

It is obvious from a reading of the foregoing section that all of the levies therein authorized to be placed outside of the constitutional ten mill limitation were, prior to January 1, 1934, the effective date of that constitutional provision, outside of the theretofore existing constitutional fifteen mill limitation. It is elementary that the legislature had no authority to authorize any levies to be made outside of the ten mill limitation which were not expressly exempted therefrom by Section 2, Article XII of the Constitution, as amended, or by the schedule thereto, nor did the legislature attempt so to do.

The schedule of the last amendment of Section 2, Article XII of the Constitution provides that only those levies which were outside of the constitutional fifteen mill limitation theretofore in effect shall be outside of the constitutional ten mill limitation effective January 1, 1934. Section 5625-7, General Code, as amended by House Bill No. 9 of the Third Special Session of the 90th General Assembly, in conformity with such schedule, does not place outside of the ten mill limitation any levies which were formerly within the fifteen mill limitation as contained in Section 2, Article XII of the Constitution, adopted November 5, 1929.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2981.

COUNTY LIBRARY DISTRICT—COUNTY AUDITOR FISCAL OFFICER
 OF SUCH DISTRICT—TRUSTEES OF DISTRICT NOT ENTITLED
 TO CUSTODY OF FUNDS.

SYLLABUS:

1. *The county auditor in a county in which there exists a county library district organized under the provisions of Sections 7643 et seq., of the General Code, is the fiscal officer of such district.*
2. *It is the duty of the fiscal officer of county library districts to draw warrants for the disbursement of the district funds in accordance with law.*
3. *It is not lawful to permit the trustees of a county library district organized under the provisions of Sections 7643, et seq., General Code, to have the custody of the moneys provided by law or otherwise for county district library purposes and to place them in a depository of its own choosing and disburse them upon its own orders and warrants.*

COLUMBUS, OHIO, August 1, 1934.

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

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

“Section 5625-1, paragraph (b), General Code, defines the fiscal officer of the county library district to be the auditor of the county

designated by law to act as auditor of the district. Sections 7643-1 et seq. of the General Code, provide for the establishment of a county library district. Section 7643-7 of the General Code, provides that all moneys realized from taxes levied for a county library district, and all moneys received or collected by the trustees for such library district, shall be placed in the treasury of the county, subject to order of such board of trustees of such library district. It further provides that the county treasurer shall be custodian of such funds, and that no moneys shall be drawn therefrom except upon requisition of the board of trustees of such library district, certified by the president and secretary of such board, directed to the county auditor, who shall draw his warrant upon the county treasurer therefor.

Question 1: In the case of Hamilton County Library District, created under the provisions of Sections 7643 et seq., is the auditor of Hamilton County the fiscal officer of such district; or is the clerk employed by the board of trustees of such district the fiscal officer of the district?

Question 2: May the county auditor, on the requisition of the board of trustees of the library district pay over to the trustees of the library district such amounts as are necessary for the operating expenses of such district; or, must the county auditor issue his warrant for each separate expenditure made or authorized by the trustees of the library board?

In this connection, we are enclosing herewith a letter from the trustees of this board in which it is contended that the board of trustees are entitled to receive from the county treasurer on warrant of the county auditor, such amount as is necessary to pay the expenses of the district and place the same in their own depository to be disbursed upon the check of the secretary of the library board."

The creation of county library districts is provided for by Sections 7643-1 and 7643-1a, of the General Code of Ohio. Said Section 7643-1, General Code, reads as follows:

"A county library district may be created in the manner herein-after provided in any county, composed of taxing districts therein, in which public library service supported in whole or in part by tax moneys, is not furnished to the citizens thereof. And said county library district may also include any taxing district having a public library supported in whole or in part by tax moneys, upon resolution of the board of trustees or other governing bodies of any such library. At any regular or special session the county commissioners of any county may adopt a resolution describing the limits of, a proposed county library district in such county, and may file the said resolution in the probate court of such county. Upon the filing of such resolution in the probate court, the probate judge shall fix a day for the hearing thereof, not less than thirty (30) days and not more than sixty (60) days after the date of such filing. If the probate judge finds the territory of such proposed district sufficiently described, he shall certify such fact to the board of elections of the county, who shall submit the question of the creation of such

county library district to the electors residing in the territory comprising such proposed district and shall place the same on the ballot at the next regular or general election. If a majority of the electors, voting upon such proposition, vote in the affirmative, such district shall be deemed and held to have been created."

Section 7643-1a, General Code, provides that in any county in which there exists a public library or libraries organized under the provisions of Sections 2976-11 (county library), 3405 (township library), 4004 (municipal library), or 7635 to 7640-1 (school district library) and supported in whole or in part by a tax levied on property in said county having an assessed valuation of at least two-thirds of the total valuation of all the property in said county as shown by the tax list thereof, or so supported in the year 1930, the said library or libraries may be transformed into a county library district having boundaries co-extensive with the county, upon complying with this section and without compliance with Section 7643-1 of the General Code.

Said Section 7643-1a, General Code, provides for the manner of transforming such library or libraries into a county library district and provides further that when this is done "all the property of the public library boards in said county organized under the provisions of Sections 2976-11, 3405, 4004, 7635 or 7643-1, of the General Code, shall be transferred, conveyed or assigned to the new county library district in accordance with the provisions of Section 7643-4a of the General Code."

Section 7643-2, General Code, provides that the management of a county library district shall be vested in a board of seven county library trustees and also provides for the manner of their appointment, and fixes their term of office. Section 7643-7, General Code, provides as follows:

"All moneys realized from the levy made for the county library district under the provisions of this act, including interest on all library funds, and all moneys received or collected by said trustees for the library district, shall be placed in the treasury of such county, subject to the order of such board of trustees of such library district. Such fund shall be known as the county library district fund of such county, of which the county treasurer shall be custodian; and no money shall be drawn therefrom, except upon the requisition of the board of trustees of such library district, certified by the president and secretary of such board, directed to the county auditor, who shall draw his warrant upon the county treasurer therefor. Any part of said funds unexpended during any year shall remain to the credit of such library district fund, and such surplus or any part thereof may be set aside by a two-thirds vote of the members of the board as a special building, repair and insurance fund. Provided, however, that in case the county library district trustees contract with the governing body or bodies of one or more public libraries for county library service the county library district fund shall be turned over when collected, by the county treasurer to the proper officer of the library or libraries with which the contract is made."

By virtue of Section 7643-3, General Code, which was enacted as a part of the county library district law and which authorizes the trustees of a county

library district to levy a tax for county district library purposes, such districts were constituted "taxing units" as the term is defined in Section 5625-1, subdivision "i" of the General Code, said Section 5625-1, General Code, being a part of the "Uniform Tax Levy Law" sometimes referred to as the "Budget Law." In the administration of the Uniform Tax Levy Law (Section 5625-1 to Section 5625-39, inclusive, of the General Code of Ohio) certain duties are fixed by law to be performed by a person known as the "fiscal officer" of a subdivision or taxing unit, as these terms are defined in the said law. The term "fiscal officer" as used in this law, is defined in Section 5625-1, subdivision (d) of the General Code, as follows:

"'Fiscal officer' in the case of a county shall mean the county auditor; in the case of a municipality, shall mean the city auditor or village clerk, or such officer as, by virtue of the charter, has the duties and functions of the city auditor or village clerk, except that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, the custody and control of the funds of the university, the chief accounting officer of the university shall perform, with respect to such funds, the duties vested in the fiscal officer of the subdivision by sections 5625-33 and 5625-36 of the General Code; in the case of a school district, the clerk of the board of education; in the case of a township the township clerk; in the case of a children's home district, tuberculosis hospital district, county school district, general health district, metropolitan park district or county library district, the auditor of the county designated by law to act as the auditor of the district; and in all other cases, the officer responsible for keeping the appropriation accounts and drawing warrants for the expenditure of the moneys of the district or taxing unit."

The substantial legal question presented by this inquiry is whether or not the provisions of Section 7643-7, *supra*, with respect to drawing money from the county library district fund in the custody of the county treasurer, *upon the warrant of the county auditor*, after the same has been requisitioned by the board of library trustees amounts to a designation of the county auditor to act as the auditor of a county library district within his county.

If the provisions of said Section 7643-7, General Code, do not amount to a designation of the county auditor as auditor of the county library district, no one is so designated in the law, as there are no provisions of the county library law expressly designating anyone as its auditor or fiscal officer, nor are there any provisions of the law authorizing either expressly or impliedly, the library trustees to designate an auditor or fiscal officer for the district. It may be noted in this connection, that Section 7643-7, General Code, and many other sections of the county library law were amended in 1931 (114 O. L., 54), four years after the enactment of the Uniform Tax Levy Law and two years after the provisions with respect to fiscal officers of county library districts was inserted in that law.

It is true that the law does not provide in direct and express language that the county auditor shall "act as the auditor" of the district as it does with respect to general health districts in Section 1261-33, but it appears to me that the provision that "no money shall be drawn therefrom (meaning the county district library fund) except upon the requisition of the board of trustees * *

directed to the county auditor who shall draw his warrant upon the county treasurer therefor" comes as near to designating the auditor as the auditor of such a district as it is possible to do without expressly saying so, and no other construction of this language seems tenable, especially in view of the fact that no other officer is designated as auditor or fiscal officer and no other provision is made in the law for auditing the accounts of the district or authorizing the board of trustees to appoint an auditor or fiscal officer. Clearly, to my mind, the legislature intended by this provision to constitute the county auditor the auditor of a county library district.

Moreover, it seems clearly to have been the intent of the legislature, in the enactment of the Budget Law and in defining the term "fiscal officer" as contained therein, that the fiscal officer of each subdivision and taxing unit should be the officer or person designated by law to keep the appropriation accounts and draw warrants for the expenditure of the moneys of the subdivision or taxing unit. In each of the instances in which the legislature has expressly provided who should be the fiscal officer as in counties, municipalities, school districts, townships and districts where the auditor of the county is designated the auditor of the district or officer or person so named in the statute, the fiscal officer is the one who draws warrants for the expenditure of the moneys of the subdivision or district and keeps its appropriation accounts. After naming the person or officer who should be the "fiscal officer" in a number of named subdivisions and districts, the statute provides that "*in all other cases*", the fiscal officer shall be "the officer responsible for keeping the appropriation accounts and drawing warrants for the moneys of the district."

In fact, there is considerable ground for construing this statute to mean that where a county library district, metropolitan park district, children's home district, tuberculosis hospital district, county school district or general health district exists and a county auditor is not designated by law to be its auditor, the district comes within the classification of "all other cases," and its fiscal officer would then be the officer or person responsible for keeping its appropriations and drawing its warrants for the disbursement of its funds. If we should adopt that construction, it would clearly follow that the county auditor is the fiscal officer of a county library district within his county, even if it should be held that the provisions of Section 7643-7, *supra*, do not suffice to designate the county auditor as the auditor of the district. It is not necessary to adopt that construction of Section 5625-1, subdivision (d), for the purposes of this opinion as it seems clear to my mind that Section 7643-7, General Code, does designate the county auditor as the auditor of a county library district within his county.

In the letter of the Law Committee of the Board of Trustees of the County Library District of Hamilton County, submitted with your inquiry, it is contended that the law with respect to the funds of a district tuberculosis hospital, as contained in Section 3152-1, General Code, is analogous to the law concerning the funds of a county library district and that it has been the consistent and unchallenged practice to permit the trustees of a district tuberculosis hospital to have the custody of the funds provided for the hospital, deposit them in a bank of their own choosing and disburse them upon the orders and warrants of the board and that the county auditor has not been regarded as the "fiscal officer" of such a board.

In the first place, under the law as it now exists, a tuberculosis hospital district is neither a "subdivision" nor a "taxing unit" within the provisions of the

Uniform Tax Levy Law, and there is no occasion for a tuberculosis hospital district having a "fiscal officer" as that term is used in that act.

In the letter it is stated "there is little difference in language and no difference in principle between Section 3152-1, and Section 7643-7, General Code." In my opinion there is a vast difference both in language and principle between a provision of law which directs that moneys realized from a levy of taxes for the use of a board of trustees or received or collected by such board of trustees, is to be placed in the treasury of the county and that it shall not be drawn therefrom except upon the requisition of the board of trustees and the warrant of the county auditor as is contained in Section 7643-7, General Code, supra, and one that directs that money arising from a levy of taxes for the use of the board of trustees shall be paid to those trustees upon the warrant of the county auditor at the same time that school and township moneys are paid to their respective treasurers, and that when so received by those trustees, it shall be deposited in a bank or trust company to be designated by the trustees for the uses and purposes of the district as provided by Section 3152-1, General Code. Said section reads as follows:

"All taxes levied by the county commissioners of any county under the provisions of section thirty-one hundred and fifty-two shall, when collected, be paid over to the trustees of the district tuberculosis hospital upon the warrant of the county auditor, at the same time that school and township moneys are paid to the respective treasurers; and the board of trustees shall receipt therefor and deposit said funds to its credit in a bank or banks or trust company to be designated by it, and said bank or trust company shall give to said board, a bond therefor in an amount at least equal to the amount so as aforesaid deposited; and thereupon said funds may be disbursed by said board of trustees for the uses and purposes of said district tuberculosis hospital, and accounted for as provided in the foregoing sections.

Each trustee shall give bond for the faithful performance of his duties in such sum as may be fixed by the joint board of commissioners, the expense of such bond, if any, shall be paid out of the fund for the maintenance of the hospital. The bond of each trustee after being approved by the joint board of commissioners shall be filed with the auditor of the county represented by him."

A mere reading of this statute is convincing to my mind that there is no analogy whatever between its provisions and those of Section 7643-7, General Code. There is no provision of the county library district law for the giving of a bond by the trustees or any agent or employe of the trustees and no responsibility is placed on anyone except the county treasurer and the county auditor for the custody and disbursement of the funds of the county library district, except that the disbursement of those funds shall be made upon proper requisition of the board of trustees. A requisition to the auditor and a warrant on the treasurer are two vastly different things. It is also contended that because the pertinent language of Section 7643-7, General Code, is practically the same as that contained in the law under which the Cincinnati Public Library had formerly existed and was operated (93 O. L. 193—Sec. 3999a et seq. Revised Statutes) and the administrative practice for years had been for the trustees of this library to

have the custody of the funds for the library and disburse them upon the checks and warrants of the clerk of the board of trustees without the intervention or interference of anyone, the legislature must have modeled the present law from the former one and the construction sanctioned by this former administrative practice should be given to it. It may be noted that the same language is also contained in Section 2976-15, General Code, with respect to county libraries.

County library districts existing by virtue of the general law (Section 2976-11 et seq. General Code) were not numerous, and I am not advised as to any general administrative practice with respect to that law. Whatever it may have been it would no doubt have some weight in construing the same language used in a later law, but would be far from conclusive especially in view of a different setting in which the language is found in the later law.

In construing the language of Section 7643-7, General Code, consideration must be given to the fact that a county library district under the present law is a "taxing unit" within the provisions of the Uniform Tax Levy Law and its fiscal officer should be adjudged to be that person who, under the terms and manifest intent of the Uniform Tax Levy Law is charged with the duty of being its fiscal officer if the language with respect thereto is reasonably consistent with such construction.

The mere fact that a certain administrative practice is tolerated does not, by any means, signify that it is right, and if it is contrary to law, it will never ripen into a positive right, no matter how long continued. It seems to me that if the legislature had intended the county library district trustees to have the custody of moneys raised by taxation or otherwise, for county library district purposes, and to distribute them on their own warrants, it would have made provision for it in language similar to that contained in Section 3152-1, General Code, supra, with respect to the trustees of a district tuberculosis hospital.

The construction which I place on the provisions of Section 7643-7, General Code, does not in any wise do violence to the provisions of Sections 5625-20, 5625-24 and 5639, General Code, wherein it is provided that the proceeds of certain classified property taxes shall be distributed to the boards of library trustees qualified under the law to receive them. In so far as county library trustees are concerned, it is the positive duty of the library trustees, upon receipt of such moneys, to place them in the treasury of the county, as directed by the express language of Section 7643-7, General Code, where it is provided that:

"All moneys received or collected by said trustees for the library district shall be placed in the treasury of such county."

It is not unreasonable to believe that the legislature had in mind the provisions of Section 7643-7, General Code, and did not intend by the provisions of Sections 5625-20, 5625-24 and 5639, General Code, in so far as county library district trustees are concerned, that said trustees should keep and disburse the moneys distributed to them from the proceeds of classified property taxes.

I am therefore of the opinion in specific answer to your questions:

1. The Auditor of Hamilton County is the fiscal officer of the Hamilton County Library District.
2. It is the duty of the County Auditor of Hamilton County to act as the fiscal officer of the Hamilton County Library District, and to draw warrants for the disbursement of the funds of said district upon the requisition of the trustees

of the district for each separate expenditure made or authorized by the trustees of said district, and he is not authorized to pay over to the trustees of the library district upon their requisition such an amount in a lump sum, as may be thought to be necessary for the operating expenses of the district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2982.

DISAPPROVAL, ARTICLES OF INCORPORATION OF UNIONE
ABRUZZESE.

COLUMBUS, OHIO, August 1, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of the proposed articles of incorporation of Unione Abruzzese. The purposes for which this corporation is formed are set forth in the Articles as follows:

“To assist each other in obtaining employment, to encourage each other in business, to accumulate a fund from dues and assessments of its members to be applied for their relief when sick and to provide for their burial after death, to promote the general welfare among its members and to provide a place where they may enjoy the society of each other and their friends.”

There is nothing contained in these articles which would bring this association within any of the exemptions contained in section 9491, General Code. Consequently, this association cannot be organized under the General Corporation Act and must be incorporated in compliance with the laws relating to insurance. For this reason, I am herewith returning the articles of incorporation to you without my approval.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2983.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS INVESTIGATOR, DEPARTMENT OF HIGHWAYS—
PAUL R. CARLSON.

COLUMBUS, OHIO, August 2, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$2,000.00, with