2454.

LEVY OF TAXES—ANNEXATION OF TERRITORY TO VILLAGE SCHOOL DISTRICT—TAXES BEYOND GENERAL TAX LIMITATIONS AUTHORIZED BY ELECTORS OF ORIGINAL DISTRICT—EXTRA LEVY MAY BE SPREAD OVER ENTIRE TERRITORY OF NEWLY CONSTITUTED DISTRICT.

*SYLLABUS:*

*In the event territory is attached to a school district by authority of Section 4692 or Section 4696, General Code, and prior thereto, the district to which the territory is attached, had been authorized to levy taxes beyond general tax limitations, which authority was still in effect at the time of the annexation, the said extra levy may be spread over the entire territory of the district as constituted subsequent to said annexation.*

COLUMBUS, OHIO, October 17, 1930.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

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

> "In the fall of 1929, the entire district of Troy Township School District, Richland County, and part of Washington Township School District, Richland County, and part of Troy Township School District, Morrow County, were transferred to the Lexington Village School District, Richland County, by the county board of education by virtue of Section 4692 of the General Code. The Lexington Village School District, prior to the time of the transferring, had voted a three mill levy for a duration of five years, in addition to the usual levy.
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> The auditor of this county desires to know if this three mill levy can be placed on the entire Lexington Village School District as now constituted, or whether by the annexation of this territory it becomes necessary for this district to re-vote said three mill increase in taxation."

Taxing authorities are limited by law in the levying of taxes to the levying of such taxes as are specifically authorized. The general statute on this subject is Section 5625-2, General Code, which reads as follows:

> "The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'fifteen mill limitation.'"

One of the classes of taxes specifically authorized to be levied in excess of the fifteen mill limitation spoken of in Section 5625-2, supra, are taxes authorized by a vote of the people, in accordance with Sections 5625-15, et seq., of the General Code.

It appears from your statement that some time prior to 1929, the electors of Lexington Village School District authorized a special levy of taxes to be made in addition to the general limitation, and inasmuch as you do not state when these taxes were authorized, it is impossible to tell whether the levy was authorized since the effective date of Sections 5625-1 to 5625-39, inclusive, or whether the said levy was

authorized prior to said date and therefore made by authority of former Sections 5649-5 and 5649-5a, which were repealed at the time of the adoption of the so-called "Budget Law" in 1927. It makes no practical difference, however, so far as your question is concerned, when the levy referred to was authorized, as the principle underlying the authority for said levy is the same whether made by authority of former Sections 5649-5 and 5649-5a or by authority of present existing Sections 5625-15 et seq. of the General Code.

In either event, the Board of Education of Lexington Village School District, as the taxing authority of such district, must necessarily have passed a resolution declaring the necessity for the levying of taxes within the district in a greater amount than at the maximum rate permitted by law without a vote of the people and thereafter taken the necessary steps to submit the question to a vote. Thereafter, a vote must necessarily have been had by virtue of which the taxing authority of the district became authorized to make the extra levy as you state.

When territory was later annexed to the district, the taxing authority was not disturbed. No powers were taken from it nor were there any added. It simply amounted to an enlargement of the district over which their authority existed.

It is too well settled to admit of the citation of authority that the Legislature has plenary power over the boundaries of the political subdivisions into which the State is divided; it may change those boundaries at will, and those changes may be made without the consent of the people who may be affected by such change. It has even been held that such annexation may be ordered without the consent and against the remonstrance of a majority of the persons residing on the annexed territory. *Blanchard, Treasurer,* vs. *Bissell,* 11 O. S., 96. It is equally well settled that the Legislature may delegate to subordinate agencies the power to change the boundaries of political subdivisions such as school districts.

The Legislature has, by authority of Section 4692, General Code, authorized the county board of education to make annexations of village or rural school districts or parts of one to the other and I assume that it was by virtue of this authority that Troy Township School District, Richland County, and parts of Washington Township Rural School District in Richland County were transferred in the fall of 1929, to Lexington Village School District, Richland County. The part of Troy Township School District, Morrow County, which you state was transferred to Lexington Village School District was probably transferred by authority of Section 4696, General Code, although it is possible that it was done by authority of Section 4692, as you state, if Troy Township School District in Morrow County was then a part of the Richland County School District.

Be that as it may, however, when these transfers were made in the fall of 1929 to Lexington Village School District, the Lexington Village School District Board of Education was not in any wise disturbed and it thereafter possessed the same powers which it had possessed before, one of which was to levy taxes in accordance with the authorization which it had received by a vote of the people of the district. The territory which then came into the district became subject to the administration of the then existing board of education just as territory which is annexed to a municipal corporation becomes subject to the ordinances which are in effect in the municipal corporation, and becomes subject to local taxation to the same extent and in the same manner as does the taxable property which had formerly been in the district or municipality as it existed prior to the annexation. It has been held that lands thus annexed are liable to local taxation on account of pre-existing debts of the subdivision to which the lands are annexed. (*Blanchard, Treasurer,* vs. *Bissell,* supra.)

I am therefore of the opinion, in specific answer to your question, that the three mill levy which the Lexington Village Board of Education had, by a vote of the

people, been authorized to levy on the property of the Lexington Village School District, may lawfully be levied on the entire district as constituted after the annexation of territory thereto, which annexation was authorized by either Section 4692 or 4696, General Code.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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2455.

APPROVAL, DEED OF THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY, CONVEYING TO STATE OF OHIO, LAND IN THE TOWN OF CARTHAGE, OHIO.

COLUMBUS, OHIO, October 17, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval the executed deed of the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, conveying to the State of Ohio a parcel of land 76 feet in width off of the southeasterly end of lots numbered 8, 9, 10, 11 and 12 of Theophilus French's subdivision in the town of Carthage, now a part of the city of Cincinnati, Ohio, the title to which property was approved by me, subject to the exceptions therein noted, in Opinion No. 1919, directed to you under date of May 28, 1930. There has likewise been submitted to me a quit claim deed executed by the New York Central Railroad Company remising and releasing to the State of Ohio all the right, title and interest which said railroad company has in and to the above described property as lessee of the property of the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company.

I have examined both of said deeds and find that the same have been properly executed and acknowledged by said railroad companies by P. E. Crowley and E. F. Stephenson, president and Secretary, respectively, of both of said railroad companies.

The deed of the New York Central Railroad Company, as above indicated, is a quit claim deed; however, the deed of the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company is in form sufficient to convey the above described property to the State of Ohio free and clear of all encumbrances whatsoever. In this connection you will recall that there are a number of mortgages covering various issues of bonds upon the above described and other property of the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, from the operation and effect of which said railroad company is now securing releases so far as this particular property is concerned; which releases, when secured, will be forwarded to this office for approval and then filed in the office of the Auditor of State.

I am advised by the Director of Public Welfare that the voucher covering the purchase price of this property is being prepared and that the same will be presented to the Auditor of State for warrants within the next few days. The executed deeds above referred to are now in the hands of the Assistant General Attorney of the New York Central Railroad Company here at Columbus and I have made arrangements to close this transaction through him when the voucher and encumbrance estimate covering the purchase of this property are submitted to the Auditor of State for warrant.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*