

347.

TAX AND TAXATION—LEVY MADE UNDER SECTION 7632, GENERAL CODE, SEPARATE FROM OTHERS AUTHORIZED BY LAW—PROCEDURE IN PAYING FOR LIBRARY SERVICE RENDERED TO BOARD OF EDUCATION.

SYLLABUS:

1. *The tax levy authorized by Section 7632, General Code, is a levy separate and distinct from other levies authorized by law.*

2. *It is the duty of a county auditor to certify to the fiscal officer of a school district the amount of taxes collected, or so much thereof as is needed to meet the contract of the subdivision for library service, being the proceeds of a special levy made by the board of education by authority of Section 7632, General Code, which fiscal officer of said school district shall thereupon, forthwith, draw his warrant for such amount on the treasurer of such district, payable to the proper officer of any public library, private corporation or library association with whom the board of education had contracted for library service.*

COLUMBUS, OHIO, April 25, 1929.

HON. GEORGE ELLIOTT McCORMICK, *State Librarian, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter requesting my opinion as follows:

“Will you please furnish this department with your opinion upon the following questions involving the interpretation of Section 7632 G. C., providing for the operation of a public library under contract between a board of education and an association or other public library.

1. Is the tax levy separate and distinct from all other levies authorized by law, or must the funds be provided from school tax?

2. May the county auditor legally pay the proceeds of the levy to the treasurer of the board of trustees of the library?”

Section 7632, General Code, reads as follows:

“The board of education of any school district, the council of any municipality, or the trustees of any township may contract with the library trustees of any public library appointed by authority of law, or with any private corporation or library association maintaining a free public library, situated within or without said taxing district, to furnish library service to all the inhabitants of said taxing districts, and may levy a tax therefor. Such tax levying authority shall require an annual report in writing from such library board, private corporation or library association. Where such tax for library purposes has been so levied, at each semi-annual collection thereof, the county auditor shall certify the amount collected to the proper officer of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library.”

The above statute was enacted in 1923. Under former Section 7632, General Code, which was repealed at that time, a board of education was authorized to make a special levy “of not to exceed one mill for a library fund” which was stated to be “in addition to all other taxes allowed by law.” The provisions of law contained in former Section 7632, General Code, were first enacted in 1902, as a part of Section 1, of an Act

"authorizing boards of education to provide library privileges for city, village and special school districts." (96 O. L. page 8.)

By the terms of said Section 1 of said Act, boards of education were authorized to establish free public libraries and to levy a tax for that purpose of not to exceed one mill. By the terms of Section 5 of the same Act, boards of education in city, village and special school districts were authorized to contract with any library corporation, or other organization owning and maintaining a library, for the use of the library by the residents of the school district, and were specifically authorized to levy a tax not to exceed one mill to pay for the same. Said Section 1 of the Act above referred to was amended in 1906 so as to provide for joint libraries, to be managed by a board of trustees consisting of six members, and a special tax levy of not to exceed one mill was authorized for said joint library purposes. (98 O. L. 244). Said Section 1, as amended in 1906, was later codified as Sections 7631, 7632, 7633 and 7634, of the General Code.

Section 5 of the Act above referred to was codified as Section 7641, General Code. Said Section 7641, was amended in 1910 (101 O. L. 298) and again in 1914 (104 O. L. 228). As amended in 1914, it did not specifically authorize a tax levy for the purpose of paying for the use of a library which might be contracted for in accordance with its terms.

Sections 2, 3 and 4 of the Act of 1902, above referred to, provided for the management of a library established by a board of education, by a board of seven trustees and again specifically authorized a tax levy for "increasing, maintaining and operating" said library, in an amount not to exceed one mill. Said Sections 2, 3 and 4, of said Act, were codified as Sections 7635, 7636, 7638, 7639 and 7640, General Code.

Section 7639, General Code, was amended in 1910, (101 O. L. 305) increasing the amount of the levy that might be made by a board of education for the maintenance of a library within the district to one and one-half mills, and was again amended in 1921, (109 O. L. 237) authorizing such levy to be outside of all tax limitations except such as were provided for in the Act of which the amended section was a part.

In 1923 former Sections 7631 and 7632 were amended and Section 7641, General Code repealed, (110 O. L. 407). Section 7632, General Code, as amended in 1923 specifically authorized the levying of a tax to meet the contract obligations that might be incurred upon any contract made by a board of education of a school district with a board of trustees of a public library or a private corporation or library association for library service. Standing alone, the language of the statute, "may levy a tax therefor", would merely authorize the payment of the obligation referred to from public moneys raised by taxation and would not necessarily imply that it is the duty of the board of education to levy a specific tax or make a levy of a specific amount for the purpose. If that be true, the levy might be included in the general tax levy for school purposes and the obligation be paid from appropriations made from the proceeds of such levy. However, the statute further provides:

"Where such tax for library purposes has been so levied, at each semi-annual collection thereof, the county auditor shall certify the amount collected to the proper officers of the taxing district who shall forthwith draw his warrant for such amount on the treasurer of such district payable to the proper officer of such library."

Clearly, if the auditor is to certify a *specific amount* collected and the fiscal officer of the district is to draw his warrant for such *amount* there must have been authorized a *specific amount* to be collected, and therefore, it is my opinion that the language of the statute should be construed as directing the board of education to make a specific tax levy for the purpose stated in the statute, separate and distinct from the

levy made for school operation purposes. This levy, however, must be made within the fifteen mill limitation fixed by Section 5625-2, General Code.

Moreover, since the enactment of the so-called budget law in 1927 (102 O. L., 391) the making of tax levies is controlled by the provisions of that act. It is there provided, in Section 5625-6, General Code:

“The following special levies are hereby authorized without vote of the people

* * *

For the library purposes of the subdivision, in accordance with the provisions of the General Code authorizing a levy or levies for such purposes, but only to the extent so authorized.

* * *

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.”

The phrase “For the library purposes of the sub-division” is sufficiently broad to include, in my opinion, the purposes set forth in Section 7632, supra.

In specific answer to your questions, I am of the opinion:

First, the tax levy authorized by Section 7632, General Code, is a levy separate and distinct from other levies authorized by law.

Second, it is the duty of the county auditor to certify the amount collected of the tax authorized by Section 7632, General Code, or so much thereof as is needed to meet the contract of the subdivision for library service, to the fiscal officer of the board of education which has made the levy, and said fiscal officer shall forthwith draw his warrant for such amount on the treasurer of said school district, payable to the proper officer of the library, private corporation or library association with which the board of education had contracted for library service.

Respectfully,

GILBERT BETTMAN,

Attorney General.

348.

TAX AND TAXATION—CORPORATION FOR PROFIT—HOW VALUE OF STOCK OF HOLDING COMPANY DETERMINED.

SYLLABUS:

Where a corporation for profit reports under the provisions of Section 5495-2, General Code, that it is holding the stock of a subsidiary company, but transacts no business and has no property, except the shares of stock of the subsidiary company, the value of the shares of stock of the subsidiary company is determinative of the value of the stock of the holding company.

COLUMBUS, OHIO, April 25, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

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