

dollars per annum, the amount and method of payment of which shall be fixed by said board and in addition thereto such secretary shall receive his necessary traveling and other incidental expenses as are incurred in the performance of such duties and all of such expenses, per diem, and compensation shall be paid out of the receipts of the board."

The secretary is a member of the Board. Section 1335-3. He receives a salary not to exceed \$3,000.00 per year. It may be safely presumed that in return the secretary shall devote a fair proportion of his time to the duties of his office, and it can likewise be inferred that the legislature had this in mind in limiting the per diem compensation of the other members of the Board to twenty days. The secretary, if your board determines, may, as a member, be present with the applicant pursuant to the provisions of section 1335-4. Section 1335-4, supra, is clear and unambiguous, and in such a situation language may not be read into a statute. It is therefore my opinion in answer to your eleventh question that you may not require that the applicant pay the expenses of the review which he is entitled to by virtue of section 1335-4.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2015.

BONDS—MANDATORY TO LEVY ANNUALLY TAXES TO PAY INTEREST THEREON AND PROVIDE FUND FOR FINAL REDEMPTION THEREOF OF POLITICAL SUBDIVISION.

SYLLABUS:

It is mandatory to levy annually sufficient taxes to pay the interest on the bonds of a political subdivision and to provide a fund for their final redemption at maturity, even though by reason thereof such subdivision may not be able, on account of constitutional or statutory limitations, to levy a sufficient amount for other purposes.

COLUMBUS, OHIO, December 14, 1933.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

"Section 5649-1 of the General Code, prior to its repeal, August 10, 1927, provided that a tax levy providing for interest and maturity payment purposes of serial bonds issued by any political subdivision, and for sinking fund purposes shall have preference to all other items.

"Inquiry is now made as to whether or not such a rule would still be followed. In 5625-3 it is provided that the taxing authorities shall levy such taxes as are necessary to pay the interest and sinking fund on, and retire the maturity bonds, notes and certificates of indebtedness, and the following section, namely, 5625-4, provides for the division of taxes, placing the general levy for debt charges first.

Is there still a preference to be given to the levy for debt charges, or must that share with the other levies provided for in 5625-4?"

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

"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.

* * * * *

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

Section 2293-26, General Code, provides that the resolution or ordinance authorizing a bond issue "shall provide for the levying of a tax sufficient in amount to pay the interest on and retire at maturity all of the bonds covered by said resolution or ordinance."

Section 2293-36, General Codes, reads as follows:

"After the issue of any notes or bonds, the taxing authority shall annually include in its budget a sufficient amount to pay the interest on and to retire at maturity such bonds or notes; and shall levy a tax therefor."

These sections, along with section 5625-3, General Code, to which you refer in your letter, follow the mandate contained in section 11 of article XII of the Constitution and make the same preference that was made by former section 5649-1, General Code. The Supreme Court has frequently held that this levy to retire debt charges is mandatory, even though by reason thereof a subdivision may not be able, on account of constitutional or statutory limitations, to levy a sufficient amount, or any amount, for other purposes. *Rabe vs. Board of Education*, 88 O. S. 403; *State, ex rel., vs. Zangerle*, 94 O. S. 447; *State, ex rel., vs. Dean, Auditor*, 95 O. S. 108; *State, ex rel. vs. School District 112* O. S. 729; *State ex rel. vs. Van Wert* 126 O. S. 78.

The case of *State, ex rel., vs. Brooklyn*, 126 O. S. 459, is, in my opinion, so clearly dispositive of your inquiry that I am quoting from the opinion at length:

"Coming now to the question whether taxes for debt charges are preferred to those for current expenses, we are of opinion that interest and principal due on bonds such as are involved in this case are entitled to preference, within the statutory and constitutional limitations. Such was the conclusion in the case of *State, ex rel., Southard, Dir. of Health, vs. City of Van Wert*, ante, 78, 184 N. E., 12, the statute (Section 5625-15, General Code) providing for current expenses outside the fifteen-mill limitation.

Section 11 of Article XII of the Ohio Constitution provides: 'No bonded indebtedness of the state, or any political sub-division thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and

collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.'

This section was considered by this court in the case of *Link vs. Karb, Mayor*, 89 Ohio St., 326, 104 N. E., 632, the second paragraph of the syllabus reading: 'Section 11 of Article XII of the Constitution of Ohio requires the taxing authority of any political subdivision of the state proposing to issue bonds to provide at the time the issue of bonds is authorized, for levying and *collecting annually* by taxation an amount sufficient to pay the interest on the bonds proposed to be issued and to provide for their final redemption at maturity. This provision made at the time the issue of bonds is authorized is mandatory on all subsequent taxing officials of that political subdivision during the term of the bonds.'

This construction thus given this constitutional provision was made prior to the amendment and repeal of Section 5649-1, General Code, and indicates its mandatory character.

Attention may also be called to Sections 5625-21 and 5625-23, General Code, requiring the county auditor to lay before the budget commission the annual tax budgets submitted to him. The latter section contains this mandatory language: 'If any debt charge is omitted from the budget, the budget commission *shall* include it therein.'

Thus, in setting up the budgetary procedure, the Legislature has carried into and retained in the General Code the statutory provisions reiterating the constitutional mandate of Section 11, Article XII of the Constitution, as construed by this court.

It may be noted that the same act which repealed Section 5649-1 enacted Sections 5625-21 and 5625-23, the present budgetary law, 112 Ohio Laws, 391.

The principles announced in *Rabe vs Board of Education of Canton School District*, 88 Ohio St., 403, 104 N. E., 537, have not been departed from by this court. The language of the opinion, at pages 422 and 423, is applicable in the present instance, although the amendment to Section 11, Article XII, had no application in the *Rabe case*: 'At this time, under the amendment to the Constitution (Section 11, Article 12) which provides that no bonded indebtedness of the state or any political subdivision thereof shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds and provide for a sinking fund for their final redemption at maturity, it is of the utmost importance that at the time of the incurring of such indebtedness the other needs of the political subdivision proposing to issue the bonds should be taken into account, for this levy must continue during the term of the bonds in an amount sufficient to pay the interest and provide a sinking fund for their final redemption, even though the amount should exhaust the entire income available from taxation and without regard to the current expenses. In other words, under this provision of the constitution, the payment of interest and the retirement of bonds are to be provided for first, and the current expenses become a secondary consideration.'

This decision, made prior to the amendment of Section 5649-1, General Code, when the same contained nothing about priorities, was followed

by *State, ex rel. Heald, vs. Zangerle et al., Budget Commrs.*, 94 Ohio St., 447, 115 N. E., 1013, the second paragraph of the syllabus in that case reading: 'The provision of Section 5649-1 General Code, that the taxing authorities in each taxing district of the state shall levy a tax sufficient to provide for sinking fund and interest purposes, requires the county budget commissioners to certify to the county auditor a tax sufficient for such purposes, regardless of other needs of the taxing district. *Rabe et al. vs. Board of Education*, 88 Ohio St., 403, approved and followed.'

In view of the fact that the provisions of Section 5649-1 were carried into Sections 5625-21 and 5625-23, General Code, the syllabus above quoted is entirely applicable. In the opinion, the language of Donahue, J., at page 450, is pertinent: 'It is not seriously contended that the amount certified is excessive. The only reason offered by the defendants for not certifying the full amount to the county auditor is that if this is done a sufficient sum cannot be provided, within the limitations fixed by law, to meet the current expenses of city government. That is unfortunate, but it does not authorize the budget commissioners to ignore the law.'"

This opinion deals only with the obligation to make a levy and not with any deficiency that may arise in the collection of taxes after such levy has been actually made, resulting from the non-payment of such taxes in full. This latter matter has been discussed in my Opinion No. 1815, dated November 3, 1933, and addressed to the Bureau of Inspection and Supervision of Public Offices, a copy of which opinion I am enclosing.

I am therefore of the opinion that it is mandatory to levy annually sufficient taxes to pay the interest on the bonds of a political subdivision and to provide a fund for their final redemption at maturity, even though by reason thereof such subdivision may not be able, on account of constitutional or statutory limitations, to levy a sufficient amount, or any amount, for other purposes.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2016.

APPROVAL, BONDS OF PARMA CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$58,000.00.

COLUMBUS, OHIO, December 15, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2017.

APPROVAL, BONDS OF MUHLENBERG TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, OHIO, \$2,400.00.

COLUMBUS, OHIO, December 15, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio