

1. A rural board of education may, under the provisions of Section 7620, General Code, purchase a right of way leading from a highway to a school house.

2. A board of education may properly file a petition with the county commissioners under the provisions of Section 6887, General Code.

3. Section 6862, General Code, as last amended, does not authorize a board of education to file a petition under said section to establish a road. However, there seems to be nothing to prevent the members of the board of education from encouraging the freeholders of the district to sign such a petition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2921.

APPROVAL, BONDS OF WYANDOT COUNTY—\$35,000.00.

COLUMBUS, OHIO, November 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2922.

APPROVAL, BONDS OF HANCOCK COUNTY—\$9,100.00.

COLUMBUS, OHIO, November 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2923.

TAX LEVY—EFFECT OF ANNEXATION OF MUNICIPALITY TO ANOTHER AFTER RESPECTIVE BUDGET CERTIFIED—WHERE TAX PROCEEDS PAYABLE.

SYLLABUS:

The annexation of one municipality by another, pursuant to a vote of the electors, having been accomplished subsequent to the action of the Budget Commission upon the budgets of such respective municipalities, will have no effect upon the tax levies in such municipalities which must be made separately, although the proceeds of taxes collected are payable to the treasury of the annexing municipality.

COLUMBUS, OHIO, November 23, 1928.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of the recent letter of Mr. Lee Ferbstein, of your office, as follows:

“We respectfully request from your office an opinion covering the following situation. On November 6th of this year, pursuant to an election had, a majority of the voters of the City of Kenmore and the City of Akron voted to annex Kenmore and Akron.

The auditor of this county is figuring the tax rate and finds the tax rate for Kenmore is 25.56 as certified by the Budget Commission on October 16, 1928, and that the rate for the city of Akron as certified by the Budget Commission and thereafter amended by the voting of an additional levy, is 26.8. Our question at this time is whether, now that Kenmore has been annexed (the certificate as provided by law will be mailed to the Secretary of State within a few days), the Akron tax rate should apply to the Kenmore district or whether the rates as certified by the Budget Commission on October 16th should be the basis for figuring the tax for 1928.

Further, would the same ruling apply to the rate for the school districts involved now that they are merged and title to the Kenmore school property has passed to Akron district?

We are enclosing herewith a pamphlet stating the terms and conditions of annexation.”

The terms and conditions of annexation provide for a merger of all the bonded indebtedness of the two cities and further provide that all appropriations of the two cities for the fiscal year 1928 shall be and remain appropriated for the respective uses named in the respective appropriation ordinances. There is no provision with respect to levies made by the two cities and it must be assumed that levies made for the year 1928 are to be paid into the treasury of the city of Akron.

From your letter it is clear that the annexation was not accomplished until after the budgets of the respective municipalities had been adopted and acted upon by the Budget Commission. Section 5625-20 of the General Code requires each taxing authority to adopt a budget on or before the 15th day of July of each year. The budget is presented to the Budget Commission for adjustment and after such action the next steps are prescribed by Section 5625-25, which is as follows:

“When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the fifteen mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. If the proposition of levying a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under the provisions of this act, the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed.”

You state that the Budget Commission certified its action on October 16, 1928, and I assume that the levies have been made by the respective councils, although I do not deem this essential to the determination of your question. Section 5625-25, *supra*, requires a levy to be made and certified to the county auditor on or before the first day of October, unless the Tax Commission approves a later date. Apparently the Budget Commission did not perform its duties until subsequent to October 1st, and, accordingly, it would have been impossible for the legislative authorities of the two cities to make the levy within the time prescribed by law.

Assuming, however, that the levies have not been made as yet, I do not deem such fact material. The action of the Budget Commission has been completed and its action was based upon the budgets adopted by the two separate municipalities. It has prescribed the extent of the permissible levies in such municipalities and I am of the opinion that it is now too late to make any readjustment, since the levies can only be made to the extent authorized by the Budget Commission and no adjustment of its action is permissible except in the one instance where the proposition of levying a tax to be placed upon the duplicate of the current year is approved by the electorate.

In determining your question it is unnecessary to establish a definite date on which an annexation may be completed so as to authorize the extension of the levies for the current year over the annexed territory. I note, however, in *Opinions of the Attorney General for 1920*, p. 1003, my predecessor had under consideration a similar question and his conclusion is set forth in the syllabus, as follows:

“The boundaries of a municipal corporation for tax levying purposes are to be determined as of the first Monday of June. Changes of boundaries thereafter made by annexation, or otherwise, do not affect the tax levies for the succeeding year.”

This opinion was based upon prior analogous statutes and my predecessor fixed the first Monday in June because that was the date upon which the statutes then required the submission of the budget of the subdivision. As I have before pointed out, the law now requires the adoption of the budget on July 15th of each year and Section 5625-22 requires its submission to the county auditor on or before the 20th day of July. Hence if I were to adopt the reasoning of my predecessor, the date upon which boundaries of a municipal corporation for tax levying purposes would become fixed would be the 20th day of July. Since the annexation in this instance was not only subsequent to July 20th but also subsequent to the final action of the Budget Commission upon the budget, I have no difficulty in reaching the conclusion that the levies should be made in accordance with the action of the Budget Commission and the tax rates applied within the old boundaries of the separate municipalities.

You are accordingly advised that the annexation of one municipality by another, pursuant to a vote of the electors, having been accomplished subsequent to the action of the Budget Commission upon the budgets of such respective municipalities, will have no effect upon the tax levies in such municipalities which must be made separately, although the proceeds of taxes collected are payable to the treasury of the annexing municipality.

You further inquire as to the effect of the merging of the school districts by reason of the annexation of Kenmore. In my opinion the same rule would apply, and the levies must be separately made in view of the fact that the annexation was not completed until after the action of the Budget Commission has taken place.

Respectfully,

EDWARD C. TURNER,
Attorney General.