

denced by my approval endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1858.

BOARD OF EDUCATION—RIGHT TO CONSTRUCT SCHOOL BUILDING FROM MONEYS IN GENERAL FUND WHEN SUCH CONSTRUCTION NOT MENTIONED IN PURPOSES FOR WHICH GENERAL LEVY MADE—SPECIAL LEVY UNNECESSARY.

SYLLABUS:

A board of education may construct a new school building with funds derived from a general levy of taxes made by authority of Section 5625-5, General Code, even though the purpose of constructing such school building was not specifically mentioned among the purposes for which the levy was made, and this may be done although a special levy for school building construction purposes is not made.

COLUMBUS, OHIO, May 13, 1930.

HON. DON W. MYERS, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

“1. May a board of education construct a new schoolhouse from funds derived under G. C. Section 5625-5 where no authorization was included for a special levy. Providing the funds are available and no bonds required?”

2. Is a school district limited in the use of funds derived under G. C. Section 5625-5 to the payment of tuition, teachers' retirement fund and the maintenance, operation and repair of schools?”

Boards of education are authorized and directed by Section 7620, General Code, to build, enlarge, repair and furnish necessary schoolhouses and to purchase or lease sites therefor or rights of way thereto. For this purpose bonds may be issued or special tax levies made, or both, but the board is not limited by statute in the raising of funds for the purpose of constructing schoolhouses to doing so by the issuance of bonds or the making of special levies therefor.

By the terms of Section 5625-4, General Code, it is provided that the taxing authority of each subdivision shall divide the taxes levied into five enumerated separate and distinct levies, one of which is “the general levy for current expenses within the fifteen mill limitation.”

Section 5625-5, General Code, provides:

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but except the con-

struction, reconstruction, re-surfacing or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. * * *

Section 5625-6, General Code, authorizes each subdivision to make a special levy without a vote of the people and within the fifteen mill limitation 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.

It seems clear, from a reading of Section 5625-5, General Code, that it is the intent of the law to provide funds by means of what is known as the general levy for current expenses within the fifteen mill limitation which shall serve the purpose of a general operating fund and permit expenditures therefrom not only for current expenses, but if it be possible to secure by that means sufficient funds to take care of an expenditure which might be met by a special levy, that expenditure may properly be taken care of from this general levy and the necessity for making the special levy be done away with. The statute specifically states that there may be included in this levy amounts required for carrying into effect any of the general or special powers granted by law to a subdivision and particularly mentions the acquisition or construction of permanent improvements.

While the statute provides that the power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax, it is not meant, in my opinion, that when sufficient moneys which might have been raised by a special tax are raised by the general levy a special levy for the same purpose must also be made. It does mean, in my opinion, that when the general levy is made to include amounts to cover what might have been done by a special levy there still remains the right to make a special levy for the same purpose, and under some circumstances, an obligation to make that levy.

The only means a board of education has to acquire funds for the building of a schoolhouse is to borrow money and issue bonds therefor or secure the money by means of tax levies without issuing bonds, and the only two classes of tax levies that may be resorted to are special levies and general levies, which the statute specifically says may be made to include anything for which a special levy may be made, and particularly mentions the acquisition or construction of permanent improvements. If, by means of this general levy, money has been made available for the building of a schoolhouse, it would be folly, in my estimation, to require the board to issue bonds therefor, or to make a special levy for that purpose. The language of the statute is clear, in my opinion, that there may be included in the general levy of taxes made by a board of education, a sufficient amount if it is possible to do so within the fifteen mill limitation to acquire or construct a schoolhouse, and that the same may be done without making a special levy therefor, or without especially including within the purposes for which the general levy is made, the purpose of constructing a school building.

Section 5625-9, General Code, provides that each subdivision shall establish certain funds among which are a "general fund" and a "special fund" for each special tax levy. Section 5625-10, General Code, provides:

"All revenue derived from the general levy for current expense within the fifteen mill limitation; from any general levy for current expense authorized by vote outside of the fifteen mill limitation; and from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund."

Questions relating to the general fund of a subdivision were discussed in Opinion No. 764 rendered under date of August 19, 1929, and addressed to the Prosecuting Attorney of Portage County, wherein it was held:

"A surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building."

Again, in Opinion No. 910, addressed to the Prosecuting Attorney of Auglaize County, under date of September 24, 1929, it was held:

"A surplus accumulated over a series of years in the general fund of a school district, may lawfully be expended for the building of a school auditorium, even though such accumulated surplus may consist in part of the proceeds of special tax levies which inadvertently have been placed in the general fund and thus become impossible of identification."

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

First, a board of education may construct a new school building from funds derived from a general levy of taxes made by authority of Section 5625-5, General Code, even though the purpose of constructing such school building was not specifically mentioned among the purposes for which the levy was made, and this may be done although a special levy for school building construction purposes is not made.

Second, the answer to your first question herein, renders unnecessary an answer to this second question.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1859.

MEDICAL RELIEF—FOR INDIGENT RESIDENTS OF VILLAGE—
CHARGEABLE TO TOWNSHIP.

SYLLABUS:

When it is necessary to furnish outside, temporary or partial relief to residents of villages the same should be granted by the township.

COLUMBUS, OHIO, May 13, 1930.

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

GENTLEMEN:—In your recent communication you present the following inquiry:

"Section 3480, G. C., provides that medical relief shall be afforded by the township trustees, or proper municipal officers, and that such township or municipal corporation is liable for relief in such amount as the trustees or proper officers determine to be just and reasonable.

Question 1. May medical relief be afforded indigent residents of a village at the expense of such village, or must the township trustees assume such obligation?"

Your attention is directed to my Opinion No. 1598, issued to Hon. John K. Sawyers, Jr., Prosecuting Attorney, Woodfield, Ohio, under date of March 7, 1930, in which it was held, as disclosed by the syllabus, that: