

1673.

SINKING FUND LEVIES FOR UNIVERSITY PURPOSES—WHEN LEVIES ARE OUTSIDE OF ALL LIMITATIONS.

SYLLABUS:

Sinking fund levies for university purposes issued prior to January 20, 1920, are outside of all limitations when the city has, by vote, put all levies outside of all limitations.

COLUMBUS, OHIO, August 7, 1924.

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

Gentlemen:—

I am in receipt of your communication as follows:

“Section 7908, General Code, reads as follows:

‘The council annually may assess and levy taxes on all the taxable property of such municipal corporation to the amount of five-tenths of one mill on the dollar valuation thereof, less the amount necessary to be levied to pay the interest and sinking fund on all bonds issued for the university subsequent to June 1, 1910, to be applied by such board to the support of such university, college or institution and also levy and assess annually five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purposes exclusively. But such taxes shall only be levied and assessed when the chief work of such university, college or institution is the maintenance of courses of instruction, in advance of, or supplementary to, the instruction authorized to be maintained in high schools by boards of education.

‘The above tax levies shall not be subject to any limitations of rates of taxation or minimum rates provided by law, except the limitations herein provided, and the further exception that the combined maximum rate for all taxes levied in any year in any city or other tax district shall not exceed fifteen mills.’

“The interest and sinking fund charge on bonds issued for the university of “A” approximate \$28,000.00, but this amount is not deducted from the levy made for university purposes, such levy being the full five-tenths of one mill. The city voted sinking fund levies outside of all limitations under authority of section 5649-6a, 5649-6b, 5649-6c and 5649-6d, General Code, and it is contended by the city officers that this action took the levy for university bonds issued prior to January 20, 1920, outside of all limitations, including the limitation of five-tenths of one mill less sinking fund provided by section 7908 G. C.

“QUESTION: Is the levy for sinking fund and interest for bonds issued prior to January 20, 1920, for university purposes to be deducted from the levy of five-tenths of one mill provided by section 7908, General Code?”

Section 7908, General Code, provides:

"The council annually may assess and levy taxes on all the taxable property of such municipal corporation to the amount of five-tenths of one mill on the dollar valuation thereof, less the amount necessary to be levied to pay the interest and sinking fund on all bonds issued for the university subsequent to June 1, 1910, to be applied by such board to the support of such university, college or institution and also levy and assess annually five one-hundredths of one mill on the dollar valuation thereof, for the establishment and maintenance of an astronomical observatory, or for other scientific purposes, to be determined by the board of directors and to be used in connection with such university, college or institution, the proceeds of which shall be applied by the board of directors for such purposes exclusively. But such taxes shall only be levied and assessed when the chief work of such university, college or institution is the maintenance of courses of instruction, in advance of, or supplementary to, the instruction authorized to be maintained in high schools by boards of education.

The above tax levies shall not be subject to any limitations of rates or taxation or maximum rates provided by law, except the limitations herein provided, and the further exception that the combined maximum rate for all tax levies in any year in any city or other tax district shall not exceed fifteen mills."

This section was formerly Revised Statute 4104 and read practically the same as at present with the exception that the last paragraph was not a part of same. In 103 Ohio Laws, p. 472, this statute was amended, adding the last paragraph. This was done by the same legislature which provided for a fifteen mill limitation for other taxes. Section 5649-6a, as far as pertinent, provides:

" *** the council or other legislative body of any municipal corporation, **** having a bonded indebtedness on January 20, 1920, *** may, at any regular or primary election held in the year 1920, or in any year thereafter during the life of any such bonds submit to the electors of such *** municipal corporation *** in the manner provided by section 5649-5 and 5649-5a of the General Code, the proposition of exempting from the limitations of sections 5649-2, 5649-3 and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of such bonds. *** "

This section is first found in 108 O. L., Part 2, p. 1199, and is subsequent in enactment to 7908 G. C.

In Opinions of the Attorney General for 1921, Vol. 1, page 403, it was said:

"From the language of section 5649-6a just quoted, it was clearly the legislative intent to authorize a board of education to submit to a vote of the electors of their school district the question of exempting from all tax limitations interest and sinking fund levies for all bonded indebtedness of such school district. It seems also from the language used to have been the legislative intent that the term 'all bonded indebtedness should include not only bonds issued and outstanding on January 20, 1920, but also all bonds authorized to be issued before that date, either by a vote of the electors or by a resolution of the board of education.' This intent is particularly clear from the wording of the form of the ballot required by section 5649-6a to be used at an election held thereunder.

"The sections quoted do not authorize a board of education to submit to the electors the question of exempting from all limitations of taxation

interest and sinking fund levies necessary for any specific bonded indebtedness. On the contrary, the language used indicates a legislative intent that the question if submitted at all must be submitted as to all bonds of the district whether issued and outstanding on January 20, 1920, or merely authorized prior to that date in the manner defined in the act."

Considering section 7908, General Code, and section 5649-6a, General Code, in the light of the above opinion, it is my opinion that the sinking fund levies for university purposes issued prior to January 20, 1920, are outside of all limitations and not subject to limitations as provided in section 7908 G. C., when the city has by a vote put all sinking fund levies outside of all limitations.

Respectfully,
C. C. CRABBE,
Attorney General.

1674.

BONDS—CITY OR VILLAGE IS NOT REQUIRED TO OFFER BONDS TO SINKING FUND TRUSTEES OF SCHOOL DISTRICT BEFORE ADVERTISING FOR BIDS FOR THE SALE THEREOF.

SYLLABUS:

A city or village is not required to offer its bonds to the sinking fund trustees of the city school district, as provided by section 3922, General Code, before advertising for bids for the sale thereof.

COLUMBUS, OHIO, August 7, 1924.

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

Gentlemen:—

I am in receipt of your communication in which you ask the following question:

"In view of the decision in the case of State ex rel. vs. Frazine, Director of Finance, must the city offer its bonds to the board of commissioners of the sinking fund of a city school district as provided by section 3922 G. C., before advertising for bids for the sale thereof?"

Sections 3922 and 3923, General Code, provide:

"Section 3922. When a municipal corporation issues its bonds, it shall first offer them at par and accrued interest to the trustees of the sinking fund, in their official capacity, or, in case there are no such trustees, to the officer or officers of such corporation having charge of its debts, in their official capacity. If such trustees or other officers of the sinking fund decline to take any or all of such bonds at par and accrued interest, the corporation shall offer to the board of commissioners of the sinking fund of the city school district such bonds or so many of them, at par and accrued interest and without competitive bidding as have not been taken by the trustees of the sinking fund, and the board of commissioners of the sinking fund of the city school district may take such bonds, or any part thereof."