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SCHOOL DISTRICT — BUDGET COMMISSION — TO COMPUTE AVERAGE LEVY, CURRENT EXPENSE AND DEBT SERVICE, FIFTEEN MILL LIMITATION, TO SCHOOL DISTRICT DURING LAST FIVE YEARS FIFTEEN MILL LIMITATION WAS IN EFFECT, 2.65 MILLS LEVIED PURSUANT TO THE THEN SECTION 7575 G.C. MUST BE CONSIDERED PART OF LEVY FOR CURRENT EXPENSE AND DEBT SERVICE FOR AFORESAID FIVE YEARS, SECTION 5625-23 G.C.

SYLLABUS:

*In computing the average levy for current expense and debt service allotted within the fifteen mill limitation to a school district during the last five years the fifteen mill limitation was in effect, the 2.65 mills which was levied pursuant to the then section 7575 of the General Code, must be considered as part of the levy for current expense and debt service for*

*the aforesaid five years within the meaning of section 5625-23 of the General Code.*

Columbus, Ohio, February 21, 1941.

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

Gentlemen:

This will acknowledge receipt of your recent communication, which reads as follows:

“Your office is respectfully requested to furnish us with written opinion upon the following:

QUESTION: In computing the average levy for current expenses and debt service allotted within the 15 mill limitation to the East Liverpool City School District during the last five years the 15 mill limitation was in effect, must the 2.65 mills which was received within the 15 mill limitation under Section 7575, General Code, be considered as part of the levy for current expenses and debt charges for those years within the meaning of Section 5625-23(d), General Code?”

In connection with this request, we should like to submit the following information and explanation:

The Budget Commission has set a tentative rate for operating revenue of  $6\frac{1}{2}$  mills. Of this amount, 3 mills has been voted by the district, leaving  $3\frac{1}{2}$  mills unvoted. This latter amount will not be sufficient for the needs of the local school district, whose board claims that they are entitled, by reason of Section 5625-23, General Code, to a minimum of 4.24 mills within the 10 mill limitation.

During the years 1929 to 1933, inclusive, the East Liverpool City School District received an average levy of 6.354 mills within the 15 mill limitation. This millage included in each year the 2.65 mills which was provided for by Section 7575, General Code, now repealed. Two-thirds of the 6.354 mills, which is the method of equalizing the millage provided by Section 5625-23(d) amounts to 4.24 mills. The Budget Commission has failed to include the 2.65 mills in its computation of the average for the last five years the 15 mill limitation was in existence, and they frankly state to the school board that they do not know whether they are right in doing this.”

Section 5625-23, General Code, which sets out the levies which shall be approved by the Budget Commission, reads in part as follows:

“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 section 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."

From the above, it is at once manifest that if the levy provided for in former section 7575, General Code, was allotted within the fifteen mill limitation during the last five years said limitation was in effect, such levy must be included in calculating the two-thirds average levy under the former fifteen mill limitation.

The fifteen mill limitation referred to in the above section became effective by statute on January 1, 1928 (112 O.L. page 392; section 5625-2, General Code). Subsequent thereto, a constitutional limitation of fifteen mills on the tax rate was adopted (Article XII, section 2, Ohio Constitution), which became effective January 1, 1931.

On November 7, 1933, the present constitutional ten mill limitation was adopted which went into effect on January 1, 1934. Therefore, the last five years that the fifteen mill limitation was in effect were the years 1929 to 1933, inclusive.

Section 7575, General Code, which was in effect during said five years was repealed on June 29, 1934 (115 O. L. 72, page 412). Said section which levied a state tax for school purposes read in part:

"For the purpose of affording the advantages of a free education to all youth of the state, there shall be levied annually a tax of two and sixty-five hundredths mills, the proceeds of which shall be retained in the several counties for the support of the schools therein.

By the express terms of section 5625-6, General Code, as it existed contemporaneous with section 7575, supra, the levy provided for in the latter section was within the fifteen mill limitation. Said section 5625-6 read as follows:

“The following special levies are hereby authorized without vote of the people:

a. For any specific permanent improvement which the subdivision is authorized by law to acquire, construct or improve, or any class of such improvements which could be included in a single bond issue.

b. For the library purposes of the subdivision, in accordance with the provisions of the General Code authorizing a levy or levies for such purposes, but only to the extent so authorized.

c. In the case of a municipality for a municipal university under section 7908 of the General Code, but only to the extent authorized therein.

d. In the case of a school district, for the purposes of section 7575 of the General Code, or for any school equalization levy which may be authorized.

e. In the case of a county, for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges thereon.

f. In the case of a county, for paying the county's proportion of the cost and expense of the construction, improvement and maintenance of state highways.

g. In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.”

In connection therewith, it should also be pointed out that section 5625-23, General Code, in its form during the above years, read in part as follows:

“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 fifteen mill limitation.

(b) All levies for debt charges not provided for by levies outside of the fifteen mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levy prescribed by section 7575 of the General Code, or any other school equalization levy which may be authorized."

In view of the above statutory provisions, obviously, the levy made pursuant to section 7575 of the General Code when the same was in effect, was subject to and within the fifteen mill limitation during the last five years said limitation was in effect.

In such case, it would consequently follow, and it is accordingly my opinion that, in computing the average levy for current expense and debt service allotted within the fifteen mill limitation to a school district during the last five years the fifteen mill limitation was in effect, the 2.65 mills which was levied pursuant to the then section 7575 of the General Code, must be considered as part of the levy for current expense and debt service for the aforesaid five years within the meaning of section 5625-23 of the General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.