

<i>No.</i>	<i>Name</i>	<i>Acres</i>
957	People's Bank & Trust Co., Lawrence Township, Washington County-----	175
1003	Miami Conservancy Dist., Dayton Township, Montgomery County-----	239
1045	A. W. Chandler, Litchfield Township, Medina County-----	68

I have examined said leases, find them correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1398.

APPROVAL, GAME REFUGE LEASE IN PORTAGE COUNTY.

COLUMBUS, OHIO, December 19, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of recent date in which you enclose the following game refuge lease, in duplicate, for my approval:

<i>No.</i>	<i>Name</i>	<i>Acres</i>
995	The Cleveland Worsted Mills Co., Portage County-----	1,000

I have examined said lease, find it correct as to form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1399.

FIREMEN'S INDEMNITY FUND—LEVY OUTSIDE ALL LIMITATIONS—
SECTION 4647-4, GENERAL CODE, DISCUSSED.

SYLLABUS:

The amount levied by the council under the provisions of Section 4647-4, General Code, for the firemen's indemnity fund is authorized to be levied outside all limitations.

COLUMBUS, OHIO, December 19, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

"Section 5625-2, G. C., 112 O. L., p. 392, reads:

'The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit of the state shall not in any one year exceed fifteen mills on each dollar of tax valuation of such subdivision or other taxing unit, except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "fifteen mill limitation."

Section 5625-7, G. C., 112 O. L. 394, reads:

'The taxing authority of any subdivision may make the following levies outside of the fifteen mill limitation and irrespective of all limitations on the tax rate:

(a) Tax levies for debt charges when such levies have, prior to the taking effect of this act, been excluded by the laws of the state or by vote of the people from the limitation imposed by Section 5649-5b, and taxes authorized by the laws of the state, prior to the taking effect of this act, to be levied outside of the limitations imposed by Section 5649-5b of the General Code, in anticipation of which indebtedness has been incurred; but in either instance only until said indebtedness has been paid.

(b) Tax levies which, prior to the taking effect of this act, were excluded by vote of the people from the limitation imposed by Section 5649-5b, not exceeding the rate and the number of years authorized by such vote.

(c) Tax levies excluded by law from the fifteen mill limitation or hereafter authorized outside of said limitation by a vote of the people under the provisions of law applicable thereto.

(d) Tax levies under the provisions of Section 7639, but not to exceed one mill of said tax shall be outside the fifteen mill limitation.'

Section 4647-4 reads:

'The council or other authority charged with the duty of levying municipal taxes shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal purposes, levy not more than three-tenths of one mill upon each dollar of taxable property in such municipality, provided that the total of said indemnity fund shall be raised in not less than four years. When the total fund has been once raised the said authorities shall annually thereafter make such levy as shall bring the amount of the indemnity fund to the amount provided for in this act (G. C. 4647-1 to 4647-9) all of which levies shall be in addition to all other levies provided by law, and shall not be limited by any law restricting such levies; provided, however, that should the said council or other authority at any time fail or refuse to make and certify the necessary levy for the creation or maintenance of said indemnity fund the said board of firemen's indemnity fund may make and certify to the county auditor the necessary levy for such purposes and such county auditor shall place the same upon the tax duplicate and cause the same to be levied and assessed against the taxable property within the municipality in the same manner as though such levy had been made and certified by the council or other taxing authority; and the taxes when so levied and collected shall be distributed and paid into said indemnity fund.'

Question: Are tax levies for a firemen's indemnity fund outside of the 15 mill limitation provided by Section 5625-2, G. C.?"

A firemen's pension fund is provided for in Chapter 1, Title XII, Division VI of the General Code. Section 4600 of the General Code provides that in any municipal corporation, having a fire department supported in whole or in part at public expense, the council by ordinance may declare the necessity for the establishment and maintenance of a firemen's pension fund.

Section 4605, General Code, provides as follows:

"In each municipality availing itself of these provisions to maintain the fireman's pension fund, the council thereof each year, in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law, may levy a tax of not to exceed three-tenths of a mill on each dollar upon all the real and personal property, as listed for taxation in such municipality. * * * "

It is noted that in this section it is provided that the levy for the firemen's pension fund is to be made in addition to all other levies authorized by law, but there is no provision that said levy shall not be limited by any law restricting such levies, nor is there any provision that said levy shall be outside of all limitations.

A firemen's indemnity fund is provided for in Sections 4647-1 to 4647-9, both inclusive.

Section 4647-1 provides:

"That in all municipalities having no firemen's pension fund created under the provisions of Chapter I, Title 12, Division 6 of the General Code of Ohio, and having and maintaining therein a fire department supported in whole or in part at public expense, a firemen's indemnity fund shall be created and disbursed as herein provided."

Section 4647-4, General Code, provides as follows:

"The council or other authority charged with the duty of levying municipal taxes shall at the time next occurring after the creation of such board, and in the manner provided by law for the levying of other taxes for municipal purposes, levy not more than three-tenths of one mill upon each dollar of the taxable property in such municipality, provided that the total of said indemnity fund shall be raised in not less than four years. When the total fund has been once raised the said authorities shall annually thereafter make such levy as shall bring the amount of the indemnity fund to the amount provided for in this act (G. C., Secs. 4647-1 to 4647-9) all of which levies shall be in addition to all other levies provided by law, and shall not be limited by any law restricting such levies * * *,"

Sections 4647-1, et seq, (109 O. L. 90) were construed in an opinion of this department, Opinions of the Attorney General, 1922, Volume I, page 165, wherein it was held in paragraph 4 of the syllabus that:

"When such levy is properly made it is outside of all limitations and not subject to being reduced by the budget commission."

After quoting Sections 4647-1 to 4647-4, General Code, both inclusive, it is stated that:

"Section 4 of the act clearly provides that 'after the creation of such board' the council shall levy not more than three-tenths of one mill upon each dollar of the taxable property of the municipality, for the purpose of creating the fund referred to in Section 3. It is obvious that it is the duty of council to make the levy, but it may not exceed the maximum of three-tenths of one mill. Council may use its discretion as to the minimum amount it will levy, except that the total amount that is to constitute such fund, as provided in Section 3, must be levied by council 'in not less than four years.'

It will be further observed that the board which constitutes the 'Trustees of Firemen's Indemnity Fund' must be composed of five firemen in addition to the presiding officer, and it is not the duty of council to make the levy referred to in Section 4 until 'after the creation of such board.' Therefore it will be seen that until such time as a municipality has five members of the fire department in addition to the presiding officer, and the board is properly organized, council is not charged with the duty of making such levy, nor is it authorized to make the same. However, when there is a sufficient number of firemen to constitute the board, then it is the duty of council to make such levy, and when the levy is so made it is outside of all other limitations and not subject to being reduced by the budget commission."

It was therefore concluded that under the said former tax levy limitation that the levy for a firemen's indemnity fund was authorized to be made outside of all limitations and was not subject to being reduced by the budget commission.

The tax levy limitation at the time said opinion was written was contained in Section 5649-2, General Code, which provided that:

"Except as otherwise provided in Section 5649-4 and Section 5649-5 of the General Code, the aggregate amount of taxes that may be levied on the taxable property in any county, township, city, village, school district or other taxing district, shall not in any one year exceed ten mills on each dollar of the tax valuation of the taxable property of such county * * * for that year, and such levies in addition thereto for sinking fund and interest purposes as may be necessary to provide for any indebtedness heretofore incurred by a vote of the people."

Section 5649-4 provided for an additional tax levy for emergencies and Section 5649-5 provided that the several taxing authorities could by a vote of two-thirds of all the members of said body declare by resolution that the amount of taxes which could be raised at the maximum rate authorized by Section 5649-2 or at the combined maximum rate authorized by Section 5649-5b of the General Code would be insufficient to provide an adequate amount for the necessary requirements of the taxing district in question, and that it was necessary to levy an additional amount. It was also provided that said question of levying additional taxes under said section should be submitted to a vote of the people. However, it was held in said Opinion of the Attorney General, supra, that the levy authorized for the firemen's indemnity fund was outside of all limitations and not subject to being reviewed by the budget commission. Your question is based upon the construction to be given Sections 5625-2 and 5625-7, General Code, 112 O. L. 391, said sections being quoted in your communication.

Enacted House Bill No. 80, 112 O. L. 391, is entitled:

"An Act—Providing for levying of taxes by local subdivisions and their method of budget procedure, and repealing Sections 2034, 2242," and various other sections.

Section 5625-3 provides as follows:

"The taxing authority of each subdivision is hereby authorized to levy taxes annually, subject to the limitations and restrictions of this act, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision * * *."

Section 5625-5, General Code, provides:

"* * * 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 amounts certified to be necessary * * * in case of municipalities * * * for a firemen's pension fund * * *. 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."

Section 5625-6 provides what special levies may be made without a vote of the people within the fifteen mill limitation, and reads as follows:

"The following special levies are hereby authorized without a vote of the people:

a. For any specific permanent improvement which the subdivision is authorized by law to acquire, construct or improve, or any class of such improvements which could be included in a single bond issue.

b. For the library purposes of the subdivision, in accordance with the provisions of the General Code authorizing a levy or levies for such purposes, but only to the extent so authorized.

c. In the case of a municipality for a municipal university under Section 7908 of the General Code, but only to the extent authorized therein.

d. In the case of a school district, for the purposes of Section 7575 of the General Code, or for any school equalization levy which may be authorized.

e. In the case of a county, for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges thereon.

f. In the case of a county, for paying the county's proportion of the cost and expense of the construction, improvement and maintenance of state highways.

g. In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses."

Section 5625-7 provides what levies may be made outside the fifteen mill limitation, and reads as follows:

"The taxing authority of any subdivision may make the following levies outside of the fifteen mill limitation and irrespective of all limitations on the tax rate:

(a) Tax levies for debt charges when such levies have, prior to the taking effect of this act, been excluded by the laws of the state or by vote of the people from the limitation imposed by Section 5649-5b, and taxes authorized by the laws of the state, prior to the taking effect of this act, to be levied outside of the limitations imposed by Section 5649-5b of the General Code, in anticipation of which indebtedness has been incurred; but in either instance only until said indebtedness has been paid.

(b) Tax levies which, prior to the taking effect of this act, were excluded by vote of the people from the limitation imposed by Section 5649-5b, not exceeding the rate and the number of years authorized by such vote.

(c) Tax levies excluded by law from the fifteen mill limitation or hereafter authorized outside of said limitation by a vote of the people under the provisions of law applicable thereto.

(d) Tax levies under the provisions of Section 7639, but not to exceed one mill of said tax shall be outside the fifteen mill limitation."

It is noted that in paragraph (c) it is provided that "tax levies excluded by law from the fifteen mill limitation" shall be outside of said limitations.

The exception in said Section 5625-2, General Code, to the fifteen mill limitation is: "Except taxes specifically authorized to be levied in excess thereof." Section 4647-4, General Code, specifically authorizes the levy for the firemen's indemnity fund in excess of said limitation, as it provides after authorizing the levy of not more than three-tenths of one mill upon each dollar of taxable property in such municipality, that "all of which levies shall be in addition to all other levies provided by law, and shall not be limited by any law restricting such levies;" and said section further provides that:

"* * * should the said council or other authority at any time fail or refuse to make and certify the necessary levy for the creation or maintenance of said indemnity fund the said board of firemen's indemnity fund may make and certify to the county auditor the necessary levy for such purposes and such county auditor shall place the same upon the tax duplicate and cause the same to be levied and assessed against the taxable property within the municipality * * *."

It seems evident that under these provisions and under the former holding of this department in 1922, the amount levied by the council, under the provisions of Section 4647-4, General Code, for the firemen's indemnity fund is authorized to be levied outside all limitations.

Respectfully,
EDWARD C. TURNER,
Attorney General.