

57.

REAPPRAISEMENT—TAXES AND TAXATION—RATE REDUCED IN SAME PROPORTION IN WHICH TOTAL VALUATION OF PROPERTY IN SUBDIVISION IS INCREASED OVER VALUATION OF YEAR PRECEDING REASSESSMENT—SECTIONS 6926 TO 6926-3 AND 5548-2, G. C., INTERPRETED.

*SYLLABUS:*

*There being no limitation in Sections 6926 to 6926-3 that will prevent the application of Section 5548-2, and the terms of Section 5548-2 being general and applying to all additional levies for specific purposes voted in the year of reassessment or any year prior thereto, the rate of said additional levy provided in Sections 6926 to 6926-3 shall be reduced in the same proportion in which the total valuation of property in a taxing subdivision is increased by the reassessment over the total valuation of the year preceding the reassessment.*

COLUMBUS, OHIO, February 9, 1927.

HON. JOHN W. DUGAN, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Is the levy of two mills voted outside the limitations under Sections 6926, 6926-1, 6926-2 and 6926-3 of the General Code, the additional levy referred to in Section 5548-2 of the General Code?”

We have had a reappraisal in our county since voting the two mill levy outside of the limitation. Shall the rate of said additional levy be reduced in the same proportion in which the total valuation of property in our county is increased by the reassessment over the total valuation of the year preceding the reassessment?”

Section 6926, General Code, in regard to the improvement of roads, reads as follows:

“The proportion of the compensation, damages, costs and expenses of such improvement to be paid by the county shall be paid out of any road improvement fund available therefor. For the purpose of providing by taxation a fund for the payment of the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, improving, maintaining, and repairing roads under the provisions of this chapter, the county commissioners are hereby authorized to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county. Said levy shall be in addition to all other levies authorized by law for county purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force.”

It will be noted that this section authorizes the county commissioners to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county without a vote of the electors; and also that while said levy is in addition to all other levies authorized by law for county purposes, it is subject to the limitation on the combined maximum rate for all taxes now in force.

Section 6926-1, providing for the submission of the question of exemption of two mill levy from tax limitations, reads as follows:

"The county commissioners of any county may, and upon the petition of qualified electors of the county in a number equal to at least five per cent of the number of votes cast therein at the last preceding general election of state and county officers, shall by resolution submit to the electors of such county at the first ensuing November election that occurs more than forty days after the adoption of such resolution, the question of exempting from all tax limitations the levy of two mills provided by Section 6926 of the General Code for the purpose of paying the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, maintaining and repairing county roads, or the question of so exempting a part of such levy, such exemption to continue for a definite term of years not exceeding ten. When such question is submitted upon the petition of the electors, such petition shall state the portion of the levy to be so exempted and the number of years during which such exemption shall continue, and these matters set forth in the petition shall also be set forth in like manner in the resolution adopted by the county commissioners pursuant thereto. Where such question is submitted by the commissioners without the filing of a petition by electors, such resolution shall state the portion of the levy to be so exempted and the number of years during which such exemption shall continue. The petition and resolution, or the resolution where the commissioners act without a petition being presented, may also state the part of such levy so to be exempted to be used for constructing and improving county roads and the part of such levy so to be exempted to be used for maintaining and repairing county roads, in which event the proceeds of any such levy exempted by a vote of the electors of the county shall be expended in accordance with such division. The board of county commissioners, upon the adoption of such resolution by a majority vote of all the members elected or appointed thereto, shall cause a copy of such resolution to be certified to the deputy state supervisors and inspectors or the deputy state supervisors of elections of the proper county."

This section provides the manner of submitting the question and exempting from all tax limitations the levy of two mills provided by Section 6926 of the General Code for the purpose of paying the county's proportion of the compensation, damages, cost and expenses of constructing, reconstructing, maintaining and repairing county roads, or the question of so exempting a part of such levy.

Section 6926-2 provides for the notice of election, preparation and form of the ballot. Section 6926-3 provides for the marking of the ballots and certifying the result of the election by the deputy state supervisors and inspectors to the county commissioners of such county. Said section also provides as follows:

"Effect of affirmative vote. If a majority of the electors voting thereon at such election vote in favor of such levy or levies, it shall be lawful to levy taxes within such county at a rate not to exceed such increased rate for and during the period provided for in such resolution, such taxes to be in addition to such other taxes for the same purposes as may be levied subject to any limitation prescribed by law upon the combined maximum rate for all taxes, and the taxes so levied pursuant to such vote of the electors 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 law or laws."

It will be noted that this section provides that the taxes so levied pursuant to such vote 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 law or laws. This limitation, however, applies to the amount of taxes so levied and not to the rate voted by the electors.

Section 5548-2, providing for the reduction of additional tax levies, as amended 111 O. L. 420, reads as follows :

"When the people of any taxing subdivision have voted additional levies for specific purposes in the year of reassessment or any year prior thereto, and said additional levies are effective in the year of reassessment or thereafter and are to be calculated on a total valuation of property higher than that of the year before reassessment, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment over the total valuation of the year preceding the reassessment."

No exception is made in this section to the additional levies provided in Sections 6926 to 6926-3. The statement in said section is in general terms, and there are no exceptions or limitations thereto. The section provides that when the people have voted additional levies for specific purposes, this general language includes the specific levies in Sections 6926 to 6926-3. There is nothing in said section to show any intention upon the part of the legislature to make exceptions for any additional levies voted for specific purposes. The only limitation is that the additional levies shall be voted in the year of reassessment or any year prior thereto and be effective in the year of reassessment and thereafter. Where there is a reassessment and the total valuation of property is higher than that of the year before the reassessment, a levy reduced in the same proportion in which the total valuation of property is increased by the reassessment over the total valuation of the year preceding the reassessment will produce the same amount of money.

It is noted that the limitation in Section 6926-3, General Code, is that the taxes so levied pursuant to the vote of the electors shall not be decreased in amount. It is, therefore, evident that the provisions of Section 5548-2 may be applied in connection with Section 6926-3 and still not be in conflict therewith. What the electors really authorized was a certain rate for specific purposes. An increase in the valuation of the property will permit the same amount of money to be obtained by reduction in the rate of the levy.

There being no limitation in Sections 6926 to 6926-3 that will prevent the application of Section 5548-2, and the terms of Section 5548-2 being general and applying to all additional levies for specific purposes voted in the year of reassessment or any year prior thereto, the rate of said additional levy provided in Sections 6926 to 6926-3 shall be reduced in the same proportion in which the total valuation of property in a taxing subdivision is increased by the reassessment over the total valuation of the year preceding the reassessment.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*