

2314.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS OR TOWNSHIP TRUSTEES NOT PREVENTED FROM MAKING FULL TWO MILL LEVY UPON TAXABLE PROPERTY OF TOWNSHIP IN ACCORDANCE WITH SECTION 1222 WHERE TRUSTEES OF TOWNSHIP MAY HAVE ERECTED SUCH TOWNSHIP EXCLUSIVE OF MUNICIPAL CORPORATIONS THEREIN INTO ROAD DISTRICT.

The fact that the trustees of a township may have erected such township, exclusive of municipal corporations therein, into a road district (sections 3298-25 to 3298-53 G. C.), will not operate to prevent county commissioners or township trustees, as the case may be, from making the full two-mill levy upon all taxable property of such township in accordance with the provisions of section 1222 G. C. as amended by House Bill No. 160, filed in the office of the Secretary of State May 6, 1921.

COLUMBUS, OHIO, August 10, 1921.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

“Will you kindly furnish me your opinion upon the following propositions?”

Section 1222, General Code of Ohio, as amended, provides in part as follows:

‘For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. *Such levy shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing laws or laws.* Where the improvement is made upon the application of the county commissioners, said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees, said township trustees shall levy the tax. A county or township may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section.’

The above provides a method for the township trustees to raise a fund in the construction of state aid roads.

Quaere: A board of township trustees having created a road district, and said road district being still in existence, can the board of township trustees or county commissioners, acting under the above authority, section 1222 G. C., put a two mill levy upon all of the township notwithstanding the fact the road district is still in existence?”

Your letter quotes the last paragraph of section 1222 G. C. as amended by House Bill No. 160, filed in the office of the Secretary of State May 6, 1921. The sentence which I have underscored in your quotation was substituted by amendment in said House Bill No. 160 for this sentence appearing in the section as enacted 108 O. L. 478 (p. 494):

"Such levy shall be in addition to all other levies authorized by law for township purposes and shall be outside the limitation of two mills for general township purposes, and subject only to the limitation upon the combined maximum rate for all taxes now in force."

The substitution noted was the only change made in the statute by the recent amendment.

Section 1222, G. C., has reference only to state aid highway improvements. Such improvements may be undertaken on the application of township trustees when the county commissioners do not by a certain date in the year make application for state aid; but in the great majority of instances, the commissioners avail themselves of the right to make application. Only where the application is made by the township trustees are the latter authorized to make the levy on township property mentioned in section 1222.

The fact that a road district (sections 3298-25 to 3298-53, G. C.) is in existence concerns the levy on all township property mentioned in section 1222 G. C. even in its present form (108 O. L.) only to the extent that the district levy would enter into the calculation of

"the limitation upon the combined maximum rate for all taxes now in force,"

when it is proposed to make a levy on all the property of the township as authorized by present section 1222. Since the amendment upon becoming effective will remove the authorized two mill levy in question from all limitations, including

"the limitation upon the combined maximum rate for all taxes now in force,"

you are advised in specific answer to your question that upon the going into effect of House Bill No. 160, county commissioners or township trustees making application for state aid will by virtue of section 1222 G. C. be authorized to levy to the full extent the two mills upon all taxable property of the township in which the proposed improvement or some part thereof is situated, even though such township exclusive of municipal corporations therein constitutes a road district.

Respectfully,
JOHN G. PRICE,
Attorney-General.