

a widow, to the State of Ohio, covering a tract of 76.2 acres of land, a part of O. S. U. Lot No. 1 in Nile Township, Scioto County, Ohio. Said deed has been redrafted to comply with the suggestions contained in an opinion of this department dated August 16, 1927, and bearing No. 878.

In comparing the description of the real estate as set out in the above deed with the description set out in Opinion No. 878, above referred to, I find that the west line of the real estate as described in the deed reads as follows:

"Thence north 96.4 poles to a stake in the north line of said Lot Number One and 60.8 poles north $89\frac{1}{2}^{\circ}$ east from the northwest corner of said Lot Number One;"

whereas the description of said line as contained in said Opinion No. 878 reads:

"thence N. 96.4 poles to a stake in the N. line of said Lot No. 1 and 60.8 poles, $89\frac{1}{2}'$ E. from the N. W. corner of Lot No. 1."

In other words, the description in the deed refers to a stake 60.8 poles *north $89\frac{1}{2}$ degrees* east from the northwest corner of Lot Number One, whereas the description set out in the opinion refers to a stake 60.8 poles, $89\frac{1}{2}$ *minutes* east from the northwest corner of said lot. You will note that the word "north" is omitted preceding $89\frac{1}{2}$ minutes in the description in the opinion.

A similar discrepancy is found in the description of the north line of the tract. As described in the deed the north line is as follows:

"Thence north $89\frac{1}{2}^{\circ}$ E. 8.2 poles to three white oaks and a hickory,"

whereas, the description of said line as set out in said Opinion No. 878 reads:

"thence N. $89\frac{1}{2}'$ E. 8.2 poles to three white oaks and a hickory."

I do not have the abstract before me, and am therefore unable to determine which of the two descriptions is the correct one. I would suggest that you carefully compare the description set out in the deed with that contained in the abstract in order to determine whether or not the description as set out in said deed is correct.

Subject to the above exception, I find that said deed is now in proper form, and therefore approve the same.

I am returning said deed herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1041.

TAXES FOR RELIEF OF POOR—HOW LEVY SHOULD BE MADE IN TOWNSHIP—SECTION 5625-5, GENERAL CODE, VALID AND CONSTITUTIONAL.

SYLLABUS:

1. *By the provisions of Section 5 of House Bill No. 80, passed by the 87th General Assembly, tax levies made by townships for the relief of the poor should be*

included in the township's general levy for current expenses, upon all the taxable property lying within the township including that within municipalities which are within the township.

2. *The provisions of Section 5625-5 as enacted in House Bill No. 80, passed by the 87th General Assembly, to the effect that tax levies for the relief of the poor within the several townships of the state shall be included in the general levy for current expenses of the township and levied on all the taxable property in the township including the property within the municipalities in the township, are valid and constitutional.*

COLUMBUS, OHIO, September 22, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN :—This will acknowledge receipt of your inquiry as follows :

“Under the provisions of Section 5 of House Bill No. 80, the trustees of townships are required to include in their levy of general taxes for current expenses, the amount necessary for the relief of the poor.

Question : Should the levy for this purpose be made upon all the real and personal property in the township, including a city located within the boundaries of the township ?

This question is asked in view of the provisions of Section 3476, G. C., which requires each city to provide for its own poor and the township in which the city is located to provide for the poor of the township outside the city. It would seem entirely unjust if not unconstitutional to levy a tax for poor purposes on the property of the city for the support of the poor in the township outside of the city when the city is required by law to care for its own poor.

Prior to the enactment of House Bill No. 80 separate levies were made for the general fund and the poor fund. The practice has been that in a township containing a city, the levy for poor purposes was made upon the property outside of the city only but the levy for the general fund was made upon the property of the whole township including the city. Since House Bill No. 80 combined these purposes into one fund and one levy, the question arises as above indicated.”

Section 3476, General Code, provides in part as follows :

“Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. * * * When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city.”

Prior to the amendment of the above statute in 1919 (108 O. L. 272) the entire statute consisted of the first sentence set out in the above quotation. When the statute was in that form it was held in several opinions of this department, namely, those reported in Report of Attorney General for 1912, page 150; Opinions of Attorney General, 1917, page 140, and Opinions of Attorney General for 1918, page 242,

that the duties of township trustees and municipal authorities to afford public relief to persons in condition requiring it who resided within a municipal corporation within a township were coordinate. In the opinion of 1917, supra, it was held:

“In townships wherein either villages or cities, or both, are situated, so long as the confines of such village or city is not coextensive with the township, the township trustees are required to provide for the indigent poor of such municipal corporations in the same manner as they provide for the indigent poor in the part of the township outside the municipal corporation.”

The effect of the amendment of 1919 was to relieve the township trustees of their duty to furnish relief within a city located within the township and to limit their jurisdiction with reference thereto to persons outside of such city.

Since this amendment it has been the practice in townships containing cities or parts of a city to limit the tax levy for the poor fund to the territory outside of the municipality.

By the terms of House Bill No. 80 enacted by the 87th General Assembly the statutes authorizing townships to levy taxes for the relief of the poor, Sections 5646, 5647 and 5648, General Code, are repealed and general authority is granted to townships and other subdivisions to levy taxes for current expenses including the relief of the poor by Sections 5625-4 and 5625-5 as therein enacted. Sections 5625-4 and 5625-5, General Code, read in part as follows:

Sec. 5625-4. “The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

* * * *

2. The general levy for current expense within the fifteen mill limitation.

3. Special levies authorized by the provisions of this act within the fifteen mill limitation.

* * * *”

Sec. 5625-5. “The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made. * * * The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amount certified to be necessary * * * in a township, for the relief of the poor. Provided that nothing herein shall require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized to be made under the provisions of this act.”

An examination of the statutes discloses that there is no other general authority by virtue of which township trustees may levy taxes for the relief of the poor, nor is there any provision in the said House Bill No. 80 which authorizes the making of a special levy for this purpose. The plain terms of the act are such as to admit of no construction other than that levies for taxes for the relief of the poor in a township shall be included in its general levy for current expenses which becoming blended as it does with the levy for all current expenses must necessarily be levied on all the taxable property of the township including that within the territorial limits of municipalities which lie within the township as well as the taxable property outside the limits of such municipalities.

In view of the fact that the disbursement of the funds arising from levies for the relief of the poor in townships, within which are cities, as directed by Section 3476, supra, is limited to persons residing outside the city it remains to determine whether the provisions of law providing for the levying of a tax so limited in its disbursement on all the taxable property of the township contravenes the provisions of the federal constitution limiting the power of the states to legislate and the limitation of the power of taxation as contained in Article II, Section 26, and Article XII, Section 2, of the Constitution of Ohio, which read in part as follows:

Article II, Section 26. "All laws of a general nature shall have a uniform operation throughout the state. * * * **"

Article XII, Section 2. "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. * * * **"

As a general proposition taxes can not be levied in one taxing district for the use and benefit of another district. As stated in Ruling Case Law, Taxation, Section 51:

"It is not sufficient that a tax be levied for a public use. It must be levied for the use of the public of the district taxed."

It is a well settled principle that statutes will not be held to be unconstitutional unless clearly so, and all doubts as to the constitutionality of the law must be resolved in favor of its being upheld.

In the case of *Miller vs. Korns*, 107 O. S. 287, the Supreme Court of Ohio had under consideration the constitutionality of Sections 7575 and 7600, General Code, which provide that a state levy of 2.65 mills for school purposes is authorized to be made on all the taxable property in the state and that, when collected, all the proceeds of the said levy arising from the levy on property within city and exempted village school districts should be paid into the treasury of such districts, while the remainder of the proceeds of the tax should be divided among the several rural and village school districts in the state, on a basis other than the comparative tax duplicates of such districts. It was contended that the said Sections 7575 and 7600, supra, violated the due process clause of the Federal Constitution and that part of the Constitution of Ohio providing for uniformity in taxation.

It was held that the said Sections 7575 and 7600, General Code, were valid and constitutional and not repugnant to either the Federal or the State Constitution or to any limitation contained in either. In the course of the opinion Judge Allen said:

"Plaintiff's position seems to be that if the distribution is not uniform, the tax is not laid by a uniform rule.

Since the tax, however, actually falls upon each school district in the state, the levy itself is uniform, whatever may be said of the distribution. There is considerable authority to the effect that so long as a tax is uniformly laid the Legislature may appropriate the proceeds of that tax by a rule that is not uniform, in case the appropriation is reasonable and made in pursuance of a valid and legitimate state purpose.

To the effect—that a constitutional provision that taxes shall be uniform applies only to their levy and assessment, and not to the expenditure and distribution of money raised by the tax, are the following cases: *Kerr vs.*

Perry School Township, 162 Ind., 310, 70 N. E., 246; Holton vs. Board of Com'rs. of Mecklenburg County, 93 N. C., 430; * *

The syllabus in the Kerr case holds:

'Section 1, Article 10, of the state Constitution, requiring uniformity and equality in the rate of assessment and taxation of property, deals only with the rate of assessment and taxation. * * *'

The second proposition of the syllabus of the Holton case reads:

'The provisions of the Constitution requiring taxes to be uniform, apply to the levying and payment of taxes, and not to the distribution of the revenue arising therefrom.'

The following were the facts in the Holton case: The Legislature passed an act authorizing a county to be divided into suitable road districts, but providing that no incorporated city nor town should be embraced in such district. It further provided that a tax might be levied for road purposes on all the property in the county, including that situated in cities and towns, and that the revenue arising therefrom should be divided among the road districts, not according to the number of miles in such district, but according to the amount of work needed on such roads. In an action by the resident of a city to restrain collection of the tax on his property, it was held: (1) That the tax was uniform. (2) That the tax could be levied on the property situated in cities and towns."

The Legislature in this case having made the township the taxing unit, and authorizing a levy on all the taxable property within the township for the relief of the poor, I am of the opinion, in the light of the decision of the Supreme Court in the case of *Miller vs. Korns*, supra, that the tax is valid and constitutional and that it may be levied on all the taxable property within the township, including the property lying within a municipality within the township.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1042.

NOMINATING PETITION—ELECTOR SIGNING PETITION CANNOT
WITHDRAW AFTER SAME IS FILED WITH ELECTION BOARD.

SYLLABUS:

Under the provisions of Section 5001, General Code, each signer of a nominating petition thereby pledges himself to support and vote for the candidate or candidates whose nominations are therein requested, and such elector signing such nomination paper may not withdraw his name therefrom after the same is duly filed with the board of deputy state supervisors of elections.

COLUMBUS, OHIO, September 22, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

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