

lication must be made in cities of eight thousand or more inhabitants which are not county seats, as that is also required by section 6252.

Likewise, similar provisions are contained in section 1519 and 1534, General Code, relative to the publication of an order fixing the time of holding court. Construing these sections, the first branch of the syllabus in Opinions of the Attorney General for 1915, Vol. II, page 1925, reads as follows:

“The provisions of section 6252, G. C., requiring the publication of the ‘times for holding courts’ to be made in two newspapers of ‘opposite politics,’ as therein specified, are supplementary to and control the provisions of the special statutes requiring such publications to be made in one or more newspapers of general circulation.”

Construing the same statutes, it is said in Opinions of the Attorney General for 1916, Vol. II, page 1771:

“It does not seem to me, therefore, that there is such a conflict between the two statutes that it can be said that section 1519 G. C. is exclusive of the provisions of section 6252 G. C. but rather that the two may be read together without in any way doing violence to the language of either. If there are two newspapers of opposite politics at the county seat an order fixing the time of holding court should be printed in such newspapers. If in such county there is a city of eight thousand inhabitants or more, not a county seat, additional publication shall be made in two newspapers of opposite politics if there be such in such city, \* \* \*.”

Specifically answering your inquiry, I am of the opinion, therefore, that in counties having cities of eight thousand inhabitants or more, not the county seat of such counties, additional publication of the notice of rates of taxation must be made for six consecutive weeks in two newspapers of opposite politics in each such city.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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4093.

UNIFORM BOND ACT—SUBDIVISION MAY BORROW IN ANTICIPATION OF COLLECTION OF CURRENT REVENUES—AMOUNT BASED ON ESTIMATED INCOME FROM GENERAL PROPERTY TAXES.

**SYLLABUS:**

*In determining the limitation of the amount which may be borrowed by the taxing authority of any subdivision, in anticipation of the collection of current revenues, as provided in Section 2293-4 of the General Code, the taxing authority is limited by the estimated income of such taxing authority as determined by the budget commission by Section 5625-26 of the General Code, and such limitation is the amount of money which the taxing authority is estimated to receive from*

*general property taxes during the ensuing half-yearly period after deducting therefrom taxes to be received for the payment of debt charges and all advances, whether received from real estate, public utility, unclassified personal property or classified personal property taxes.*

COLUMBUS, OHIO, February 26, 1932.

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

GENTLEMEN:—I am in receipt of your request for my opinion as to whether the limitation in Section 2293-4, of the General Code,

“ \* \* but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances.”

excludes from the estimated current revenue any of the general property tax items to wit: those received from the real and public utility property duplicate, those from the taxable classified property duplicate, or those from the general personal property tax duplicate. Stating your inquiry otherwise, it becomes:

In determining the amount of money which a municipal corporation may borrow by reason of the provisions of Section 2293-4, of the General Code, may the tax income to be received by the city from real estate taxes, public utility taxes, general or unclassified personal property taxes and classified personal property taxes all be included in such amount?

Your inquiry no doubt arises by reason of the fact that until the enactment of Amended Senate Bill 323, properly known as the Classified Personal Property Tax Law, by the recent legislature, there were during each year two settlements of taxes collected between the county treasurer and the county auditor, one at the end of the tax collection of each half yearly installment of taxes. By the enactment of the Classified Personal Property Tax Law, the legislature provided for settlements between the county treasurer and the county auditor, on the fifteenth day of February and the tenth day of August in each year, of all real and public utility property taxes collected by the county treasurer during the preceding half year. See Section 2596 of the General Code, which reads in part as follows:

“On or before the fifteenth day of February and on or before the tenth day of August of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of real property taxes and assessments and public utility property taxes with which such treasurer is to stand charged.”

Then in the next section of such act, which has been given Section number 2602 of the General Code, the legislature has provided for settlements between the county treasurer and the county auditor of all general personal and classified personal property taxes on the tenth day of May and the tenth day of October in each year, which taxes have been collected during the half year just prior to the date of such settlement. Such section reads in part, as follows:

“On or before the tenth day of May and on or before the tenth day

of October of each year the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of general personal and classified property taxes with which such treasurer is to stand charged."

Section 2683 of the General Code, which further defines the settlement of taxes collected by the county treasurer, reads as follows:

"On or before the fifteenth day of February, in each year, the county treasurer shall settle with the county auditor for all taxes and assessments that he has collected on the general duplicate of real and public utility property at the time of making the settlement. On or before the tenth day of May, in each year, the county treasurer shall settle with the county auditor for all advance payments of general personal property and classified property taxes that he has received at the time of making the settlement. On or before the tenth day of August in each year, he shall settle with the auditor for all taxes and assessments that he has collected on the general duplicates of real and public utility property at the time of making such settlement, not included in the preceding February settlement. On or before the tenth day of October in each year, he shall settle with the auditor for all taxes that he has collected on the general personal and classified property duplicates, and for all advance payments of general personal and classified property taxes, not included in the preceding May settlement, that he has received at the time of making such settlement. At each such settlement, the auditor shall allow to the treasurer on the moneys received or collected and accounted for by him, his fees, at the rate or percentage allowed by law, at a full settlement of the county treasurer."

Thus, there are now two separate and distinct sets of semi-annual settlements of taxes collected by the county treasurer; one set of half-yearly settlements on the fifteenth day of February and the tenth day of August and the other on the tenth day of May and the tenth day of October.

The question thereupon arises as to the meaning of the language used in Section 2293-4 of the General Code, concerning the authority of a taxing subdivision to borrow money in anticipation of collection of taxes. Such Section 2293-4, General Code, reads:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, *but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances.* The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement." (Italics, the writer's.)

The legislature, in fixing the amount that might be borrowed, used the language:

"\* \* but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances."

What basis is the Budget Commission to use in making the estimate of the taxes to be received by a subdivision? It must be borne in mind that the distribution of the "Classified Tax" has not been set forth for a period longer than the years 1932 and 1933. Section 6 of Amended Senate Bill 323, enacted by the 89th General Assembly, sets forth certain rules governing the budget commission during the years 1932 and 1933, in the preparation of its budget. This section reads in part as follows:

"In preparing the tax budget for the years 1932 and 1933, under section 5625-20 of the General Code, the taxing authorities of each subdivision shall estimate that said subdivision will receive from the intangible tax fund the full amount to which such subdivision is entitled under the provisions of this section, to be apportioned among the several funds, including funds for the payment of interest, sinking fund and retirement charges on bonds, in accordance with the provisions of this act."

The legislature has created a "budget commission" by the enactment of Section 5625-19 et seq. of the General Code, and prescribed its duties and functions. In Section 5625-26 of the General Code, the legislature has provided for, and defined the "official certificate of estimated resources." Such section reads as follows:

"The certification of the budget commission to the taxing authority of each subdivision or taxing unit as set forth in the preceding section shall show the various funds of such subdivision other than the funds to be created by transfer. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and the rate of the levy and what portion thereof is within and without the fifteen mill tax limitation, and on the debit side the total appropriations that may be made therefrom. There shall be attached thereto a summary which shall be known as the 'Official certificate of estimated resources,' which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

There is no other provision of statute for an official estimate by the budget commission. I therefore am of the opinion that the language used in Section

2293-4, General Code, has reference to the "official certificate of estimated resources" defined by Section 5625-26, supra. If this conclusion be correct it would naturally follow that the legislature intended that the limit of such borrowing would be that part of such estimate as would be received by, and accounted for by the county treasurer at his next semi-annual settlement.

What is the next semi-annual settlement, within the purview of Section 2293-4 of the General Code? It must be borne in mind that Section 2293-4, General Code, was enacted in 1927, by the 87th General Assembly (112 O. L., 365), at a time when, under the tax laws, there was only one settlement between the county treasurer and the county auditor which was made on a half-year basis. In 2 Lewis' Sutherland Statutory Construction, Section 499, it is stated that:

"It is presumed that the legislature does not intend to make any change in the existing law beyond what is expressly declared. And this presumption applies to common law as well as to statutes. \* \* The presumption is against any radical change of legislative policy.

It is presumed, in the construction of general words or dubious provisions, that there is no intention to depart from any established policy of law."

The statute, Section 2293-4 uses the language "the next ensuing semi-annual settlement." Sections 2596, 2602 and 2683, General Code, which refer to the settlements between the county treasurer and the county auditor, contain no reference to a semi-annual settlement of taxes other than a provision in such sections that on certain days in each half of the tax year there shall be such settlement of the specific taxes referred to in such sections. It should be borne in mind that there is one system of property taxation in Ohio; such system, however, is somewhat complicated by the fact that one part of the property is taxed upon an actual value basis and another upon a classified basis. The purpose or use of the taxes to be collected has not been changed by the system, it is identical. The system of assessment and collection has been changed by the enactment of the "classified property tax bill." The purpose of the act, as stated in the enactment clause, was to provide for "the levy of taxes on intangible property at classified rates and for the assessment of tangible property for taxation." Thus, when the act provides for four settlements between the county treasurer and the county auditor, and each settlement is required to be on a half-yearly basis, there is no semi-annual settlement provided for in the section, if the word "semi-annual" is construed in its narrower meaning. There is only one property tax, although there is a different basis of assessing such tax upon personal property than upon real property. Since the budget commission makes its estimate and prepares its "official certificate of estimated resources" on an annual basis and includes all these taxes in its estimate, it is evident that the intent was to regard the yearly tax as estimated by the budget commission as the unit. By the use of the language "one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission" was meant one-half of the half-yearly taxes received and accounted for by the county treasurer to the county auditor; whether a partial accounting was made on the fifteenth day of February and the tenth day of May, or on the tenth day of August and the tenth day of October in each year.

It is therefore my opinion that in determining the limitation of the amount which may be borrowed by the taxing authority of any subdivision, in anticipation of the collection of current revenues, as provided in Section 2293-4 of the

General Code, the taxing authority is limited by the estimated income of such taxing authority as determined by the budget commission by Section 5625-26 of the General Code, and such limitation is the amount of money which the taxing authority is estimated to receive from general property taxes during the ensuing half-yearly period after deducting therefrom taxes to be received for the payment of debt charges and all advances, whether received from real estate, public utility, unclassified personal property or classified personal property taxes.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4094.

TOWNSHIP FUNDS—MAY NOT BE DEPOSITED FOR LESS THAN TWO PERCENT INTEREST—TOWNSHIP CLERK ACTS AS COUNTY TREASURER—TOWNSHIP TRUSTEES MAY PERMIT TAX FUNDS TO REMAIN IN COUNTY TREASURY.

*SYLLABUS:*

1. *The board of township trustees, when unable to procure a greater rate of interest from a depository, may not legally contract with a depository for the deposit of township funds at a less rate than two percent.*

2. *If unable, after the use of due diligence, to obtain a depository which will pay interest at the rate of two percent or more, such board of trustees does not become personally liable for the two percent penalty described in Section 3326, of the General Code.*

3. *The office of township treasurer has been abolished by the legislature in the enactment of 110 O. L., 30, and the duties thereof placed on the township clerk, and it does not become revived by the inability of the board of township trustees to provide a depository.*

4. *The board of township trustees or the board of education may permit the tax funds to remain with the county treasurer and withdraw same by means of warrants executed by the township trustees and township clerk in amounts of not less than one hundred dollars.*

COLUMBUS, OHIO, February 26, 1932.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—This will acknowledge your recent request for opinion. Requests for opinions on substantially the same questions have been received from the Prosecuting Attorney of Stark County and the Prosecuting Attorney of Defiance County. I am therefore taking the liberty of combining the inquiries contained in these three requests into a single opinion and deducing the following inquiries:

"1. Under the statutory law regarding township depositories, may township trustees contract for a bid of less than two percent, when a bid at a greater rate is not obtainable?

2. In the event that the board of township trustees is unable to contract for a bid at a rate of two percent or greater, what must they do