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1. TAX LEVY, ADDITIONAL—WHERE APPROVED BY ELECTORS OF SUBDIVISION—SUBDIVISION MAY LEVY SUCH TAX ON CURRENT TAX DUPLICATE—AMENDED SUBSTITUTE SENATE BILL 63, 98 GENERAL ASSEMBLY.
2. WHERE ELECTION HELD IN 1949 AND TAX LEVY APPROVED FOR FISCAL YEARS 1950, 1951, LEVY MUST BE INCLUDED IN ANNUAL TAX BUDGET FOR YEAR 1950 AND LEVIED ON TAX DUPLICATES 1950, 1951.
3. WHERE COUNTY COMMISSIONERS LEVY ADDITIONAL TAXES TO SUPPLEMENT GENERAL FUND APPROPRIATION FOR “DEPENDENT CHILDREN AND POOR RELIEF”—PURPOSES WOULD INCLUDE PAYMENTS ALLOWED BY COUNTY CHILD WELFARE BOARD.
4. SECTION 5625-9 G. C. REQUIRES THAT PROCEEDS OF EACH SPECIAL TAX LEVY BE CREDITED TO SPECIAL FUND OF SUBDIVISION—NO PROVISION FUND BE CHARACTERIZED BY ANY PARTICULAR NAME.

SYLLABUS:

1. Where an additional tax levy under the provisions of Amended Substitute Senate Bill No. 63 of the 98th General Assembly has been approved by the electors of a subdivision, the subdivision may levy such tax on the current tax duplicate.

2. Where the taxing authority in 1949 adopts a resolution of necessity for an additional tax levy, pursuant to the provisions of Amended Substitute Senate Bill No. 63 of the 98th General Assembly, specifically providing for the additional tax for the fiscal years 1950 and 1951 and such levy is approved by the requisite majority of the electors of the subdivision in an election held in 1949, such levy may not be

made on the tax duplicate for the year 1949 but must be included in the annual tax budget for the year 1950 and levied on the 1950 and 1951 tax duplicates.

3. Where additional taxes are levied by county commissioners pursuant to the provisions of Amended Substitute Senate Bill No. 63, 98th General Assembly, for the purpose of supplementing general fund appropriations for "dependent children and poor relief," such purposes would include payments allowed by the county child welfare board.

4. Section 5625-9, General Code, requires that the proceeds of each special tax levy be credited to a special fund of the subdivision, but there is no provision of law requiring such fund to be characterized by any particular name.

Columbus, Ohio, March 29, 1950

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The County Commissioners of Clermont County passed a resolution of necessity asking for an additional tax levy providing for an increase in the tax rate for the benefit of Clermont County to supplement appropriations as provided in Amended Substitute Senate Bill No. 63, passed by the Ninety-eighth General Assembly. The ballot form in substance is the same as included in the resolution, a copy of which is inclosed.

Under the provisions of Amended Substitute Senate Bill No. 63, the fifty-five per cent affirmative vote was necessary for passage. The Board of Elections of Clermont County have certified to the County Auditor the vote, which shows that the levy has carried.

The first question that arises upon the receipt of the certification is the question whether this levy may be run for the full amount requested, namely, two mills, on the current 1949 tax duplicate, or whether it requires action by the budget commission on the next annual budget to be submitted by the County Commissioners in June 1950.

The second question deals with the expenditures that can be made if and when the tax is levied. In the resolution and on the form of ballot the wording used was to supplement appropriation for dependent children and poor relief. Under the provisions of Senate Bill No. 63, the vote could be for the following purposes: relief, welfare, hospitals, health, and support of general or tuberculosis hospitals. In view of the fact that the word, dependent children, is used, the question is raised as to the definition of the

word, dependent children, as used in the resolution and whether it would cover payments allowed by the Child Welfare Board.

After this tax is run on the duplicate, what name should be used to designate the fund that the tax collection will be placed in by the County Auditor after collection?"

The resolution declaring it necessary for an additional tax levy, passed by the Board of County Commissioners, reads in part as follows:

"NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Clermont County, Ohio, that it is necessary to levy a tax in excess of the ten mill limitation for the use of Clermont County, Ohio, for the purpose of providing funds to supplement general fund appropriations for dependent children and poor relief at a rate not to exceed two mills for the fiscal years 1950 and 1951; that the question of levying said additional tax be submitted to the electors of Clermont County, Ohio at the next general election as provided by Sections 5625-15, 5625-17 and 4785-103 of the general code of Ohio and Amended Substitute Senate Bill No. 63 of the 98th General Assembly;"

The ballot submitted to the electors proposing the tax levy reads as follows:

"An additional tax for the benefit of Clermont County for the purpose of Dependent Children and Poor Relief at a rate not exceeding two mills for each one dollar of valuation, which amounts to 0.20 cents for each one hundred dollars of valuation, for two years."

Amended Substitute Senate Bill No. 63 provides in part as follows:

"Notwithstanding the provisions of any other law to the contrary, during the period from the effective date of this act until December thirty-first, 1950, the taxing authority of any subdivision, other than the board of education of a school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount from the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5625-15 of the General Code, or to supplement general fund appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary

or special election to be held at a time therein specified. Such resolution shall conform to the requirements of section 5625-15 of the General Code, excepting that such levy may not be for a longer period than two years, and such resolution shall specify the date of holding such election, which shall not be earlier than twenty-five days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5625-17 of the General Code, and the provisions of said section shall govern the arrangements for the submission of such question and other matters and things with respect to such election, to which said section 5625-17 of the General Code refers, excepting that such election shall be held on the date specified in the resolution, provided, however, only one special election for the submission of such question may be held in any one calendar year and may not be held during the thirty days immediately preceding or following a primary or general election. Provided, further, however, that a special election may be held upon the same day a primary election is held. Publication of notice of such election shall be required to be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks.

If sixty percent or more of the electors voting on the question at a primary or special election vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. If fifty-five percent of the electors voting on the question submitted at a general election vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission."

With reference to that part of your first question pertaining to the year for which the levy is to appear on the tax duplicate, it will be observed that the statute provides that the taxing authority "may forthwith make the necessary levy" while the resolution passed by the county commissioners specifically provides that the proposed levy was for the fiscal years 1950 and 1951.

Amended Substitute Senate Bill No. 63 is a special act of the 98th General Assembly to provide for submitting the question of levying additional taxes to the electors of a subdivision, other than a school district, at a general, primary or special election, in the years 1949 and 1950, and to authorize the making of such levy. Said act is temporary in its nature and has not been codified. In effect it is supplementary to the uniform tax levy law, but due to its temporary character the legislature did not see fit to make it a part of such law.

It will be noted that the second paragraph quoted above from said act states that "the subdivision may forthwith make the necessary levy." In view of the fact that the last sentence of the paragraph contains the word "shall" in making it mandatory that the tax levy be included in the next annual tax budget, I am inclined to the position that the prior language using the word "may" was used in a permissive sense thereby authorizing the subdivision, if it deemed necessary, under proper procedure, to levy such tax, upon its approval by the requisite majority vote of the electors voting thereon, on the current tax duplicate. Whether or not the actual levy be made on the current tax duplicate would therefore depend upon the determination of the taxing subdivision as to the necessity of such immediate levy.

Under the facts which you have presented, it appears eminently clear that the board of commissioners of Clermont county did determine that the levy should not be made to apply to the tax duplicate for the year 1949, for they expressly stated, as shown by the above quoted portion of their resolution declaring the necessity of such tax, that such levy was to be made "for the fiscal years 1950 and 1951."

With reference to your second question, it will be noted that said Amended Substitute Senate Bill No. 63 authorizes the levying of additional taxes under its provisions for any of the purposes in Section 5625-15, General Code, or to supplement general fund appropriations for relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals. When such levy is made for the purpose stated in Section 5625-15 it will be observed that it is not required that the levy be made to supplement general fund appropriations for such purposes. However, when made for the specific purposes set forth in said Senate Bill, i.e., relief, welfare, etc., it is required that such levy be supplemental to general fund appropriations for such purposes. It necessarily follows

that the expenditures of the tax moneys collected under a levy for such specific purposes would be limited in the same manner and to the same extent as those which are appropriated for the same purposes from the general fund.

Child welfare boards are provided for by Sections 3070-1 to 3070-36, General Code, commonly referred to as the Child Welfare Act. These sections of the General Code were enacted by House Bill No. 418 of the 96th General Assembly, the express purpose of which is indicated in the title to the act as "to clarify and supplement existing statutes relating to county care of dependent, neglected, delinquent and handicapped children and to provide for the unification of county services to children." The purpose of the act is further stated in Section 3070-1 as follows:

"The purpose of sections 3070-1 to 3070-35, inclusive, is to supplement, expand, modernize and integrate child welfare services and the care and placement of children in the several counties of the state, and to this end this act shall be liberally construed."

Sections 3070-17 to 3070-20, inclusive, General Code, enumerate the powers and duties of such child welfare boards. These powers are quite broad and appear to deal with social service rather than with the distribution of relief. (See Opinions of the Attorney General for 1946, No. 761.) Section 3070-17 limits the powers and duties of the child welfare board to those "for and on behalf of children in the county deemed by the board to be *in need of public care or protective services.*" The words "children * * * in need of public care or protective services," as used therein were defined in Opinions of the Attorney General for 1946, No. 769, to mean "persons under twenty-one years of age who are the objects of public charity in that their social and economic status does not enable them to be properly maintained by private resources."

No general legal definition of the term "dependent children" is readily available, for such term is normally construed in connection with particular statutory enactments dealing with the subject which limit or expand its ordinary meaning. The term is commonly understood to be applied to minors who must be supported by others than their natural guardian. In view of this common acceptance of the term and the limitation on the powers and duties of child welfare boards as contained in Section 3070-17, General Code, and the further fact that the additional

taxes levied under Amended Substitute Senate Bill No. 63 may be for welfare purposes as well as for relief, I am inclined to the position that the words "dependent children," as used in the resolution levying the tax, would include payments allowed by the child welfare board.

In response to your last question relative to the name of the fund in which the proceeds of the tax, when collected, is to be placed, your attention is called to Section 5625-9, General Code, which provides in part as follows:

"Each subdivision shall establish the following funds:

* * * (d) A special fund for each special levy."

I am apprised of no provision of law which would require the use of any particular name for such special fund. I am of the opinion that any name may be used which would distinguish the moneys constituting this fund from all other county funds.

Respectfully,

HERBERT S. DUFFY,
Attorney General.