

799.

APPROVAL, TRANSCRIPT OF PROCEEDINGS FOR SALE OF ABANDONED OHIO CANAL LAND IN MADISON TOWNSHIP, LICKING COUNTY, OHIO.

COLUMBUS, OHIO, August 27, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR :—This is to acknowledge your recent communication, submitting for my examination and approval a transcript in duplicate of the findings of fact and other records of proceedings of your office relating to the proposed sale to one Eugene Montgomery, of Newark, Ohio, of a certain parcel of abandoned Ohio canal lands in Madison Township, Licking County, Ohio, being that portion of the abandoned Ohio canal property, including the full width of the bed and embankments thereof located in Madison Township, Licking County, Ohio, and described as follows:

“Beginning at a line drawn at right angles to the transit line of the Bruce Doughton’s survey of said canal property through Station 2012-04, and running thence easterly with the northerly and southerly lines of said canal property, ten hundred and thirty-nine (1039) feet, as measured along the transit line of said survey to a line drawn at right angles through Station 2001-65 of said survey, and containing two and one-tenth (2.1) acres, more or less.

For a more definite description of the above described property, reference is hereby made to Plat No. 127, Bruce Doughton’s survey of said canal property, said plat being on file at the office of Public Works, Columbus, Ohio.”

An examination of the transcript of your findings and proceedings with respect to the sale of the above described parcel of land shows that aside from the erroneous reference to Section 14203-22, General Code, instead of to Section 14203-14, General Code, as the source of the special authority for the sale of this property, said findings and proceedings are in compliance with the statutory provisions authorizing and providing for the sale of such lands, subject to the correction to be made as above noted.

The statutory provisions relating to the sale of abandoned Ohio canal lands at private sale require such sale to be approved by the Governor and the Attorney General. In the present instance, the purchase price of the property to be sold to said Eugene Montgomery is the sum of \$420.00. No facts are presented relating to the appraisal of this property or to other matters touching this proposed sale which suggest any reason why this sale should not be approved by me. My approval of the sale is accordingly hereby given, as is evidenced by my approval of the resolution providing for the sale of this property found in said transcript.

Respectfully,

GILBERT BETTMAN,
Attorney General.

800.

BUDGET COMMISSION—COUNTY—LEVIES THAT ARE TO BE INCLUDED WITHIN THE BUDGET FOR EACH SCHOOL DISTRICT INSIDE THE FIFTEEN MILL LIMITATION.

SYLLABUS:

A county budget commission is required to include within the budget for each school district, within the fifteen mill limitation, all levies for debt charges not pro-

vided for by levies outside of the fifteen mill limitation including levies necessary to pay notes issued for emergency purposes and also a minimum school levy for current expenses including the levy prescribed by Section 7575, General Code, or any other school equalization levy which may be authorized, aggregating 4.85 mills.

COLUMBUS, OHIO, August 27, 1929.

HON. CHAS. T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The state law makes a mandatory levy of 2.65 mills (two and sixty-five hundredths mills) for current expenses under Section 7575, General Code of Ohio.

Does the said levy have a preference over debt charges which is also mandatory under the statute?

In other words is the budget commission authorized to reduce the levy of 2.65 mills to meet the debt charges of any given school district?”

Section 5625-23, General Code, reads as follows:

“The county auditor shall lay before the budget commission the annual tax budgets submitted to him under the provisions of this act, together with an estimate to be prepared by such auditor, of the amount of any state levy, the rate of any school tax levy as theretofore determined, and such other information as the budget commission may request or the state tax commission may prescribe. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

The budget commission shall ascertain that the following levies are properly authorized and if so authorized, shall approve them without modification.

(a) All levies outside of the fifteen mill limitation.

(b) All levies for debt charges not provided for by levies outside of the fifteen mill limitation, including levies necessary to pay notes issued for emergency purposes.

(c) The levy prescribed by Section 7575 of the General Code, or any other school equalization levy which may be authorized.

(d) A minimum board of education levy for current expense in case the levy referred to in paragraph “c” hereof is less than four and eighty-five hundredths mills. Such minimum board of education tax levy shall be at such rate in each school district that the sum of the levy referred to in paragraph “c” hereof, and such minimum board of education tax levy shall be four and eighty-five hundredths mills in such district, unless the board of education requests an amount requiring a lower rate.

If any debt charge is omitted from the budget, the budget commission shall include it therein.”

By the terms of the foregoing statute, the duty is mandatory on a county budget commission to include within each budget provisions within the fifteen mill limitation for three separate and distinct things for three separate and distinct levies as provided for by clauses (b), (c) and (d) as set forth in the foregoing statute. That duty with reference to each of the three levies spoken of is no more imperative as to one than

as to the other. It appears from the language used that all other levies shall be subordinated to the three levies mentioned, and that it is necessary, in order that the budget commission's action conform to the statute, that all three of the levies mentioned be included in the budget within the fifteen mill limitation.

Because of the limitations on political subdivisions on the creation of debt charges within the fifteen mill limitation, and the fact that the sum total of the levies spoken of in clauses (c) and (d) of Section 5625-23, supra, is four and eighty-five hundredths mills, it is inconceivable that in any case it would be necessary to cut down the four and eighty-five hundredths mills levies in order to provide for debt charges.

Until such time as there is presented a specific situation where the debt charges within the fifteen mill limitation for any political subdivision are so great as to make it impossible to include all these debt charges as well as the levies spoken of in clauses (c) and (d) of Section 5625-23, supra, I am impelled to conclude that the levies provided for by clauses (b), (c) and (d) of said section stand on an equal footing and are to be authorized by the budget commission upon the final adoption of the budget and the same should be approved by them.

Respectfully,
GILBERT BETTMAN,
Attorney General.

801.

APPROVAL, FINAL RESOLUTIONS ON ROAD CONSTRUCTION PROJECT
IN DEFIANCE AND WYANDOT COUNTIES.

COLUMBUS, OHIO, August 27, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

802.

FUNDS—TOWNSHIP—WHERE INHERITANCE AND GASOLINE TAXES
CREDITED.

SYLLABUS:

1. *One-half part of the funds distributed to townships under the provisions of Section 5348-11, as enacted in House Bill 223 of the 88th General Assembly, should be credited to the general fund or to the fund created by paragraph (f) of Section 5625-9, in the discretion of the township trustees, When credited to the latter it may be used for the same purposes for which said fund was established.*

2. *Moneys arising under the provisions of Section 5541-8, General Code, as enacted by the 88th General Assembly, in House Bill 335, should be placed in a separate*