

5077.

BUDGET COMMISSION — MAY AUTHORIZE SUBDIVISION TO LEVY IN EXCESS OF TEN AND INSIDE OF FIFTEEN MILL LIMITATION FOR DEBT SERVICE ON BONDS WHEN.

SYLLABUS:

1. *The budget commission of a county may authorize a subdivision therein to levy in excess of the ten and inside the fifteen mill limitation for debt service on bonds that have been issued subject only to the former fifteen mill limitation where such subdivision's share of the ten mill levy is not sufficient therefor and such levy may be in addition to the operating levy and debt levy of its overlapping subdivisions.*

2. *Where a subdivision has outstanding bonds which were issued subject only to the former fifteen mill limitation, the property in that subdivision is subject to a levy of fifteen mills if necessary to meet such debt charges and such subdivision must be authorized to levy as much of the additional five mills in excess of the ten mill limitation as is necessary for said purposes, provided that where there are two or more subdivisions which overlap each other, the debt charges of which exceed the amount such subdivisions are authorized to levy within the ten mill limitation and the additional five mill levy is not sufficient therefor, then the budget commission must determine the fair proportionate share thereof to which each of said subdivisions is entitled.*

COLUMBUS, OHIO, January 4, 1936.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This acknowledges receipt of your communication which reads as follows:

"We respectfully request your interpretation and opinion of the decision of the Supreme Court of Ohio rendered in mandamus, *The State, ex rel. Bruml v. Village of Brooklyn, et al.*, Case No. 23941, decided November 27, 1935.

(a) May the budget commission and taxing authority levy in excess of the ten mill limitation, for a particular taxing subdivision, for debt service on bonds that have heretofore been issued within the constitutional or statutory fifteen mill limitation, when such levy is in addition to the current operating levy and debt levy of other taxing subdivisions forming a part of the whole taxing district?

We quote from the decision :

'further, commanding the defendants, the County Auditor and the County Treasurer of Cuyahoga County, to collect such taxes, up to the said village's full proportion of the said fifteen (15) mill limitation as from time to time and year to year will be necessary for such purposes'.

(b) If the budget commission has the authority to make a levy for debt service in excess of the ten mill limitation, for a particular subdivision, how are they to determine what proportion of the fifteen mill limitation that particular subdivision is entitled to under this decision? How much can be levied outside the ten mill limitation and within the fifteen mill limitation?

(c) Paragraph D of Section 5625-23 requires the budget commission to approve a levy for current expenses and debt service, for each subdivision, based upon two-thirds of the average levy of each subdivision or taxing unit during the last five years the fifteen mill limitation was in effect. If the minimum requirements of Paragraphs B and C are not met by the above method the budget commission must reduce the minimum levy of the other subdivisions to provide for the requirements of B and C and in addition thereto an operating levy. What method should the budget commission follow in fixing tax levies where one subdivision, being a part of a taxing district, requires the full ten mills for debt service? When they require fifteen mills for debt service?

(d) We submit the following hypothetical requirement of a taxing district :

	county	township	school	municipality	total
operating					
levy	2.00	.80	3.00	2.00	7.80
debt levy	....	...	....	12.00	12.00
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	2.00	.80	3.00	14.00	19.80

The total debt requirement of x village is twelve mills, providing a full and sufficient levy is made to meet all debt requirements. This, of course, will exclude any county, township, school or municipal operating levy, if it be construed that the ten mill levy must be fully absorbed for debt service. May the budget commission determine the proportionate share of each subdivision, within the ten mill limitation, and then levy between the ten and fifteen mill limitation for debt for bonds issued under the fifteen mill limitation for x village?

(e) We submit the following hypothetical requirement of a taxing district:

	county	township	school	municipality	total
operating					
levy	2.00	.80	3.00	2.00	7.80
debt levy	....	...	....	8.00	8.00
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	2.00	.80	3.00	10.00	15.80

The total debt requirement of x village is eight mills. Because of this fact, sufficient revenues will not be available for operating purposes for the county, township and school by reason of the remainder of free millage within the ten mill limitation. May the taxing authority and budget commission place any portion of the eight mills required for debt on bonds issued within the fifteen mill limitation and outside of the ten mill limitation?"

The journal entry in the Brooklyn case referred to by you reads as follows:

"This cause came on to be heard upon the pleadings and the evidence, and was argued by counsel and submitted to the court; on consideration whereof the court finds the issues in favor of the relator and that a peremptory writ of mandamus should be allowed, as prayed for in the petition.

It is, therefore, ordered and adjudged that a peremptory writ of mandamus issue, commanding the defendants, the village of Brooklyn, Cuyahoga County, Ohio, the Mayor, Clerk, the Council of said village and members thereof, and their respective successors in office, to apply any and all moneys on hand in the treasury of said village as are applicable thereto and not otherwise certified and appropriated, to the payment, first, of the accrued interest due and payable on its outstanding bonds, and then to the payment of its past due and matured bonds; further, to adopt a budget for the fiscal year 1936 or to so amend any budget now adopted for said fiscal year so as to show the full amount required to pay the interest and principal charges on its bonded indebtedness now due and unpaid, or to become due in the fiscal year 1936, and to certify the same to the defendant, the County Auditor; further, commanding the County Auditor to lay said budget or amendment thereof before the Budget Commission of Cuyahoga county; commanding the defendant, the Budget Commission of Cuyahoga county and the members thereof, to ascer-

tain that all levies for debt charges not provided for by levies outside of the limitation of Section 2, Article XII of the Constitution of Ohio, are authorized according to law and, if so, to approve them without modification; further, commanding said defendant, the Budget Commission and members thereof, if necessary, to revise and readjust its estimate of balances and receipts from all sources for each fund of said defendant, village of Brooklyn, so as to make due provision for the debt charges upon its outstanding bonded indebtedness within the limitation imposed by Section 2, Article XII of the Constitution of Ohio, and whenever total levies for debt service of defendant village inside of limitations exceed said ten mill limitation, make due provision outside said ten mill limitation and within the fifteen mill limitation for debt charges for such bonds as have heretofore been issued within constitutional or statutory fifteen mill limitations; and thereupon to certify to the Council of said village of Brooklyn its estimate of balances and receipts, together with the estimated revenues to be derived from taxation in the fiscal years 1935 and 1936, so that all appropriations and expenditures to be made by said defendant, village of Brooklyn, for the balance of the current year and in the fiscal year 1936 shall make due provision for the payment of the interest and principal on its outstanding bonds to the exclusion of current operating expenses, if necessary; further, commanding the defendants, the County Auditor and the County Treasurer of Cuyahoga county, to collect such taxes, up to the said village's full proportion of the said fifteen (15) mill limitation as from time to time and year to year will be necessary for such purposes, and apply the proceeds thereof solely to the interest and principal accruing on the outstanding bonds of said defendant, village of Brooklyn, in the current year and in the ensuing fiscal years according to law; and further commanding each and all of the defendants herein to do and perform, or cause to be done and performed, all of such acts and all other acts as may be required of them by law to provide funds with which to pay the interest and the principal charges on the outstanding bonds of said defendant, village of Brooklyn, as the same mature in the ensuing fiscal year and all succeeding years until the interest and principal on said outstanding bonds have been fully paid."

That part of the entry commanding the budget commission of Cuyahoga county to make provision outside of the ten and inside of the fifteen mill limitation for debt charges for such bonds as had been issued within the former fifteen mill limitation whenever total levies for debt service of

said village inside limitations exceed the ten mill limitation, as well as that part of the entry commanding the county auditor and treasurer to collect such taxes up to the village's full proportion of the fifteen mill limitation as from time to time and from year to year will be necessary, is in accordance with the holding of the court in the case of *State, ex rel. v. Steel*, 130 O. S. 90, which reads as follows:

“In our opinion the bonded indebtedness here under consideration is not, and cannot be, affected by the adoption of the amendment to Section 2, Article XII of the Ohio Constitution, for the reason that even such constitutional amendment may not impair the obligation of existing contracts.

Our conclusion is that outstanding bonds of a political subdivision issued prior to the effective date of the constitutional ten-mill limitation imposed by Section 2, Article XII, of the Ohio Constitution now in effect, may be refunded to the extent of the unpaid principal balance then due thereon, notwithstanding the fact that the ten-mill limitation may be thereby exceeded.”

In other words, the amendment of Section 2 of Article XII of the Constitution cannot be construed to prohibit the levy by a subdivision for debt charges for bonds which had been issued subject only to the fifteen mill limitation, outside of the ten mill limitation of said amendment where such debt charges would require a greater levy.

Section 11 of Article XII of the Constitution makes it mandatory that provision be made annually by a subdivision for a levy sufficient to pay the principal and interest of its bonds as they mature. Section 2 of Article XII limits the amount which may be levied for all purposes upon property taxed according to its value except those purposes which are excepted from its operation. In other words, the aggregate amount which may be levied by a subdivision and all its overlapping subdivisions upon property located within said subdivisions for both current expense and debt charges not excepted from said amendment, is limited to ten mills.

The Constitution makes no provision as to how much of said ten mills may be levied by each of said subdivisions. Consequently, it is competent for the legislature to make such provision. The legislature, as it had the right to do, has prescribed the method of the allocation of the proceeds of such tax in Section 5625-23, General Code. Of course, it could not so materially change the method of such allocation as to impair the obligations of bonds created prior to such change. Said statute reads as follows:

“The county auditor shall lay before the budget commission the annual tax budgets submitted to him under the provisions of

this act, together with an estimate to be prepared by such auditor, of the amount of any state levy, the rate of any school tax levy as therefor determined, and such other information as the budget commission may request or the state tax commission may prescribe. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification:

- (a) All levies outside of the ten mill limitation.
- (b) All levies for debt charges not provided for by levies outside of the ten mill limitation, including levies necessary to pay notes issued for emergency purposes.
- (c) The levies prescribed by sections 4605 and 4621 of the General Code.
- (d) A minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate. Provided, however, that if the levies required in paragraphs (b) and (c) for said subdivision or taxing unit equal or exceed the entire minimum levy of said subdivision as hereinbefore fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the budget commission to provide for said levies and in addition thereto an operating levy for said subdivision. Such additional levy thus required shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.

If any debt charge is omitted from the budget, the budget commission shall include it therein."

Since Section 11 of Article XII of the Constitution makes it mandatory upon a subdivision to make provision annually for the payment of its bonds and interest as they mature, the limitation of Section 2 of said article prevents a subdivision from issuing bonds without a vote of the people where the debt charge requirements subject to such limitation

for said subdivision and all its overlapping subdivisions will exceed ten mills in any year during the life of the proposed bond issue. *State, ex rel. v. Kountz*, 129 O. S. 272.

Likewise, in view of the decision in the case of *Rabe v. Board of Education*, 88 O. S. 403, construing former statutes, it may be said that Section 5625-23 prevents a subdivision from issuing bonds without a vote which are not to be financed from sources other than taxation where the debt charge requirements of said subdivision will in any year during the life of the proposed bond issue exceed its share of the ten mill levy. The third and fourth branches of the syllabus of said case read as follows:

“3. Bonds cannot be issued in anticipation of income from taxes levied or to be levied in an amount greater than the income to be anticipated thereby.

4. In determining the amount of income from taxes levied or to be levied that may be anticipated by an issue of bonds by any taxing authority, the calculation must be based on the same proportion of the total maximum levy in any one taxing district as the proportion of the maximum levy it is authorized to certify to the budget commissioners is to the total maximum levies that all the taxing authorities within that taxing district are authorized to certify.”

Any other construction would make it possible for one subdivision to create bonded indebtedness which would entirely consume the ten mill limitation, which it could not be authorized to make under Section 5625-23, General Code.

However, the reduction of the tax limitation from fifteen mills to ten mills has presented cases where the amount which may be levied by certain subdivisions will not be sufficient to pay their debt charges within limitations. Paragraph (d) of Section 5625-23 provides for a minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy therefor allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said limitation was in effect unless an amount requiring a smaller rate is requested. Said paragraph further provides that if the levies required in paragraphs (b) and (c) for said subdivision equal or exceed such minimum levy, the minimum levy for the other subdivisions shall be reduced to provide for such levies and in addition thereto an operating levy for such subdivision. This provision does not state in what proportion the levies of the other subdivisions shall be reduced, nor does it state how much shall be taken from the other subdivisions for current expense of said subdivision. This apparently is left to the discretion of the budget commission. This provision can only be

based upon the assumption that the ten mill levy will be sufficient to take care of the debt charges of a subdivision and all its overlapping subdivisions and leave something for current expense of each of said subdivisions and must be construed with that in mind; otherwise, it would be impossible of operation. Certainly, it could not have been intended that levies for debt charges and current expense for a subdivision whose requirements for the levies set forth in paragraphs (b) and (c) equal or exceed the minimum levy must be provided for where such provision would leave nothing for debt charges or current expense for its overlapping subdivisions. Consequently, where the ten mill levy is not sufficient to take care of the debt charges and provide an operating levy for each overlapping subdivision, the proviso contained in paragraph (d) is not applicable.

Of course, debt charges of a subdivision must be taken care of first even though the requirement therefor will consume the entire levy which said subdivision is authorized to make. The amount which the subdivision is authorized to levy is determined by the budget commission in accordance with the rules laid down in Section 5625-23, but there is nothing in this statute which would require the budget commission to authorize one subdivision, the debt charge requirement of which exceeds ten mills, to levy the entire ten mills for said purposes, thereby denying its overlapping subdivisions the right to make any levy within limitations either for current expense or for debt charges.

Answering your first question, I am therefore of the opinion that the budget commission of a county may authorize a subdivision therein to levy in excess of the ten and inside the fifteen mill limitation for debt service on bonds that have been issued subject only to the former fifteen mill limitation where such subdivision's share of the ten mill levy is not sufficient therefor and such levy may be in addition to the operating levy and debt levy of its overlapping subdivisions.

I come now to your second question.

The writ in the Brooklyn case referred to commanded the budget commission to make provision for levies for debt service on bonds which were subject only to the former fifteen mill limitation, outside of the ten mill limitation and inside the fifteen mill limitation where total levies for debt service of said village could not be made within the ten mill limitation. Where a subdivision has issued bonds subject only to the fifteen mill limitation, the property in that subdivision is subject to a levy of fifteen mills if necessary to meet such debt charges and such subdivision must be authorized to levy as much of the additional five mills as is necessary for its debt charges.

Of course, where there are two or more subdivisions which overlap each other, the debt charges of which exceed the amount which such subdivisions are authorized to levy inside of the ten mill limitation, and the additional five mill levy is not sufficient therefor, then said additional

five mill levy must be apportioned among said subdivisions. I find nothing in the law which states how each of said subdivisions' proportion of said levy is to be determined. In such case, therefore, it must necessarily be up to the budget commission to determine the fair proportionate share thereof to which each of said subdivisions is entitled.

I believe the discussion with reference to your first two questions is dispositive of your third question. •

As to the first hypothetical case presented by you, I assume the requirements for the subdivisions other than the municipality are the minimum requirements set forth in the first sentence of paragraph (d) of Section 5625-23. It is clear that these levies cannot be reduced sufficiently to meet the requirements of the municipality for current expenses and debt charges and leave an operating levy for the overlapping subdivisions. Consequently, the provisions of paragraph (d) cannot be applied. The operating levy for said three subdivisions totals 5.80 mills. This leaves a levy of 4.20 mills for the municipality, all of which must be made for debt charges. Since this is not sufficient for its debt charge requirements, said subdivision must be authorized to levy an additional five mills which would make a total levy for the municipality of 9.20 mills, all of which must be made for debt charges. To say that the municipality must be authorized to levy twelve mills would mean that the county would have no right to make any levy on property anywhere within the county. I do not believe that it was intended that the result of the errors of one subdivision must be visited upon its overlapping subdivisions which are not at fault.

As to your second hypothetical case, I make the same assumption as I did with respect to the first. It is also clear that the requirements for the subdivisions other than the municipality cannot be reduced to provide a levy for the debt charges of the municipality and leave anything for the operating levy for all the subdivisions except a very nominal amount. Strictly speaking, the proviso contained in paragraph (d) of Section 5625-23 may be applicable in this case as the total requirement for debt charges is less than ten mills, but since this statute was apparently passed with the assumption that no debt charges within the limitation could be levied outside the ten mill limitation, I do not believe that such a strict construction which would leave practically nothing for an operating levy for the other subdivisions would be justified. I do not feel, therefore, that the budget commission should be compelled to apply said provision of paragraph (d). Consequently, the budget commission could authorize the municipality to levy part of its requirement for debt charges outside the ten mill limitation. The requirement for current expense of the three other subdivisions totals 5.80 mills. This leaves 4.20 mills which the municipality must be authorized to levy for debt charges. Since this is not sufficient for its requirements for that purpose, 3.80 mills must be

levied by the municipality outside of the ten mill limitation, all of which must be used for its debt charges.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5078.

DOMESTIC CORPORATION—AUTHORIZED BY CHARTER TO TRANSACT BUSINESS OF INSURANCE COMPANY, MAY BE LICENSED AS AGENCY WHEN.

SYLLABUS:

A domestic corporation, authorized by its charter to transact the business of insurance agency, may be licensed as an agency for a fire or casualty insurance company where the persons who are to act for such agency corporation possess the qualifications required of an insurance agent and are licensed therefor.

COLUMBUS, OHIO, January 6, 1936.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR: I acknowledge receipt of your communication which reads as follows:

“Will you kindly give us an opinion on the following questions:

1. Under existing Section 644 of the Ohio General Code, which provides for an examination of certain applicants for insurance agents' licenses, may a domestic corporation be licensed as an agency for a fire or casualty insurance company?

2. If the answer to question 1 is in the negative, may a domestic corporation which, in the past, has been licensed by this Division as an agency for a fire or casualty insurance company, be licensed for a different fire or casualty insurance company, than the company which held the license in the past?

3. If the answer to question 1 is in the negative, may agents' licenses to domestic corporations be renewed by the issuance of new licenses for the same insurance companies on the expiration of existing licenses?”