

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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889.

TOWNSHIP TRUSTEES—ROAD LEVY OUTSIDE FIFTEEN MILL LIMITATION UNAUTHORIZED.

*SYLLABUS:*

*There is no authority for township trustees to levy a tax for road purposes except within the fifteen mill limitation as provided in Section 5625-6, General Code.*

COLUMBUS, OHIO, September 18, 1929.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“Clinton County for several years has had a two mill tax levy by vote of the people outside of all limitations for the maintenance and repairs of roads and highways. It is desired by several townships of this county to do away with the county levy and to vote for a township levy for the maintenance and repairs of roads and highways.

I have advised the several townships that under the provision of the General Code Section 5625-15, par. 7 that it is impossible for them to vote for a levy outside of the 15 mill limitation as a township issue, where the money is to be used for the maintenance and repairs of roads. I have further advised them that under Sections 5625-6, par. G, that they may have a levy without vote within the 15 mill limitation where the proceeds of the levy are to be used for the maintenance and repairs of roads and bridges.

I desire to reinforce my opinion to them by an opinion from your office.

Please advise if I am correct or not in stating that townships cannot vote for a road levy outside of the 15 mill limitation.”

In considering your inquiry we may start with the basic proposition as set forth in Section 5, Article XII of the Constitution to the effect that no tax shall be levied except in pursuance of law. It therefore follows that a township, or any other subdivision, may make only such levies as are expressly authorized by law.

The so-called budget law, as enacted in House Bill No. 80 of the 87th General Assembly, was an act which provided for the levying of taxes by local subdivisions, their method of procedure, etc. This act generally purports to outline the purposes for which levies may be made by the various subdivisions of the state, as well as the procedure for the same.

Section 5625-6, General Code, a part of said budget law to which you refer, specifies the levies that are authorized without vote of the people. Paragraph (g) provides:

“In the case of a township, for the construction, reconstruction, resur-

facing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

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."

It is clear from the above section that any levy which is made therein is subject to the fifteen mill limitation and may be made without the vote of the people.

In your communication you refer to Section 5625-15, General Code; that provides for the submission to the vote of the electors of various subdivisions the question of levying taxes outside of the fifteen mill limitation for certain purposes. Those purposes are enumerated as follows:

1. Current expenses of the subdivision.
2. For the payment of debt charges on certain described bonds, notes or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925.
3. For the debt charges on all bonds, notes and certificates of indebtedness issued and authorized to be issued prior to January 1st, 1925.
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.
5. For a municipal university but not to exceed fifty-five hundredths of a mill as prescribed in Section 7908, of the General Code.
6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.
7. For the general construction, reconstruction, resurfacing and repair of roads and bridges in counties.

You will observe that the only specific authority for levying under this section for the repair of roads and bridges is that granted to counties. It might well be argued that the term "current expenses", as contained in the first subdivision quoted above, would include repair of roads were it not for the fact that, by the terms of Section 5625-5, General Code, the right to include within the provisions of the general levy for current expenses anything for the repair of roads and expressly negated.

In view of the foregoing, I concur in your conclusion to the effect that there is no authority for township trustees to levy for road purposes except within the fifteen mill limitation as provided in Section 5625-6, General Code.

Respectfully,

**GILBERT BETTMAN,**  
*Attorney General.*