1104.

TAXES AND TAXATION—INTERPRETATION OF HOUSE BILL NO. 615 (108 O. L. ——)—ONE MILL FOR TUITION PURPOSES AUTHORIZED BY SECTION 7587 G. C. IS IN ADDITION TO THREE MILL LIMITATION PROVIDED FOR IN SECTION 5649-3a G. C.—LEVY FOR SCHOOL PURPOSES AUTHORIZED BY ELECTORS UNDER SECTIONS 5649-5 AND 5649-5a G. C. PRIOR TO 1920 MAY NOT BE MADE TO ANY EXTENT OUTSIDE OF LIMITATION OF SECTION 5649-5b G. C.

The one mill for tuition purposes authorized by the amendment to section 7587 G. C. is in addition to the three mill limitation provided for in section 5649-3a G. C.

A levy for school purposes authorized by the electors under sections 5649-5 and 5649-5a G. C. prior to 1920 may not be made to any extent outside of the limitation of section 5649-5b G. C.

COLUMBUS, OHIO, March 27, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission submits for the opinion of this department two questions relating to the interpretation of House Bill No. 615, filed in the office of the secretary of state February 24, 1920. These questions are as follows:

> "Is the one mill for tuition purposes authorized by the amendment to section 7587 in addition to the 3 mill limitation provided for in section 5649-3a? In other words, is the amount which a school board may levy for current expenses limited to 3 mills or 4 mills?
>
> If, under the provisions of sections 5649-5 and 5649-5a of the General Code the board of education of a school district has in any year prior to 1920 submitted to the electors the proposition to increase the school levy for a period of years which extends to and includes 1920 or subsequent years and the proposition has been carried, will such levy to the extent of 3 mills, or the whole levy if the authorization was for a rate less than 3 mills, be exempt from all of the limitations of the so-called Smith one per cent law or is it necessary that a vote be taken in the year 1920 and subsequent years in order to exempt such levy from the limitations?"

The first of these questions requires interpretation of the sentence added to section 7587 G. C. by the act referred to, as follows:

> "The levy for tuition fund to the extent of one mill shall be subject only to the limitation on the combined maximum rate for all taxes levied in the school district."

The phrase "the combined maximum rate for all taxes levied" has apt reference to the so-called fifteen mill limitation imposed by section 5649-5b G. C. This phrase has been used very frequently by the general assembly when the intention to exclude particular levies, or parts of levies, from the operation of what is known as the interior limitations of the so-called Smith one per cent. law and from the operation of the ten mill limitation of that act has been apparent.

Accordingly, no question would be possible as to the application and effect of the sentence quoted were it not for the fact that section 5649-3a G. C., defining

the interior limitations of the Smith law, was also amended by the same bill so as to change these limitations as applied to school districts from five mills to three mills, and as applied to townships from two to one and one-half mills. In making these changes the general assembly retained the general language in which the limitations had always been expressed in that section. Thus, the language with respect to county levies is:

> "The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills."

That applicable to school districts is:

> "The local tax levy for all school purposes shall not exceed in any one year three mills on the dollar of valuation of taxable property in any school district."

The section still provides, as it always provided, that these interior limitations should exclude certain levies, such as special assessments and levies in special districts created for road or ditch improvements.

Notwithstanding the wide natural scope of language such as that which has been quoted, it is obvious that it must receive a restricted interpretation; for to give it any other interpretation would bring it into apparent conflict with other sections of the original Smith one per cent law. Such a narrow interpretation was given to this section by the supreme court soon after the Smith law went into effect in the case of *State ex rel. vs. Sanzenbacher,* the journal entry in which is found in 84 O. S. 506 (see 6th paragraph of the journal entry, which deals with the question actually in controversy at the time).

It had therefore become the established interpretation of the section defining the interior limitations that they applied, not literally to all levies except those expressly excluded by the section itself, but to all excepting those so excluded and excepting those excluded from such limitation by any other section of the General Code in *pari materia.*

Even without the historical light which we have on section 5649-3a, it is believed that the same result would follow. The language in that section, whatever it may be, had acquired in the mind of the legislature and in the public mind generally the significance expressed by the epithet which was always applied to the section. Considering the section from this standpoint we might paraphrase or describe what the legislature did in House Bill No. 615 so far as school levies are concerned, as follows:

> "The interior limitation as to schools shall be reduced from five mills to three mills, and the levy for tuition purposes to the extent of one mill shall be outside the interior limitation."

So understood there is no incompatibility between section 5649-3a and section 7587 of the General Code as both are amended in the act.

But even if there were such incompatibility, a very familiar principle that a special provision is to control where it is inconsistent with a general provision would have application. There can be no doubt that unless section 5649-3a be explained as it has been explained in this opinion, there is an inconsistency between the two sections. They cannot be reconciled upon any hypothesis that will bring the one mill expressly referred to in section 7587 within the three mills prescribed by section 5649-3a. The statement in section 7587 that the one mill for tuition

purposes shall be subject *only* to the fifteen mill limitation is equivalent to a statement that it shall not be subject to any other limitation. Therefore, it is tantamount to a declaration that it shall not be subject to the three mill limitation. Section 7587 is special, while section 5649-3a is general. Therefore, section 7587 must control.

Any one of the several reasons as stated is sufficient upon which to base the conclusion that the one mill for tuition purposes referred to in section 7587 is in addition to the three mills referred to in section 5649-3a G. C.

The solution of your second question is not quite so palpable. The language inserted in section 5649-4 G. C. by House Bill No. 615 (and requiring interpretation in this connection) is as follows:

> "and for local school purposes authorized by a vote of the electors under the provisions of sections 5649-5 and 5649-5a of the General Code, to the extent of three mills for such school purposes."

The very words necessary to answer the question which you raise respecting the application of this section would have to be supplied, for they are not in the context save by such inferences as may be drawn from the whole act. Such words would have to be either the words "heretofore or hereafter," on the one hand, or merely the word "hereafter," on the other hand, both coming just prior to the word "authorized."

It is a general rule of statutory interpretation that all acts will be construed as prospective unless the intention to make them retrospective rather clearly appears. A more exact way of expressing this principle is to say that all verbs in a statute are used with a future connotation with reference to the date of enactment or other date as of which the act as a whole speaks. This principle, if given proper application here, would suggest reading in the word "hereafter," there being nothing in the section which clearly points to a retrospective application of the section.

But it is believed that the principle referred to finds some slight support in the schedule of the act, the office and function of which is to determine just such matters as have effect upon the existing law and the existing status of things generally. The following is quoted from section 3, which is the schedule of this act:

> "This act shall not affect * * * the inclusion in or exclusion from any limitations on tax levies in a taxing district of any levy for any purpose other than such levies for such purposes as with respect to which sections 5649-4 and 7587 of the General Code are herein expressly amended."

This provision standing by itself also leaves some doubt as to its exact scope in connection with the question which you raise; nevertheless, it does manifest clearly an intention to limit the amendatory effect of the act very closely. It shows that the act is to have no greater effect upon the status of things than its very terms require, and therefore suggests a strict interpretation of those terms themselves in so far as their application to existing things is concerned.

But the schedule goes on, in a separate paragraph, to provide as follows:

> "In the year nineteen hundred and twenty, the question authorized to be submitted to the electors of a school district by sections 5649-5 and 5649-5a of the General Code may be so submitted at an election to be held on the second Tuesday in August of such year, with like effect, for all purposes, as regards levies on the duplicate made up in the year 1920, as if submitted at the regular election in said year."

Here, again, we find a provision which constitutes evidence, slight in itself, to be sure, but significant, in addition to what has already been referred to, as disclosing the legislative mind. Clearly, the legislature would scarcely have gone to the trouble of making this provision had it supposed that a vote taken under section 5649-5 of the General Code prior to the passage of the act were to be effective to obtain the benefits of section 5649-4, without any action on the part of the electors after the act might go into effect.

It is to be admitted that the act is silent so far as express provision is concerned, and thus is open to an interpretation in order to arrive at the answer to your second question. It is also to be admitted that the evidences of legislative intention are not convincing, though they all point in the one direction. I think, however, that we may fairly add to them the thought that the fifteen mill limitation of the Smith one per cent law so-called has, as all citizens of Ohio know, acquired such a unique position in legislation as to give rise to a presumption against giving a liberal interpretation to any legislation affecting its application. In other words, I think it is only proper to give a strict interpretation, where such interpretation is as possible as the opposite liberal one would be, to legislation dealing with the fifteen mill limitation.

For these reasons, then, the opinion of this department is that a levy for school purposes authorized by the electors under sections 5649-5 and 5649-5a of the General Code prior to 1920 may not be made to any extent outside of the limitation of section 5649-5b of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1105.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS NOT AUTHORIZED TO PROCURE INSURANCE ON AUTOMOBILE TRUCKS TURNED OVER TO STATE BY FEDERAL GOVERNMENT.

1. *County commissioners who have received from the state highway commissioner automobile trucks turned over to the state by the federal government, are not authorized at this time to procure insurance on said trucks against their loss or damage.*

Whether state highway commissioner is authorized by section 1190-2 *G. C. (Amended substitute Senate Bill No.* 105, *effective May* 20, 1920) *to require county commissioners to procure such insurance—Quaere.*

2. *County commissioners have no authority to procure insurance on behalf of the county against loss which may accrue to it in the use of automobile trucks, through injuries to the person or property of third persons; cost of defending claims and suits; first aid expense, etc.*

COLUMBUS, OHIO, March 29, 1920.

HON. WALTER W. BECK, *Prosecuting Attorney, Lisbon, Ohio.*

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

"The commissioners of Columbiana county have received from the state highway department several federal trucks which are to be used in the improvement of state and county roads. It is the opinion of the