

a deputy clerk of common pleas court and that a certificate of such appointment must be filed with the county auditor.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1115.

APPROVAL, RESOLUTIONS PROVIDING FOR SALE OF SMALL TRACT OF ABANDONED OHIO CANAL TO VILLAGE OF FRAZEYSBURG, OHIO.

COLUMBUS, OHIO, April 1, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of March 27, 1920, transmitting in duplicate resolutions providing for the sale to the village of Frazeysburg, Ohio, of a small tract of the abandoned Ohio Canal property in said village for the sum of \$50.00. I note your statement that the land in question is to be used in extending the public highway across the canal.

I have carefully examined the resolutions, find them correct in form and legal, and I have therefore affixed my signature to the same and return them herewith.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1116.

ROADS AND HIGHWAYS—LEVY UNDER SECTION 1222 G. C. (108 O. L. 494) OF LESS THAN FULL ONE AND ONE-HALF MILLS OR OF FULL ONE AND ONE-HALF MILLS IS SUBJECT TO EXTENT OF ONE-HALF MILL THEREOF TO LIMITATION UPON COMBINED MAXIMUM TAX RATE.

A levy for the "county's proportion" under section 1222 G. C. as amended 108 O. L. 494, of less than the full one and one-half mills as well as a levy of the full one and one-half mills, is subject, to the extent of one-half mill thereof, to the limitation upon the combined maximum tax rate.

COLUMBUS, OHIO, April 1, 1920.

HON. CARROLL A. STUBBS, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading as follows:

"This is an inquiry with reference to section 1222 of the General Code of Ohio, as amended in part one of 108 Ohio Laws at page 494. The second paragraph therein reads as follows:

"The county commissioners in any county in which less than one and one-half mills is levied in any year under the provisions of this section shall within the above limitations determine what part of such levy shall be subject to the limitations upon the combined maximum rate for all taxes now in force and what part of such levy shall be outside such limitations and unrestricted by any existing law or laws."

If Mercer county were to levy one mill for state roads under this section, am I to understand that by order of the county commissioners the whole amount of that under the one mill so levied can be outside of the maximum fifteen mill limitation?"

The first two paragraphs of section 1222 G. C. as amended 108 O. L. 494, read as follows; the paragraphs for convenience being here designated as paragraph 1 and paragraph 2:

Paragraph 1

"For the purpose of providing a fund for the payment of the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of highways under the provisions of this chapter, the county commissioners are hereby authorized to levy a tax, not exceeding one and one-half mills, upon all the taxable property of the county. *Said levy* shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the *extent of one-half mill thereof*, to the limitation upon the combined maximum rate for all taxes now in force. *The remaining one mill* of said levy so authorized shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. The proceeds of such levy shall be used solely for the purpose of paying the county's proportion of the cost and expense of constructing, improving, maintaining and repairing inter-county highways and main market roads or parts thereof in co-operation with the state highway department or the federal government or both; and the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise."

Paragraph 2

"The county commissioners of any county in which less than one and one-half mills is levied in any year under the provisions of this section shall *within the above limitations* determine what part of such levy shall be subject to the limitations upon the combined maximum rate for all taxes now in force and what part of such levy shall be outside such limitation and unrestricted by any existing law or laws."

The provisions of paragraph 1 are quite plain. If the commissioners find that the financial situation of the county is such as to permit, within the maximum limitation of fifteen mills, the levy of one-half mill for the purpose named in section 1222, and if the commissioners thereupon take action levying the full amount named in said paragraph 1 (one and one-half mills), such action *ipso facto* causes one-half mill to be within the maximum limitation of fifteen mills and one mill to be outside of said maximum limitation.

Your inquiry, however, has particular reference to the provisions of paragraph 2 of said section. In line with the impression which you seem to have as to the meaning of this paragraph, the claim may, perhaps, be made that the legislative intent in using the clause "within the above limitations" was that the commissioners when making a levy of less than one and one-half mills should not place *more than* one mill outside of maximum limitations nor *more than* one-half mill inside of maximum limitations. In support of such claim, it may be urged that in the clause quoted, the plural "limitations" is used and hence can refer only to the *ipso facto* result of the making of the full levy as set out in paragraph 1, to-wit: That one mill is without, and one-half mill within, maximum limitations.

The fundamental weakness of any such claim becomes evident when it is considered that the *levying power* granted by section 1222 is as between paragraphs 1 and 2 found entirely in the former paragraph. Paragraph 2 deals solely with the power of distribution as above or below the maximum rate. It proceeds on the theory that the levy has been authorized by paragraph 1; for it refers to a levy "under the provisions of this section," and recites that the commissioners shall "determine what part of *such levy* shall be subject," etc. When recourse is had to paragraph one for a definition of "such levy," we find authority in the commissioners to levy a tax, "*not exceeding one and one-half mills.*" Then follows the sentence:

"Said levy shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the extent of one-half mill thereof, to the limitation upon the combined maximum rate for all taxes now in force."

Surely this language makes clear beyond question that "said levy"—the only levy for county's proportion authorized by section 1222, "not exceeding one and one-half mills,"—is "subject, however, to the extent of one-half mill thereof, to the limitation upon the combined maximum rate," without reference to the point whether the levy is the full one and one-half mills or something less than the full one and one-half mills. In brief, the very authority for the levy carries with it a restriction that a given part of the levy shall be within maximum limitations.

Another, though less palpable, point of weakness in the claim above supposed, is this: Paragraph 1, in describing the part of the full one and one-half mill levy that is not to be within maximum limitations, states that:

*"The remaining one mill of said levy * * * shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws."*

These words are not the language of limitation; they are the language of *enlargement*—"not * * * limited," "not * * * restricted," "not * * * decreased." They cannot then be reversed in meaning by the clause "within the above limitations" and made to do duty as *limiting the power of the commissioners to the placing of one mill outside of general limitations.*

The combined result of the two elements of weakness just pointed out may be thus stated: The clause in paragraph 2 "within the above limitations" cannot for the *purposes of paragraph 2* add to the levying power granted in paragraph 1; while on the other hand, the restriction on levying power in paragraph 1 makes it necessary to read said clause "within the above limitations" in the singular, that is, as having reference only to the "limitation" that one-half mill shall be within maximum limitations.

We are therefore driven to the conclusion that the two paragraphs, read together, mean that the commissioners may not under any circumstances make a determination which fails to leave within maximum tax limitations at least one-half mill. As applied to your specific question, this means that if the commissioners desire to make a levy of one mill, they are free to apply to only one-half mill of such one mill their determination of how much of the levy shall be within and how much without maximum limitations.

Carrying further the illustration suggested by your inquiry, the commissioners may determine that of a one mill levy, three-fourths of a mill shall be within the maximum limitation, and one-fourth of a mill free from such limitation; but they cannot determine that three-fourths of a mill shall be free from maximum tax limitations and only one-fourth subject thereto.

Taking another illustration: If the commissioners were to levy one and one-fourth mills, they might determine that three-fourths of a mill thereof shall be outside of the maximum limitation and one-half mill within such limitation, or they might determine that one mill be within maximum tax limitations and one-fourth mill outside of maximum tax limitations; but they are not empowered to determine that only one-fourth mill be within and an entire mill outside of maximum tax limitations.

In short, as above stated, they may not in any event determine that less than one-half mill shall be within maximum tax limitations.

It is quite true that under the construction stated, said paragraph 2, while given effect in form, is yet meaningless in substance; for it is plain that a determination by the commissioners under said paragraph 2 as to the part of the levy to be within and the part without maximum limitations will have no effect on the amount of the levy. A levy of one mill, for instance, will be a levy of one mill whether the commissioners determine that one-half mill thereof or three-fourths mill thereof shall be within maximum limitations. However, the mere assumption that the legislature may have had a certain intent with respect to paragraph 2 does not furnish ground for reading such intent into the paragraph if the language employed fails to express it. See case of *Slingluff vs. Weaver*, 66 O. S. 621, whereof the second paragraph of the syllabus reads:

“But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

The rigid character of the terms employed in paragraph 1, which, as already noted, prevents a construction giving any substantial meaning to paragraph 2, is further illustrated by the fact that said paragraph 1, in describing the portion of a one and one-half mill levy that is to be free from maximum limitations, refers, not to “one mill,” but to “*the remaining* one mill.” It is quite evident that this word “remaining” would have to be shorn of meaning in order to give the clause in paragraph 2 “within the above limitations” the construction first above supposed.

The conclusion therefore is in answer to your specific question, that your county commissioners if they levy one mill under section 1222 are not authorized to determine that the whole one mill so levied may be outside of the maximum fifteen mill limitation; they must in making their determination, leave at least one-half mill within the maximum fifteen mill limitation.

Respectfully,
JOHN G. PRICE,
Attorney-General.