

4536.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO,  
\$28,000.00.

COLUMBUS, OHIO, August 12, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4537.

APPROVAL, BONDS OF WHEELERSBURG RURAL SCHOOL  
DISTRICT, SCIOTO COUNTY, OHIO, \$2,900.00.

COLUMBUS, OHIO, August 12, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4538.

TAX LEVY—BUDGET COMMISSION SHOULD NOT ALLOW  
TAX LEVY FOR OPERATING PURPOSES OF SCHOOL  
DISTRICT TO BE GREATER THAN AMOUNT NEEDED  
FOR THAT PURPOSE.

**SYLLABUS:**

*In no event, under the terms of Section 5625-23, General Code, as amended in House Bill No. 466 of the 91st General Assembly, should the tax levy allowed by a county budget commission for an operating levy for a school district within the county be greater than at a rate necessary to produce an amount sufficient to satisfy the requirements of the school district for operating purposes as shown by the budget of the board of education of the district.*

COLUMBUS, OHIO, August 14, 1935.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"I would appreciate it very much, and would like to have your opinion relative to the following: House Bill No. 466, the New School Foundation Tax Bill, enacted by the last General Assembly under Section 5625-23, General Code, Section D, provides that the schools' taxing subdivision have a preferred levy equivalent to 45% of the millage available within the ten mill limitation after all the levies in sub-sections (b) and (c) have been provided for, also in Section 7595-1-b, it provides that the tax levies for current school operation must have at least three mills in order to participate in the school foundation program.

In making the tax levies, is it mandatory that the 45% under Section 5625-23, Section D, be levied for the schools for operating levy or will it be sufficient if a levy is made of at least three mills to enable a school district to operate under the foundation program?

If we levy 45% of the millage after all the levies (b) and (c) have been provided for, it will necessarily mean that the majority of the schools in Perry county will receive more than four mills within the ten mill limitation and a cut in the county rate to provide for the excess levy."

The pertinent part of Section 5625-23, General Code, reads as follows:

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The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification:

(a) All levies outside of the ten mill limitation.

(b) All levies for debt charges not provided for by levies outside of the ten mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levies prescribed by section 4605 and 4621 of the General Code.

(d) A minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate. Provided, however, that if the levies required in paragraphs (b) and (c) for said subdivision or taxing unit equal or exceed the entire minimum levy of said subdivision as hereinbefore fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the budget commission

to provide for said levies and in addition thereto an operating levy for said subdivision. Such additional levy thus required shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.

If any debt charge is omitted from the budget, the budget commission shall include it therein."

Upon an analysis of paragraph (d) above, it will be noted that the first sentence of this paragraph fixes a minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which the budget commission must allow to be a definite ascertainable rate "unless such subdivision or taxing unit requests an amount requiring a lower rate."

It is manifest that so far as this provision of the statute is concerned, the required minimum levy for each subdivision or taxing unit is limited to a rate sufficient to produce such an amount only as the subdivision or taxing unit requests, as shown by its budget which it files with the county auditor and which is later presented by the auditor to the county budget commission for its information in adjusting the tax levies for the several taxing units and subdivisions in the county so as to bring all those levies within the ten mill limitation.

Inasmuch as all debt charges within the ten mill limitation for each of the subdivisions and taxing units within a county must be allowed (paragraph b above) as well as all levies for firemen's pension funds and police relief funds in accordance with Sections 4605 and 4621, General Code, (paragraph c above), the situation is such in many instances that in adjusting rates so as to bring them all within the ten mill limitation it is impossible for the budget commission to allow the minimum levy as fixed by the first sentence of paragraph (d) above. It is necessary in those cases to reduce this minimum. Such cases are provided for by the proviso which constitutes the remaining portion of paragraph (d) after the first sentence.

This proviso has no force whatever in any case unless the levies required for debt charges (paragraph b) and firemen's pension funds and police relief funds (paragraph c) equal or exceed the entire minimum levy for a subdivision or taxing unit "as hereinbefore fixed", in which event the *minimum levy* of the other subdivisions or taxing units must be *reduced* by the budget commission to provide for said levies (meaning those fixed by paragraphs b and c), and in addition thereto, an operating levy for said subdivision. It further provides that such *additional levy* shall be *deducted from the minimum levies* of each of the other subdivisions or taxing units. Manifestly, the term

“minimum levies” as used throughout the proviso means the minimum levies as fixed by the part of the statute preceding the proviso, and the deductions and reductions to meet the conditions which the proviso is designed to meet, apply to this minimum levy which, as we have seen, is limited to such a levy as is necessary to produce the amount of revenues needed to match the request of the subdivision or taxing unit.

Under the terms of the proviso, where the reduction of the minimum levy fixed for a school district to provide for the levies required in paragraphs (b) and (c) and operating levies for all the other subdivisions is involved, there is a limitation placed upon the extent of the reduction that may be made—to wit, not “below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.”

Be that as it may, the implication is clear from the language used that the “figure” fixed below which a rate for an operating levy for a school district shall not be reduced, is within a figure representing the rate necessary to produce the minimum levy for the school district as fixed by the earlier part of the statute. No authority whatever exists by the terms of this statute to increase the rate or add to a rate to produce the 45 per cent spoken of, but on the other hand a reduction is involved, and manifestly, the reduction is from the minimum levy referred to.

As a general rule, unless the contrary intention appears, a proviso in a statute is to be construed with reference to the immediately preceding paragraph to which it is attached. *Buckman vs. State, ex rel Board of Education*, 81 O. S., 171.

It is also a well recognized rule of law that the exception of a particular thing from the operation of the general wording of the statute shows that in the opinion of the lawmaker this thing excepted would be within the general words had not the exception been made. *Commonwealth vs. Summerville*, 204 Pa. St., 300; 54 Atl. 27.

In *Lewis' Sutherland Statutory Construction*, 2nd Ed., Sec. 352, it is said:

“The natural and appropriate office of the proviso being to restrain or qualify some preceding matter, it should be confined to what precedes it unless it clearly appears to have been intended to apply to some other matter. It is to be construed in connection with the section of which it forms a part, and it is substantially an exception. If it be a proviso to a particular section, it does not apply to others unless plainly intended. It should be construed with reference to the immediately preceding parts of the clause to which it is attached. In other words, the proviso will be so restricted in the

absence of anything in its terms, or the subject it deals with, evincing an intention to give it a broader effect.”

By the terms of Section 5625-21, General Code, it will be observed that the needs of a subdivision or taxing unit for operating expenses will be reflected in the budget of the taxing unit or subdivision which the law provides shall be filed annually with the county auditor of the county in which the taxing unit or subdivision is located.

Of course, if a school district is to be qualified for the receiving of “additional aid from the public school fund” as provided for by Section 7595-1-b, General Code, it will be necessary that it have a tax levy for current school operation of at least three mills. Any district which expects to participate in this “additional aid” under the terms of said Section 7595-1-b, should state its requirements in its budget so that a tax levy of at least three mills for current school operation would be approved for it by the budget commission.

From what has been said, it is manifest that the terms of the proviso contained in paragraph (d) of the statute in question must be construed in the light of the provisions of that part of the statute which precedes it and that in so doing, the reduction spoken of to provide for an operating levy for a school district in a situation where the terms of the proviso are applicable is a reduction from the minimum levy spoken of in the first sentence of the paragraph and if that minimum levy for operating purposes is less than the 45 per cent spoken of in the proviso there is no room for a reduction at all. The minimum levy spoken of can be no greater than a rate necessary to provide an amount sufficient to satisfy requirements of the school district as shown by the budget of the board of education for the district.

In conclusion, I am of the opinion that in no event, under the terms of Section 5625-23, General Code, as amended in House Bill No. 466 of the 91st General Assembly, should the tax levy allowed by a county budget commission for an operating levy for a school district within the county be greater than at a rate necessary to produce an amount sufficient to satisfy the requirements of the school district for operating purposes as shown by the budget of the board of education of the district.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*