

of the current year, and record, certify and publish them as part of the delinquent list."

It would follow, therefore, that if the taxes, assessments and penalties involved in such unauthorized publication, are not paid before the tenth day of August, the lands and town lots against which they are charged, should be included in the delinquent list to be published under section 5704 G. C. between the twentieth day of December and the second Thursday in February next ensuing.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1245.

STATE TEACHERS RETIREMENT ACT—DISCUSSION OF LEVY UNDER SECTION 7896-55 G. C. TO PROVIDE FUNDS FOR ADMINISTERING SAID ACT—SAID LEVY IS NOT A PART OF FOUR PRINCIPAL LEVIES OF SCHOOL DISTRICT—IT IS A SEPARATE LEVY—AUTHORITY OF BUDGET COMMISSION AND ELECTORS IN REGARD TO SAID LEVY.

1. *The levy provided for by section 7896-55 G. C. is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to the extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent law by virtue of the provisions of H. B. 615 (108 O. L., Part II, —) but with other local school levies must be brought within the limitation of three mills provided by section 5649-3a G. C. as amended in said bill.*

2. *The board of education in making up its annual budget must designate the levy under section 7896-55 not as a special item of some other fund, but as a separate levy. The budget commission in acting upon the school levies is not at liberty to reduce this levy unless such reduction is compelled by the fact that the levy itself, without consideration of contingent and building fund levies and so much of the tuition fund levy as is in excess of one mill, will exhaust the three mill limitation of section 5649-3a G. C. or with other levies applicable in the same district will cause the ten mill limitation of section 5649-2 G. C. to be exceeded; but if the electors of the district approve additional levies under sections 5649-4 and 5649-5 et seq G. C. the levy provided for by section 7896-55 may be included within the levies that may be thus made outside of all limitations.*

COLUMBUS, OHIO, May 14, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You request the opinion of this department upon the following question:

"Section 7896-55 G. C., relative to a levy by boards of education to provide funds necessary to meet the financial requirements of the teachers' retirement law is as follows:

'Employers who obtain funds directly by taxation are hereby authorized and directed to *levy annually* such additional taxes as are required to provide the additional funds necessary to meet the financial requirements imposed upon them by this act, and *said tax shall be placed before and in preference to all other items except for sinking fund or interest purposes.*'"

In view of the fact that the school revenue law, known as H. B. 615, repeals section 7595-1 G. C., which specifies the purpose for which the moneys in the tuition fund may be expended in state aid districts and which indicated at least the purpose for which moneys in the tuition fund should be expended in districts other than state aid districts, shall the annual levy as provided in section 7896-55 G. C. be made a part of the levy for the tuition fund as provided for in section 7587 G. C., or shall it be made a part of the contingent fund provided for in the same section?

Since the levy provided for in section 7896-55 G. C. is given priority and preference to all other items except for sinking fund or interest purposes, should a board of education in making up its annual budget designate such levy as a special item of the fund in which it is properly included that it may not be reduced by the budget commission along with other levies for such fund; or will the priority and preference given to such levy sustain it in its entirety to such an extent that it may be set aside from the fund in which it is properly included after final review by the budget commission?"

A single statement will furnish the principle for the correct solution of the problems which you raise, viz.: the levy provided for by section 7896-55 G. C. is a separate and independent tax, levy, not to be included within any of the four designations mentioned in section 7587 G. C., which are: tuition, contingent, building and sinking funds. This conclusion is rather clear from the face of section 7896-55 G. C. as you quote it. The taxes therein referred to are designated as "additional taxes." Again it is referred to as "said tax," importing that it is not merely a charge on the proceeds of a tax already provided for but a new and independent levy. Still further, it is given preference over "all other items except for sinking fund or interest purposes." Here it is compared with the levies for interest and sinking fund purposes, which are independent levies.

Were there no provision for a special levy, but the board of education were merely required to provide out of their revenues for the financial burdens imposed by the teachers' retirement system law, it is believed that it would still be impossible to reach the conclusion that such expenditures might lawfully be made from the tuition fund.

On the principle laid down the following conclusions are reached:

(1) The levy provided for by section 7896-55 G. C. is not a part of any of the four principal levies of a school district. It is accordingly not included within the tuition levy, which to the extent of one mill is subject only to the fifteen mill limitation of the Smith one per cent law by virtue of the provisions of House Bill 615 (108 O. L., Part II, 1303) but with other local school levies must be brought within the limitation of three mills provided by section 5649-3a G. C. as amended in said bill.

(2) The board of education in making up its annual budget must designate the levy under section 7896-55 not as a special item of some other fund but as a separate levy. The budget commission in acting upon the school levies is not at liberty to reduce this levy unless such reduction is compelled by the fact that the levy itself, without consideration of contingent and building fund levies and so much of the tuition fund levy as is in excess of one mill, will exhaust the three mill limitation of section 5649-3a G. C. or with other levies applicable in the same district will cause the ten mill limitation of section 5649-2 G. C. to be exceeded; but if the electors of the district approve additional levies under sections 5649-4 and 5649-5 et seq. G. C. the levy provided for by section 7896-55 may be included within the levies that may be thus made outside of all limitations.

In other words, section 7896-55 G. C. provides for an independent levy coordinate in dignity, so to speak, with the four levies mentioned in section 7587 G. C. and subject to all the limitations of the Smith one per cent law unless removed from the operation thereof by a vote of the electors.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1246.

REGISTERED UNITED STATES GOVERNMENT BONDS—WHEN SAME ARE ACCEPTABLE AS SECURITY FOR DEPOSIT OF PUBLIC FUNDS IN MUNICIPAL CORPORATIONS AND SCHOOL DISTRICTS—EXCEPTION TOWNSHIP DEPOSITORIES.

*Except as to township depositories, registered Liberty or other registered bonds of the United States are receivable as security for the deposit of public funds. In order to be so used, however, such registered bonds should be transferred on the books of the United States into the name of the proper officers of the subdivision, subject to trust agreement to be executed by such proper officer, stipulating the purposes for which the legal title is thus assigned and the disposition which such officers are authorized to make of such legal title. In the case of municipal corporations and school districts such bonds may not be so received unless the necessary details for the acceptance of such transfer and the execution of such trust agreement are provided for in the legislation of council or the board of education.*

COLUMBUS, OHIO, May 14, 1920.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—You request the opinion of this department upon the following question:

“May the proper public officers accept registered Liberty or other bonds of the United States as surety for the deposit of public funds? If so, how can these be hypothecated by the depository offering them? Can this be legally done by the depository officials executing a power of attorney to the proper custodian to assign the bonds in event of default on the part of the depository?”

The circumstances under which bonds of the United States may be accepted as security for deposits of public funds are set forth in the following statutes applicable to the various subdivisions of the state with respect to which I presume your inquiry is asked:

“Sec. 2722. No award shall be binding on the county nor shall money of the county be deposited thereunder until the hypothecation of the securities hereinafter provided, or until there is executed by the bank or banks or trust companies so selected and accepted a good and sufficient undertaking, payable to the county, in such sum as the commissioners direct, but not less than the sum that shall be deposited in such depository or depositories at any one time.”

“Sec. 2732. In place of the undertaking provided for herein, the com-