

This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2631.

HOUSE BILL 851—EXEMPTION FROM TAXATION—IMPROVEMENTS ON REAL PROPERTY YEARS 1938, 1939 OR 1940—NO EFFECT ON LEGALLY PERMISSIBLE CLASSIFICATION OF PROPERTY FOR TAXATION—IF ENACTED INTO LAW WOULD BE UNCONSTITUTIONAL AS A VIOLATION OF ARTICLE XII, SECTION 2 AND ARTICLE 1, SECTION 2, CONSTITUTION OF OHIO.

SYLLABUS:

House Bill No. 851, providing for the exemption from taxation of improvements made on real property during the years 1938, 1939 or 1940, does not effect a legally permissible classification of property for purposes of taxation, and if the same were enacted as a law such law would be unconstitutional as a violation of the provisions of Section 2 of Article XII and of Section 2 of Article 1 of the State Constitution.

COLUMBUS, OHIO, June 24, 1938.

HON. RUTH LLOYD, *Chairman, Taxation Committee, House of Representatives, Columbus, Ohio.*

DEAR MADAM: This is to acknowledge the receipt of your recent communication with which you enclose a copy of a resolution adopted by the Taxation Committee of the House of Representatives requesting my opinion as to the constitutionality of House Bill No. 851.

By this proposed act, the declared purpose of which is stated in the title of the bill to be "To exempt improvements made on real property during the years 1938, 1939 or 1940 from taxation in order to afford relief from unemployment, and to declare an emergency," it is provided in the first section thereof as follows:

"The appraised value of any real property in this state, as determined in the year 1937 or any year earlier thereto, under the provisions of Section 5548 of the General Code, shall not be

increased for purposes of taxation, by reason of any improvement made on such real property during the years 1938, 1939 or 1940."

Section 2 of this bill is included therein for the purpose of making this proposed act an emergency law as one for the immediate preservation of the public peace, health and safety, and it is stated therein that the reason for such necessity lies in the fact that the exemption of improvements made on real property during the years 1938, 1939 and 1940 will stimulate the building trades and give employment to many, "and thus provide relief from the unemployment situation."

In view of the provisions of this proposed act as set out in Section 1 thereof, it is pertinent, perhaps, to note that by the provisions of Section 5322, General Code, the terms "real property" and "land" include, for purposes of taxation, not only the land itself, whether laid out in town lots or otherwise, but all buildings, structures, improvements and fixtures of whatever kind thereon, and all rights and privileges belonging or appertaining thereto. However, in this connection, it is further noted that the county auditor in his valuation of real property for taxation under the provisions of Sections 5548 and 5548-1, General Code, makes a separate valuation of the land and of the buildings or other improvements thereon; and under the provisions of Section 2583, General Code, such valuations of land and of improvements thereon are separately entered in the name of the taxpayer owning such lands and the buildings or other improvements which have been constructed or erected thereon.

In any view as to the sections of the General Code above referred to and with respect to their operation in the valuation and listing of real property for purposes of taxation, it is quite clear that the purpose and effect of this proposed act is to exempt from taxation all buildings or other improvements erected or constructed on any tract or parcel of land, whether laid out in town lots or otherwise, which have been erected or constructed thereon during the years 1938, 1939 or 1940. This being the purpose and effect of the proposed act, the question here presented requires a consideration of the provisions of Section 2 of article XI of the State Constitution. So far as this section is pertinent to the question presented, the same provides as follows:

"Land and improvements thereon shall be taxed by uniform rule according to value. All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the 1st day of January, 1913, and all bonds issued for the

World War Compensation Fund, shall be exempt from taxation, and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law."

In the case of *State, ex rel. Struble, vs. Davis, et al., Tax Commission of Ohio*, 132 O. S. 555, in which case there was involved the constitutional validity of certain acts of the legislature which exempted from taxation for limited periods of time the personal property owned and used by interurban railroad companies in this state, it was held:

"Section 2 of Article XII of the state Constitution requires only lands and improvements thereon to be taxed by uniform rule according to value. By reason of the removal of previous constitutional limitations and restrictions, the power of the General Assembly to determine the subjects and methods of taxation and exemption of personal property therefrom is limited only by Article I of the Constitution of the state."

"The provisions of House Bill 674, passed July 1, 1933 (115 Ohio Laws, 546), and Amended Senate Bill 23, passed March 5, 1935 (116 Ohio Laws, 26), exempting the property of interurban railroad companies, other than real estate used for railroad purposes, from taxes during the periods therein specified, are not violative of the provisions of Section 2, Article XII, relating to taxation by uniform rule; Section 4, Article XIII, requiring that all corporate property shall be subject to taxation the same as the property of individuals; or the equal protection of the law guarantee of Article I of the state Constitution."

In the opinion of the court in this case it is said:

"It is to be observed that, while Section 2 of Article XII authorizes certain exemptions recited in the provision prior to its amendment, in substantially the same language as it then read, it now very significantly provides: ' * * * without limiting the

general power, subject to the provisions of Article I of this Constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds,' etc. As amended, the Constitution itself now provides that the enumeration of certain classes of property which may be exempted does not take away or limit authority of the Legislature to make other exemptions. Thus, while the uniform rule was retained as to real estate, full and complete plenary power to otherwise classify property for taxation and determine exemptions therefrom apparently was restored substantially as it had existed under the provisions of the Constitution of 1802. It is quite obvious, therefore, that having expressly removed the previous limitation in the constitutional provision, the power of the General Assembly to determine the subjects and methods of taxation and exemptions of personal property therefrom is limited only by the provisions of Article I of the Constitution, which is the 'equal protection of the law' provision and is substantially the same as the guarantee in that respect contained in the Fourteenth Amendment to the federal Constitution."

Although, as above noted, the question involved in the case of *State, ex rel. Struble, vs. Davis, et al., Tax Commission of Ohio, supra*, was one relating to the exemption from taxation of personal property rather than real property, the court in its decision and opinion above quoted, clearly drew a distinction between personal property, on the one hand, and lands and improvements thereon, on the other, with respect to the power and authority of the General Assembly to exempt said several classes of property from taxation under the provisions of Section 2 of Article XII of the State Constitution above quoted; and while it was held that the requirement with respect to uniformity in taxation was removed as to personal property by the provisions of this section of the Constitution as the same was adopted November, 1929, effective January 1, 1931, the court expressly recognized that this section of the Constitution now requires "lands and improvements thereon to be taxed by uniform rule according to value." This requirement in itself, in my opinion, inhibits to the General Assembly the power and authority to exempt from taxation lands and improvements thereon other than such as it has exempted or may exempt under the specific authority of the Constitution itself. Although it is recognized that in a few jurisdictions authorities to the contrary may be found, the view above expressed is in conformity with the great weight of authority in the several states of this country where this question has been considered. In 26 R. C. L., page 252, it is said:

"In the states in which the constitution requires taxation to be equal or proportional, it is held by the weight of authority that the legislature is bound to tax all property within its jurisdiction and therefore cannot grant any exemptions unless the power to do so is expressly reserved in the constitution."

In Gray's Limitation of Taxing Power, page 657, Section 1326, it is said:

"Constitutions which command uniformity and equality generally provide specifically for the common exemptions of church property, schools, colleges, mechanic's tools, and the like; and in most states it is held that the legislatures under such constitutions have no power of exemption except as expressly provided in the constitution."

In Cooley on Taxation, Vol. II, page 1390, Sec. 663, the following is said:

"Where the constitution requires taxation to be equal and uniform, it is held in most states that the legislature must tax all property and cannot grant any exemptions unless the power to exempt is expressly conferred by the constitution."

This view is in accord with that expressed in earlier decisions of the Supreme Court of this State. Thus, in the case of *Little vs. Seminary*, 72 O. S., 417, 426, the court, referring to the then provisions of Section 2 of Article XII of the Constitution that "laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and also all real and personal property according to its true value in money," said:

"While the section employs mandatory terms in prescribing the general rule of uniformity of taxation, it does not by force of its terms provide any exceptions to that rule, but merely authorizes the general assembly to provide by general laws for the exemption of property of the designated character."

In the case of *The City of Zanesville vs. Richards, Auditor*, 5 O. S., 589, 592, the court, speaking of the provision in Section 2 of Article XII of the Constitution of 1851 requiring all real and personal property to be taxed by law according to its true value in money, said:

"The great object of the provision was to secure equality and uniformity in the imposition of these public burdens. The

convention was very well aware that much the largest part would be required to answer the purposes of these local subdivisions; and equally well, that it could only be levied as the general assembly should provide. In establishing this principle of justice and equality, they have necessarily made it the fundamental rule upon which all such laws must be based; and its spirit and purpose can only be preserved by holding that it requires a uniform rate per cent to be levied upon all property, according to its true value in money, within the limits of the local subdivision for which the revenue is collected; subject only to the exemptions specially provided for in the section."

In none of the cases where this general question was under consideration, whether within this State or out of the same, was the constitutional provision as to uniformity in taxation then before the court clearer or more mandatory than the requirement which now obtains in this State with respect to the taxation of lands and improvements thereon. And by force of this requirement in the language above stated and for the reason that this section of the Constitution here under consideration expressly enumerates the several kinds of real property which with respect to their ownership or use the General Assembly is authorized to exempt from taxation, I am of the opinion that House Bill No. 851, if enacted, will for these reasons be unconstitutional.

Moreover, even if we were to subscribe to the view that the amendatory provisions of Section 2 of Article XII of the State Constitution confer upon the General Assembly the same power and authority to exempt real property from taxation as it now has with respect to the exemption of personal property, and subject only to the same constitutional limitation noted in the amendatory provision of Section 2 of Article XII above quoted, I am of the opinion that the exemptions provided for in House Bill No. 851 cannot be granted without a violation of the equal protection of the law provision of Section 2 of Article I of the State Constitution. As to this, it may be observed that it is not contemplated by this proposed act that there will be any difference with respect to the nature, purpose or use of improvements made on real property during the years 1938, 1939 or 1940 from like improvements made on real property in other years, whether prior to or subsequent to the years above mentioned. And although consistent with the constitutional provisions above referred to there may be a permissible classification of property for purposes of taxation, the classification effected by this act would not be a classification of property but of taxpayers owning property as between persons owning real property with improvements constructed thereon during the years 1938, 1939 and 1940, and persons owning real prop-

erty with like improvements thereon which have been erected and constructed in other years. The constitutional provisions above noted forbid such a classification of taxpayers. *State, ex rel. Hostetter, vs. Hunt, et al., Executors*, 132 O. S., 568; *State, ex rel., vs. Davis*, 132 O. S., 555, 564. And for this reason as well as for those above noted and discussed I am of the opinion that House Bill No. 851 would be unconstitutional if the same were enacted as a law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2632.

APPROVAL—BONDS, VILLAGE OF BETHESDA, BELMONT COUNTY, OHIO, \$44,000.00, DATED MARCH 15, 1938.

COLUMBUS, OHIO, June 24, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Village of Bethesda, Belmont County,
Ohio, \$44,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of water-works bonds dated March 15, 1938, bearing interest at the rate of $3\frac{1}{2}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

HERBERT S. DUFFY,

Attorney General.