

clear understanding of the contract of employment, it is believed when such employment is fully consummated, as indicated in your statement, and the teacher is clearly employed to teach in a certain specific school, this arrangement and employment must stand.

Respectfully,
C. C. CRABBE,
Attorney-General.

912.

TAXATION—TAX LEVY PROVIDED FOR IN SECTION 5655-3 G. C. IS WITHIN THREE MILL LIMITATION PROVIDED BY SECTION 5649-3A G. C.

SYLLABUS:

The tax levy provided for in section 5655-3 G. C. as found in 110 O. L., p. 324, is within the three mill limitation provided by section 5649-3a G. C.

COLUMBUS, OHIO, November 20, 1923.

HON. A. F. ALLYN, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—I am in receipt of your recent communication in which you ask the following questions:

“Is a tax levy under section 5655-3 G. C., as amended by the last legislature, found in 110 O. L., p. 324, within the three mill limitation as provided in section 5649-3a of the General Code, or within the fifteen mill limitation, or outside of all tax limitations?”

If such tax levy must be within the limitations mentioned above, and such limitations have already been reached, how are such bonds to be issued?”

The sections which are pertinent to your inquiry are 5655-1, 5655-2 and 5655-3, found in 110 O. L., p. 325, and provide as follows:

Section 5655-1:

“On or before July 15, 1923, each board of education in the state of Ohio shall submit to the auditor of state a statement of all outstanding indebtedness of the school district on July 1, 1923, in detail, with the amounts, and maturities thereof, the rate of interest thereon, if any, the authority under which incurred, the tax duplicate of the district, and all balances in the sinking fund or otherwise applicable to the payment thereof. Such statement shall be in such form and accompanied by such information as the auditor of state may prescribe, and the auditor of state shall have full power to make an audit of the books of any school district to

determine the correctness of any such statement. In case any board of education fails to furnish such statement prior to August 1, 1923, or in case its statement is ambiguous or incomplete, the auditor of state shall cause an audit to be made for the purpose of obtaining the information required for a correct statement and in preparing the same."

Section 5655-2:

"The auditor of state shall examine and compile said statements and shall certify to each board of education the amount of its net floating indebtedness on July 1, 1923. The floating indebtedness shall be deemed to include all legally incurred indebtedness of the school district except bonds or notes falling due on or after January 1, 1924, and except payments not yet due on July 1, 1923, upon current contracts. The net floating indebtedness shall be the floating indebtedness less (1) all sums due and owing to the school district on July 1, 1923, (2) all cash balances on July 1, 1923, (3) all sums in any sinking fund applicable to the retirement of bonds or notes falling due prior to January 1, 1924, and (4) all sums to be received from the last half of the 1922 taxes levied specifically for the retirement of bonds or notes falling due prior to January 1, 1924."

Section 5655-3:

"Upon receiving the certificate of net floating indebtedness from the auditor of state each board of education having any such indebtedness in excess of four hundred dollars shall proceed to issue the bonds or notes of the school district in the total sum of said indebtedness. Such bonds or notes shall be full general obligations of the school district and shall be divided into sixteen substantially equal semi-annual installments, the first installment falling due on February 1, 1924, and subsequent installments falling due every six months thereafter, the final installment to fall due on August 1, 1931. Such bonds or notes shall bear interest at a rate not to exceed six per cent per annum, and shall be issued or sold in the manner provided by law. The proceeds thereof shall be applied immediately to the payment of existing indebtedness or shall be held for the retirement of bonds or notes falling due prior to January 1, 1924, and it shall be unlawful to use such proceeds for any other purpose. At the time of the issue of such bonds, the board of education shall levy a tax for the payment of the interest and principal thereof."

It will be noted that section 5655-3, which is the section authorizing the issuance of bonds and the levying of a tax for the payment of interest and principal thereof, does not take such levies without the limitations of the so-called Smith law in so many words.

Section 5649-2, General Code of Ohio, provides:

"Except as otherwise provided in section 5649-4 and section 5649-5 of the General Code, the aggregate amount of taxes that may be levied on the taxable property in any county, township, city, village, school district or other taxing district, shall not in any one year exceed ten mills on each dollar of the tax valuation of the taxable property of such county, township, city, village, school district or other taxing district for that

year, and such levies in addition thereto for sinking fund and interest purposes as may be necessary to provide for any indebtedness that may hereafter be incurred by a vote of the people."

Section 5649-3a G. C. as far as pertinent provides :

"The aggregate of all taxes that may be levied by a county for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for corporation purposes, on the tax list, shall not exceed in any one year five mills. The aggregate of all taxes that may be levied by a township, for township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year one and five-tenths mills. The local tax levy for all school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy, provided for by a vote of the electors, special assessments, levies for road taxes that may be worked out by the taxpayers, and levies and assessments in special districts created for road or ditch improvements, over which the budget commissioners shall have no control. * * * "

Section 5649-5b, General Code of Ohio, provides :

"If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate for and during the period provided for in such resolution, but in no case shall the combined maximum rate for all taxes levied in any year in any county, city, village, school district, or other taxing district, under the provisions of this and the two preceding sections and sections 5649-1, 5649-2 and 5649-3 of the General Code as herein enacted, exceed fifteen mills."

It might be argued that inasmuch as section 5655-3 provides "that upon the receipt of the certificate of net floating indebtedness from the auditor of state, each board of education * * * shall proceed to issue the bonds and levy a tax for the payment thereof," it is a mandatory duty, and as such it would take such levies without the limitation.

In the case of State ex rel. v. Zangerle, 95 O. S., p. 1, it was held by the court in the first branch of the syllabus :

"1. In view of the legislative policy declared by the enactment of the so-called Smith one per cent. law (sections 5649-2 to 5649-5b, General Code), the manifest purpose of which is to restrict the power of levying taxes and thus limit expenditure by administrative officers, statutes purporting to permit departures from that general policy and authorizing exemption therefrom will be strictly construed."

On page 9 of the opinion supra, the court says :

"Some such language as 'the limitations of this act shall not apply to sections 4450, 4451, 5629 and 7419,' etc., would undoubtedly have been

employed by the legislature and had it intended to provide that all levies authorized by those sections should be made irrespective of the limitations of the Smith one per cent. law. Had that been the desire of the legislature it would not have chosen the specific language 'emergencies mentioned', but in all probability would have used some broader and more comprehensive form of expression, such as above indicated."

In the case of *Wampler et al. v. Haines*, 19 O. N. P. (N. S.) the court says at page 365:

"All of the law with reference to taxation should be read together and a reasonable and proper construction placed upon the language, and not such a construction as would make the clear expression of the legislature other than the very terms of the statute intend."

It is a general rule that in construing statutes, we must consider that the legislature had knowledge of all the statutes then in force. As the so-called Smith one per cent. law is still in effect, we must assume in arriving at the intent of the legislature, that as there are no provisions for exempting this levy from the Smith law, that it is subject to same.

While it would seem that it was the intent to put this levy without the limitations for the reason that if the political subdivision was operating within their limitations, there would be no reason for issuing bonds under this section, it is not believed in taking into consideration the history of this enactment that such is true.

House Bill No. 599 was a companion bill to House Bill No. 20 of the so-called Taft Act. These two acts would have gone into effect at practically the same time but for the filing of the referendum petition on the Taft Act.

Section 5627-2, as amended by the Taft Act, provides:

"The board of education of every school district shall annually prior to May first determine and set out in a school district budget, the amount necessary for school purposes during the ensuing fiscal year. They shall include in the budget:

A. The full amount required for the payment of the principal, interest and sinking fund charges due on all bonds or notes of said school district or board of education, except amounts required for bonds and notes on which the principal, interest and sinking fund charges in the calculation of the 1922 tax were included within a statutory limit of 15 mills and have not subsequently by vote of the people been removed from said statutory limit or the limit provided by this act.

B. The amount required for the payment of the principal, interest and sinking fund charges due on bonds and notes of said school district or board of education excepted from paragraph A.

C. The amount necessary to pay the expense of the lawful activities of the board of education or school district, and all other lawful current expenses thereof, other than property or replacements having an estimated life or usefulness of five (5) years or more; such amount shall not be less than that which would be provided by a levy of 2.65 mills on the duplicate of said school district, shall take into account any estimated deficiency or excess in revenue arising from the distribution of school moneys under the provisions of section 7600 of the General Code and following sections,

and shall include the amount certified under section 5649-1c of the General Code for the payment of final judgments.

D. The amount necessary from general taxation for property or replacements having an estimated life or usefulness of five (5) years or more."

Under the above section, bonds issued under section 5655-3 would be listed in the budget under paragraph A.

Section 5627-12, as amended by the Taft Act, provides:

"The board shall first allow all amounts properly requested under the provisions of section 1, paragraphs A and B; section 2, paragraphs A and B; section 3, paragraphs A, B and E; section 4, paragraphs A and B, and under section 5 for the interest, principal and sinking fund charges for public library bonds, including all taxes already levied against which bonds of the subdivision have been lawfully issued; they shall then allow all amounts the levy of which is made compulsory by law.

In case the authorities of any subdivision and the county auditor should omit any sums required for the payment of interest, sinking fund and principal, they shall be included by the budget commission on their own motion."

Section 5627-14, as amended by the Taft Act, as far as pertinent provides:

"Within the limits of any municipality, the board shall reduce the amounts requested from general taxation in the budgets presented under the provisions of section 1, 2, 3, 4, and 5 of this act exclusive of the levies requested under the provisions of section 1, paragraph A; section 2, paragraph A; section 3, paragraph A; section 4 paragraph A; * * *"

Section 5627-6, as amended by the Taft Act, provides:

"All laws now in force or hereafter passed and not herein or hereafter repealed which authorize the levy of a tax by county commissioners, boards of education, municipalities, township trustees and boards of public library trustees shall no longer authorize the levy of a tax by such authorities, but shall be construed to authorize including the amount of such taxes in the budgets provided by sections 1, 2, 3, 4, and 5 of this act, and any limits upon the rate of such tax levies calculated on the current tax list, shall operate as limits on the amounts which may be approved in such budgets by the budget commission; provided that nothing in this section shall in any way affect the levy of taxes under section 5649-1b of the General Code."

It will be seen from the above statutes that the Taft Bill provided for the listing of bonds under section 5655-3 in the budget and then provided that the board could not reduce this amount and that said board should levy a tax for same. Under section 5627-14 as amended, such levy was outside all the limitations as provided by sections 5649-2 to 5649-5b G. C.

While it is apparent that section 5655-3 when operating with the Taft Bill was to be outside of all limitations, is the same true with the Taft Bill defeated by the referendum?

In the case of *Slingluff et al. v. Weaver*, 66 O. S., p. 621 it was held:

"2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

In this case, section 5655-3 G. C., the legislature enacted a statute, which when operating with the Taft Bill provides that the tax levy is outside all limitations, and when operating under existing statutes, is subject to the tax limitations provided in sections 5649-2 to 5649-5b G. C.

The practical results of the conclusion just stated is that while the issuance of bonds under section 5653-3 G. C. is mandatory in case the net floating indebtedness described in that section and its related sections exceeds four hundred dollars, yet the levy for such bonds must be placed within the three mill limitations named in section 5649-3a G. C., even though this may in many instances cause a rejection of the budget.

The fact that placing such levy within the limitations will work a hardship on some taxing subdivisions does not justify the reading into the law something which was not placed there by the legislature.

It is therefore my opinion that the tax levy provided for in section 5655-3 as amended in 110 O. L., p. 324 is within the three mill limitation as provided by section 5649-3a G. C.

Respectfully,

C. C. CRABBE,
Attorney-General.

913.

APPROVAL, BONDS OF FAIRFIELD TOWNSHIP RURAL SCHOOL DISTRICT, COLUMBIANA COUNTY, \$2,868.59, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 20, 1923.