

4559.

TAX LEVY—AUTHORITY TO COLLECT LEVY WHERE TAXING UNIT MAKES LEVY TOO LATE FOR AUDITOR TO PLACE ON DUPLICATE OR WHERE AUDITOR FAILS TO PLACE LEVY ON DUPLICATE ALTHOUGH PROPERLY MADE BY TAXING UNIT.

SYLLABUS:

1. *Where the taxing authority of a subdivision or taxing unit fails for any reason to make a tax levy for certain purposes as directed by Section 5625-25, General Code, even though it be a levy outside the ten mill limitation which had been authorized by vote of the people, until too late for the auditor to extend the levy on the tax duplicate for that year for collection with the first half year's collection of taxes on that duplicate the said taxing authority is without power to effectively make the levy at a later date.*
2. *Where a levy of taxes is made by the taxing authority of a subdivision or taxing unit and the same is certified to the county auditor in pursuance of Section 5625-25, General Code, within the time allowed by law and the county auditor inadvertently fails to extend the levy on the tax duplicate for collection prior to the collection of the first half year's collection of taxes on the said duplicate he may lawfully extend the levy for collection at the time of collecting the second half year's collection of taxes. State ex rel. vs. Roose, Auditor, 90 O. S., 345.*

COLUMBUS, OHIO, August 20, 1935.

HON. E. L. BOWSHER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of a request for my opinion submitted by your predecessor, which reads as follows:

“May we have an opinion as to whether it would be legal to place an additional mill in the computation for the second half tax collection for the benefit of the Willard Board of Education?

The Willard School District approved a 3.15 mills levy for one year for operating purposes, but the Willard Board of Education certified only one of the 3.15 mills in making up the rate for the schools for this year. In making up the schedule, this one mill was omitted from the Willard school rate, and not collected in the first half collections.

The Budget Commission failed to certify the tax rates for the school district as provided by law. The tax rates, as fixed by the Budget Commission, have been published as provided by law. Inas-

much as the Willard School District is not located in the county seat and the advertised tax rates were not available to this district until after the tax books were open and the tax collection started, the board of education was unable to detect the error in the advertised tax rate. Upon finding the error as advertised, the Budget Commission was notified immediately, but it was apparently too late to rectify the error."

It is difficult to understand how a situation such as is outlined in this inquiry could have come about. County budget commissions are not tax levying authorities; they only approve the levies. In a school district the board of education of the district is the taxing authority—made so by statute—see Section 5625-1, General Code, paragraph (c). The taxing authority of a subdivision does not and is not expected to depend on the "advertising" of tax rates to determine what levies have been approved for it. The tax levies for each subdivision depend on the levies which are made by the taxing authority of the subdivision after those levies are approved by the budget commission.

In 1934, the law provided in Section 5625-20, General Code, that the taxing authority of each subdivision should, on or before the 15th of July of each year, adopt a tax budget for the next succeeding fiscal year.

Section 5625-21, General Code, then provided what the budget should present. Among other things it was provided in paragraph 4 of said statute that the budget shall contain an: (4) "estimate of amounts of taxes authorized to be levied outside of the ten mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the provisions of the General Code under which such tax is exempted from all limitations on the tax rate."

Section 5625-22, General Code, provided that the budget after adoption, should be submitted to the county auditor of the county on or before July 20, or at such later time as might be prescribed by the Tax Commission.

Section 5625-23, General Code, provided that the auditor should lay before the budget commission the annual tax budgets submitted to him, together with an estimate of the rates necessary to meet the requirements of such subdivision, as shown by the budgets. Said section further provided:

"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.* *"

Section 5625-25, General Code, then provided as follows:

"When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the fifteen mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. If the proposition of levying a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under the provisions of this act (G. C. §§5625-1 to 5625-39), the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed."

If the Board of Education of the Willard School District had included in its budget an estimate of an amount required to meet its needs which was to be raised from a levy outside the ten mill limitation, amounting to one mill in accordance with paragraph 4 of Section 5625-20, supra, it was clearly the duty of the budget commission as provided by Section 5625-23, General Code, to approve a levy of one mill outside of the ten mill limitation for the district. If that had been done, and certified back to the board of education of the district as the law provides, it then became the duty of the board of education to make the necessary levy by resolution and certify its action with respect thereto to the county auditor, as provided by Section 5625-25, supra. If the budget commission inadvertently failed to approve the levy the board of education should have discovered the error when the action of the budget commission was certified back to it in accordance with Section 5625-25, General Code.

Apparently either the board of education did not set up its requirements for a levy outside the ten mill limitation in its budget, or the budget commission inadvertently failed to approve such a levy or the board of education failed to make the levy after the budget commission's action had been certified to it in accordance with Section 5625-25, General Code. In any event, the board of education of the Willard School District cannot now be heard to say that it did not know the situation until it had learned of it after the rates had been "advertised."

Whatever may have been the cause of the failure to make this levy, if in fact it was not made as prescribed by Section 5625-25, General Code, a levy

cannot now be made by the Willard Board of Education to apply to the 1935 tax duplicate simply because there is no authority for allowing such a levy to be made at this date.

If the levy was actually made and the county auditor for some reason or other failed to extend it on the duplicate for collection in time that it might be included for collection with the first half year's collection of taxes it might now, in my opinion, be put on at this time and the entire levy collected at the time of collecting the second half year's collection of taxes. *State ex rel. vs. Roose, Auditor*, 90 O. S., 345.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4560.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE
GERMAN AMERICAN AID SOCIETY OF AKRON, OHIO.

COLUMBUS, OHIO, August 20, 1935.

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

DEAR SIR:—I acknowledge receipt of the articles of incorporation of the German American Mutual Aid Society of Akron. The purpose of this corporation, as designated in the articles, is "mutual support in case of sickness and death".

Since there is nothing in the articles which brings this society within any of the exemptions of the insurance laws of Ohio, it will be necessary for the society to comply with those laws unless, of course, articles are submitted which do bring it within such exemptions. I am therefore returning said articles to you without my approval.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4561.

APPROVAL, NOTES OF JEFFERSON TOWNSHIP RURAL
SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO, \$8,040.00.

COLUMBUS, OHIO, August 20, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.