

33.

UNDER SECTION 5649-10b G. C.—BUDGET COMMISSION SHALL APPLY AVERAGE LEVY WITHIN LIMITATIONS SEPARATELY—HOW TO CALCULATE LIMITATIONS AND DISTRIBUTE TAXES—CHARTER PROVISION UNDER SECTION 5649-10 G. C.—SEE OPINIONS ATTORNEY GENERAL, 1926, NO. 3927 PAGE 580.

*SYLLABUS:*

*In proceeding under Section 5649-10b of the General Code, to calculate the limitations and distribute the taxes within such limitations, the Budget Commission shall apply the average levy within each limitation separately for the three years next preceding the year in which the charter provision authorized under Section 5649-10 became effective. Opinion of the Attorney General, No. 3927, rendered January 6, 1927, modified.*

COLUMBUS, OHIO, January 31, 1927.

HON. CHARLES P. TAFT, 2nd., *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your communication of January 19, 1927, in which you call my attention to the last paragraph of an opinion rendered by this department under date of January 6, 1927.

That opinion had reference to the method of calculating the limitations provided in Sections 5649-2, 5649-3a, 5649-3c and 5649-5b, where a municipality has taken advantage of the provisions of Section 5649-10. Section 5649-10b directs that for the purpose of calculating such limitations and the distribution of taxes within such limitations, the budget commission shall regard the tax rate in each such municipality "within any such limitation" to be the same as the average rate allowed to such municipality "within such limitation" for three years next preceding the year in which the charter provision authorized by Section 5649-10 became effective.

The concluding paragraph of the opinion, to which you refer, is as follows:

"The average levy for the three years preceding the adoption of the amendment for current operating expenses will be considered as within the ten mill limitation for the purpose of adjusting the budget under Section 5649-3 of the General Code."

You call my attention to the fact that a portion of the levy for operating expenses of the city of Cincinnati for the last three years has been within the ten mill limitation and the remainder between the ten mill and fifteen mill limitation. It is evident that the writer of the previous opinion assumed that all of the levy for current operating expenses was within the ten mill limitation. It is my opinion that your interpretation of Section 5649-10b is correct and that, for the purpose of adjusting the budget under Section 5649-3c, it is necessary to consider the tax rate in Cincinnati within each limitation separately. In other words, the average levy for current operating expenses for three years preceding the adoption of the amendment shall first be determined, having reference only to that part of the levy within the ten mill limitation. The budget commission should then proceed to determine such average for the three year period between the ten and fifteen mill limitation.

You are accordingly advised that the opinion of January 6, 1927, is modified to conform to the views herein expressed.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*