that if a School District votes an additional tax levy in the November, 1949 election, pursuant to Section 5625-15, General Code, and the Board of Education resolves to place the tax on the books for the current year, pursuant to Section 5625-17a, General Code, the county auditor is required to certify and the county treasurer to collect said tax in December, 1949, despite the provisions of Section 2584, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.