

1747.

LIBRARY, PUBLIC — WHEN UNDIVIDED CLASSIFIED PROPERTY TAX FUND IN COUNTY AT SECOND SEMI-ANNUAL SETTLEMENT, INSUFFICIENT TO PAY A SUM EQUAL TO REMAINING FIFTY PER CENT OF ALLOCATED FUNDS, NO STATUTORY AUTHORITY TO ALLEVIATE SUCH DEFICIENCY—DISTRIBUTION OF CLASSIFIED PERSONAL PROPERTY TAXES, FIRST HALF OF YEAR—WHERE PORTION RECEIPTS RECEIVED AS PAYMENT OF SECOND SEMI-ANNUAL INSTALLMENT, EXCESS SHOULD BE DISTRIBUTED AS ADVANCE DISTRIBUTION OF OCTOBER SETTLEMENT AND CHARGED FOR SECOND HALF OF YEAR.

SYLLABUS:

1. *When the undivided classified property tax fund in the county at the time of the second semiannual settlement of classified property taxes is insufficient to pay to a public library a sum equal to the remaining fifty percent of the funds allocated to it from such source, there is no statutory authority by virtue of which such deficiency may be alleviated.*

2. *When, at the time of the distribution of the proceeds of classified personal property taxes for the first half year, it is determined that a portion of such receipts were received as payment of the second semiannual installment of such taxes, such excess should be distributed as an advance distribution of the October settlement and should be charged against such settlement of the taxes for the second half of such year.*

Columbus, Ohio, January 20, 1940.

Hon. LaMoine Handley, Prosecuting Attorney,  
Carrollton, Ohio.

Dear Sir:

I am in receipt of your request for opinion reading:

“Our County Auditor is desirous of your opinion on the following question:

Where the Budget Commission allocates the required fifty percent of the classified tax collection to a county library pur-

suant to G. C. 5639, at the first settlement, and the second settlement falls far short, in so far as available funds are concerned, is there any way for said library to obtain the balance of the fifty percent previously allocated to it by the County Budget Commission?"

Section 5639 of the General Code, in so far as it is material to your inquiry, reads:

"At each settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury as follows:

\* \* \* \* \*

To each board of public library trustees in the county, which shall have qualified or be qualified according to law for participation in such fund, fifty per centum of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount or amounts so distributed, together with the fees of the auditor and treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the several municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively.

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The residue of the undivided classified property tax fund, together with the amount distributed to the county under section 5414-22 of the General Code, shall constitute the county school tax fund, and be distributed among all the school districts in the county (excepting the county school district) in the manner provided by law."

In the language contained in your request there is an ambiguity concerning the distribution of funds to the library from the undivided classified property tax fund. There is no provision of law authorizing the county budget commission to allocate fifty percent or any other percentage of the funds to be received from such fund to a library. The power of the budget commission is set forth in Section 5625-20, General Code. Such section provides that "On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year." Section 5625-21, General Code, prescribes the form and contents of such budget. In the case of a public library, Section 5625-20, General Code, makes further provision as follows:

"The board of trustees of any public library, desiring to

participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes) on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. In all cases in which such rules and regulations have been so certified and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board of library trustees.”

Section 5625-24, General Code, authorizes the budget commission to make certain adjustments on the budgets so filed in order to keep the tax to be levied thereon within constitutional limitations. From the language of Section 5625-20, General Code, it is evident that the legislature intended that public libraries shall receive no support from tax funds other than those derived from levies on classified property. The funds necessary for its support must have been allowed by the budget commission from the classified property taxes.

From your inquiry, I understand that one-half of such sum so fixed by the budget commission was paid to the library by the county treasurer, at the time of the first semiannual settlement. You do state the amount of the second settlement was insufficient to pay the remaining fifty percent of such budget. Your inquiry then is as to whether such deficit may be extinguished by means of other tax proceeds currently in the possession of the county treasury.

Under the Ohio Constitution (Section I, Article II), the exclusive power to levy taxes is in the General Assembly. *Adler v. Whitbeck*, 44 O. S., 539; *Hill v. Higdon*, 5 O. S., 243; *State, ex rel. Zielonka, v. Carrel*, 99 O. S., 220. While this power is placed in the General Assembly, such body has the authority to delegate a portion of it to a subdivision or other governmental agency to enable it to perform a governmental function. *State, ex rel. Attorney General, v. Toledo*, 48 O. S., 112; *Miami County v. Dayton*, 92 O. S., 215. The legislature has the right either to delegate a portion of the power or it may withhold it in its entirety.

Even though the legislature has delegated a portion of the power to a subdivision, it may enact such limitations and restrictions as it may choose with respect to the use of the power so delegated. *State, ex. rel. Toledo, v. Cooper*, 97 O. S., 86.

The Uniform Tax Levy Law (Sections 5625-1 to 5626-2, General Code) defines the terms "subdivision" and "taxing authority." In neither of such definitions is the board of public library trustees included. It is therefore evident that such trustees have levied no taxes, the proceeds of which may be in the custody of the county treasurer for distribution.

It is also fundamental that when taxes are levied for a specific purpose the proceeds of such levy must be used for the purpose for which the levy was made. (See Section 5, Article XII of the Constitution.)

No governmental subdivision or instrumentality of the state has any vested right in any taxes levied by the state, while in the process of collection. *Cleveland v. Zangerle, Auditor*, 127 O. S., 91, 92. The subdivision has no assurance that it will ever receive the amount of taxes which have been levied for its benefit. As stated in *Ohio Fuel Supply Company, et al., v. Paxton*, 22 O. L. R., 573, 581, 1 Fed. 2d., 662:

"The Ohio statutes give no assurance to taxing authorities that they will receive the full amount of tax assessed in favor of the subdivisions which they respectively represent."

The condition of public libraries is as stated by Judge Weygandt in *State, ex rel. Rice, v. Lutz*, 129 O. S., 198, 205, "that the Legislature has completely deprived the public libraries of all their former revenue from other sources, and they are now compelled to rely solely upon the proceeds of classified property taxes." It is by reason of this peculiar condition that public libraries are entitled to a preferred position in the distribution of the classified property taxes. *State, ex rel. Davis, v. Cleveland Heights*, 131 O. S., 380, 386. It therefore would appear that if the proceeds were sufficient to pay fifty percent of the budget allowance during the first half of the tax year but were not sufficient for such distribution during the second half year, there is no statutory authority by virtue of which the library may be made to receive the amount which the budget commission found to be necessary for the needs of the public library.

If, however, at the time of the distribution of the proceeds received during the first half year, it is found that more money is in the treasury

than necessary to pay such fifty percent of the budget allowance to the extent that such excess has been caused by advance payment of the taxes for the second half year, then a different circumstance would arise. Such question was answered by one of my predecessors in Volume II of the Opinions of the Attorney General for the year 1935, page 996, the syllabus of which reads:

“When, prior to the May settlement of the county treasurer of the proceeds of classified personal property taxes, the county treasurer has received from such source an amount greater than one-half of the taxes levied on such property, the county treasurer is required, in view of the provisions of Sections 5625-24 and 5639, General Code, to distribute such proceeds as represent one-half of such taxes in accordance with the provisions of Section 5639, General Code, and the amount in excess of such half of taxes levied should be then distributed as provided in Section 5639, General Code, as an advance distribution of the October settlement, charging such distribution against the distribution of such taxes for the second half of the year.”

Specifically answering your inquiry, it is my opinion that:

1. When the undivided classified property tax fund in the county at the time of the second semiannual settlement of classified property taxes is insufficient to pay to a public library a sum equal to the remaining fifty percent of the funds allocated to it from such source, there is no statutory authority by virtue of which such deficiency may be alleviated.

2. When, at the time of the distribution of the proceeds of classified personal property taxes for the first half year, it is determined that a portion of such receipts were received as payment of the second semiannual installment of such taxes, such excess should be distributed as an advance distribution of the October settlement and should be charged against such settlement of the taxes for the second half of such tax year.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.