

car when the condition of his mortgage has been broken, and upon the transfer of title to a subsequent purchaser such dealer should deliver to the purchaser the same evidence of title that any other seller of a used motor vehicle is required by law to give.

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

1186.

TAX LEVY—ADDITIONAL TAX LEVY AND RESOLUTION UNDER SECTIONS 5625-15 AND 5625-18, GENERAL CODE, DISCUSSED.

*SYLLABUS:*

1. *Unless the resolution authorized under Section 5625-18, General Code, provides that the additional tax levy authorized under Section 5625-15, General Code, shall be placed on the tax duplicate for the current year said additional tax shall be included in the annual tax budget that is certified to the county budget commission in the succeeding year or years.*

2. *When the original resolution provided for in Section 5625-15, General Code, does not require that the additional tax levy therein authorized shall be placed upon the tax duplicate for the current year, said resolution may not be changed or amended after notice given as provided in Section 5625-17, General Code, and within four weeks of the election, so as to provide that said additional tax levy shall be placed upon the tax duplicate for the current year.*

COLUMBUS, OHIO, October 22, 1927.

HON. GEORGE H. BLECKER, *Prosecuting Attorney, Mansfield, Ohio.*

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

“The City Council of the City of Mansfield, by authority of the new Section 5625-16, passed the following resolution:

‘Resolution No. 807.

By Mr. Porter.

Resolution authorizing the submission of a tax of one tenth of one mill for recreational activities.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MANSFIELD,  
STATE OF OHIO:

Section 1. That there shall be submitted to the electors of the City of Mansfield the question of authorizing the said City Council of Mansfield to levy annually for not to exceed five (5) years a tax of one tenth of one mill on each dollar of the assessed valuation of property in said city for the purpose of establishing, equipping, embellishing, operating and maintaining playgrounds, playfields, gymnasiums and indoor recreation centers. All levy, if adopted, to be in addition to all other levies authorized by law and outside the fifteen mill limitation.

Section 2. That said question to be submitted to the electors of the City of Mansfield at the November 8, 1927, regular election; the said election to be conducted and certified in like manner as regular elections in said city for the election of the officers thereof and shall be submitted in the manner and form provided by the General Assembly of the State of Ohio, regular session 1927, (Sub. H. B. No. 80.)

Section 3. The Clerk of said Council is hereby directed to certify a copy of this resolution to the Board of Deputy State Supervisors and Inspectors of Election for Richland County, and shall give thirty days notice of such election in two newspapers printed and of general circulation within the said City of Mansfield, once a week for four consecutive weeks on the same day of each week prior to the said election, specifying in said notice the amount of the additional rate to be levied, the purpose for which it is to be levied, the number of years during which increased rate will be continued to be levied and the time and place of holding said election.

Section 4. That said levy shall be administered by the Recreation Board created by the City Council of the City of Mansfield, Ohio, Ordinance No. 765. Passed June 21, 1927.

(Signed) C. S. Moore,  
Pres. of Council.'

which was certified to the Deputy State Supervisors of Election as required by law.

Our County Auditor is now endeavoring to make up his city rate and according to the way the rate tables figure is unable to do so without some knowledge as to whether this levy, if it should pass, should be put on the tax list for the current year, and has requested an opinion as to whether or not under this resolution, if it should carry, whether he should hold his books open and put it on for the current year.

My first opinion is that as the resolution does nowhere state that the election board shall immediately certify the result to the taxing authorities that it would not go on this year but that it should be included in the annual tax budget that is certified to the County Budget Commission. My authority for this statement is found in Section 5625-18 which reads as follows:

'Certifying the result of the election. If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of such subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; and in all other years, it shall be included in the annual tax budget that is certified to the county budget commission. (112 v. H80, Sec. 18, Eff. Aug. 10, 1927)'

I wonder if your office would be so kind as to render me an opinion as soon as possible so our rate may be determined. Whether we must wait until this resolution to tell whether this shall be added immediately or whether according to the resolution it will simply be submitted in the budget for the next ensuing year, and I am wondering whether at this late date as there have

been some absent voters already voted on the subject as to whether it could be modified so as to request that it be certified immediately and be put on this year's tax list?"

Enacted House Bill No. 80 provides, among other things, that the taxing authority of any subdivision can levy taxes under certain conditions beyond the fifteen mill limitation for certain specified purposes.

Section 5625-15, General Code, (112 O. L. 391) provides as follows:

"The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

\* \* \* \* \*

4. For recreational purposes except in townships, but the total levy for such purpose authorized by vote of the people, shall not exceed two-tenths of a mill.

\* \* \* \* \*

Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. The number of years shall be any number not exceeding five, \* \* \*

Such resolution shall go into immediate effect upon its passage, and no publication of the same shall be necessary other than that provided for in the notice of election."

Section 5625-16 provides as follows:

"The taxing authority of any subdivision, except townships, upon the filing of a petition therefor, signed by the qualified electors of such subdivision, equal in number to ten per centum of the votes cast for governor in the last state election, shall submit to the vote of the electors of the subdivision the special levy for recreational purposes which they are authorized to submit under Section 15 of this act.

The proceeds of any recreational levy outside of the fifteen mill limitation shall be used for the purpose of establishing, equipping, operating and maintaining playgrounds, play-fields, gymnasiums and indoor recreational centers and shall be in addition to any revenue for such purpose derived from any tax within the fifteen mill limitation."

Section 5625-17 reads as follows:

"A copy of any resolution adopted as provided in Section 15 shall be certified by the taxing authority to the board of deputy state supervisors and inspectors of election for the proper county or counties prior to September 15th in any year, and said board shall submit the proposal to the electors of the subdivision at the succeeding November election \* \* \*."

Section 5625-18 reads as follows:

"If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; in all other years, it shall be included in the annual tax budget that is certified to the county budget commission."

It is noted that in Section 5625-17, supra, the resolution shall be certified by the taxing authority to the board of deputy state supervisors and inspectors of election for the proper county or counties prior to September 15th in any year, and that said board shall submit the proposal to the electors of the subdivision at the succeeding November election. Section 5625-18, General Code, provides that, if the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen mill limitation for any of said years or purposes therein provided. This section further provides that if such additional tax is to be placed upon the tax list for the current year, the result of the election shall be certified immediately, after the canvass by the board of election, to the taxing authority who shall forthwith make the necessary levy and certify it to the county auditor and that said auditor shall extend it on the tax list for collection. If said additional tax is not to be placed upon the tax list of the current year it shall be included in the current budget that is certified to the county budget commission.

There is no provision in "Resolution No. 807", as passed by the council, commanding or requiring that the additional levy of one-tenth of one mill on each dollar of the assessed valuation of property in said city shall be placed upon the tax list of the current year. And without such a provision, there is no requirement in Section 5625-18, supra, that the result of the election shall be certified immediately after the canvass by the board of election to the taxing authority, nor that said taxing authority shall forthwith make the necessary levy and certify it to the county auditor, nor is there any provision requiring the county auditor to extend the extra levy on the tax list of the current year for collection. As the taxing authority expressed in the resolution no intention or requirement that the additional levy should be placed upon the tax list for the current year, it is evident that the additional tax should be included in the regular annual budget certified to the county budget commission.

You also inquire whether at this date said resolution could be modified so as to require the result of the election to be certified immediately and put on this year's tax list, and you state that some absent voters have already voted on the question.

The question of voting an additional tax to be levied this year is a different question from the question of voting an additional tax for a future year or years. A taxpayer may be willing to vote for an additional tax next year but not this year.

The statute requires that notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto, setting out the purpose, the proposed increase in rate, and the number of years during which such increase shall be in effect and the time and place of holding the election.

As before stated, Section 5625-18 provides that:

"If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; in all other years, it shall be included in the annual budget that is certified to the county budget commission."

It would seem from the foregoing provisions that the question, as to whether the additional tax levy shall go on the tax duplicate of the current year or not, is to be determined from the resolution passed by the taxing authority and certified to the board of elections. In other words, unless the resolution declares that the said additional levy shall go on the tax duplicate for the current year it will be included in the annual tax budget that is certified to the county budget commission.

It is obvious that the resolution passed by the taxing authority of the subdivision certified to the board of elections must contain all of the questions which are submitted to the voters and that notice of the election required to be published in a newspaper of general circulation in the subdivision once a week for four consecutive weeks prior thereto, must refer to an election upon the questions submitted in said resolution.

It therefore follows that after said notice has been given and within four weeks of the proposed election, no change may be made in said resolution or the notice based thereon as a change at that time in said resolution would involve the submission of a different question to the voters than the question concerning which notice was given.

It is therefore my opinion that:

1. Unless the resolution authorized under Section 5625-18, General Code, provides that the additional tax levy authorized under Section 5625-15, General Code, shall be placed on the tax duplicate for the current year said additional tax shall be included in the annual tax budget that is certified to the county budget commission in the succeeding year or years.

2. When the original resolution provided for in Section 5625-15, General Code, does not require that the additional tax levy therein authorized shall be placed upon the tax duplicate for the current year, said resolution may not be changed or amended after notice given as provided in Section 5625-17, General Code, and within four weeks of the election, so as to provide that said additional tax levy shall be placed upon the tax duplicate for the current year.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1187.

RABBITS—UNLAWFUL TO SELL EXCEPT DURING OPEN SEASON.

SYLLABUS:

*It is unlawful for anyone within this state to sell hares and rabbits except during the open season, viz.; from the fifteenth day of November to the first day of January, both inclusive.*

COLUMBUS, OHIO, October 22, 1927.

HON. D. O. THOMPSON, *Chief, Division of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion re-