

in section 5654 would seem to be a tax for a specific improvement, because section 5654 directs that the surplus of the proceeds of such special tax not used or needed for the purpose for which the tax was levied shall go into the sinking fund. In this view, the levy provided by section 6926 is a general levy rather than a special levy.

It should be said, however, that the power of transfer relates only to funds which are either in the treasury or on the duplicate and in process of collection as the result of a levy under section 6926. In order that the proceeds of a direct tax levy may be used by the county in conjunction with state aid improvements, the auditor's certificate provided by section 5660 must first have been made (see section 1218 [as amended 108 O. L. 478]); and under the provisions of section 5660 such certificate cannot be made until the tax funds are either in the treasury or have been levied and put on the duplicate and in process of collection. Therefore, as a prerequisite to the making of such certificate, not only must the funds be in the treasury or on the duplicate and in process of collection, but the order of transfer from the county road improvement fund to a fund for state aid improvements must have been made by the court of common pleas as directed by section 2296 et seq.

In conformity with the foregoing observations, answer to your question is given as follows:

Subject to the prior granting of an order of transfer by the common pleas court in accordance with sections 2296 et seq. G. C., county commissioners may devote to state aid improvement projects funds not otherwise appropriated, derived and to be derived from levies under section 6926 G. C. insofar and only insofar as the proceeds of such levies are either in the county treasury or are to accrue to the treasury from levies which have been placed on the duplicate and are in process of collection; provided that the use stated may not be made of any part of such funds as may have been (a) anticipated by bond issues; (b) directed by popular vote under section 6926-b 1 G. C. to be put to certain uses; or (c) found necessary for the maintenance and repair fund purposes mentioned in section 6956-1 G. C.

Respectfully,

JOHN G. PRICE,

Attorney-General.

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CONSTITUTION OF OHIO—COST OF PUBLISHING PROPOSED AMENDMENTS GOVERNED BY SECTION 6251 G. C.

1. *Section 4 of the act passed April 28, 1913 (103 O. L. 724), and designated as section 5123-4 of the General Code, applied only to charges for publishing amendments to the state constitution which were proposed by the 80th general assembly and submitted to the electors at the November, 1913, election, and not to proposed amendments generally.*

2. *The costs of publishing proposed amendments to the state constitution, other than those proposed by the 80th general assembly, should be paid by the secretary of state at the rates prescribed by section 6251 G. C.*

COLUMBUS, OHIO, January 23, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date making inquiry concerning the payment of bills incurred in publishing or advertising proposed amendments to the state constitution, was duly received, and, omitting formal parts, reads as follows:

“Constitutional amendments proposed by the general assembly of Ohio are required, under the provisions of section 1, article XVI of the constitution

to be published once a week for five consecutive weeks, preceding their submission to the electors of the state, in at least one newspaper in each county in the state, where a newspaper is published. This advertising has been done and bills are now being presented for the payment of said service.

I hereby ask your opinion as to whether I shall pay for such advertising of said amendments as provided in section 6251 of the General Code, amended part 1, 108 Ohio Laws, page 475, or whether the said advertising shall be paid in accordance with the provision of an act known as house bill 679, passed April 28, 1913, page 724, 103 Ohio Laws, amended 106 Ohio Laws, page 479 and again amended part 1, 108 Ohio Laws at page 693."

In my former opinion, No. 189, rendered to the supervisor of public printing under date of April 10, 1919, it was held that the act passed April 28, 1913 (H. B. No. 679; Secs. 5123-1 to 5123-5 G. C.; 103 O. L. 724), did not apply to proposed constitutional amendments generally, nor to the publication of amendments proposed at all sessions of the general assembly, but only to those proposed by the 80th general assembly and submitted to the electors at the November, 1913, election. And it was further held in that opinion that the rate of payment fixed in section 4 of the act (section 5123-4) applied only to the cost of publishing the proposed amendments above referred to. In other words, the act of April 28, 1913, is not a permanent act, but temporary only, notwithstanding the fact that its several sections were given code numbers by a former Attorney-General.

The act passed May 27, 1915 (H. B. 722; 106 O. L. 479), and referred to in your letter, amended section 1 of the original act by designating and referring to it as section 5123-1 G. C. The purpose and effect of the amendment was to make the section one of a permanent character and applicable to proposed amendments generally, as well as to fix the time at which amendments should be submitted to the electors for adoption or rejection, and to impose certain duties on the judges and clerks of election with respect to making returns of the votes cast for and against a proposed amendment. The other provisions of the original act relating to the publication of the proposed amendments, and the payment of the costs of publication, were not affected.

The Act of April 15, 1919 (amended S. B. 125; 108 O. L. 693), also referred to in your letter, again amended the same section, viz.: 5123-1 G. C., but in a respect not material to the present inquiry, and by the same Act section C of the original act, viz., 5123-3 G. C., was also amended so as to require all amendments to the constitution proposed by the general assembly to be published in at least one newspaper in each county of the state, but without any provision being made therein for paying the costs of such publication.

It will thus be seen from the foregoing review of the legislation on the subject, that the only special provision with respect to the cost of publishing amendments to the constitution proposed by the general assembly was the provision contained in the original and temporary act of April 28, 1913, which, as already stated, applied only to amendments proposed by the 80th general assembly and submitted to the electors of the state at the November, 1913, election.

Since the original act applied only to amendments proposed by the 80th general assembly and submitted to the electors at the November, 1913, election, and no special provision having been made in any subsequent amendatory or other act for paying the costs of publishing proposed amendments generally, it must necessarily follow that the payment of such costs are governed by section 6251 G. C. (108 O. L. 475, 476) which prescribes a schedule of rates that may be charged and paid for the publication of such advertisements, notices and proclamations as are required to be published by a state officer.

Respectfully,
JOHN G. PRICE,
Attorney-General.