

In the matter of the court decision cited by you in 88 O. S. 403, our certificate has been made that a levy will be made on the 1925 duplicate to care for the \$160,000.00 school bond issue of Mingo school district, after this levy has been made there is not sufficient room within the 15 mills to care for the bond issue in question.

"When the resolution for the school bond issue was presented to us there was room within the 15 mill limitation to levy the sinking fund requirements and I accordingly issued my certificate.

"I am advising you that there is not sufficient room within the 15 mill limitation to care for the sinking fund requirements for the bond issue in question."

On account of the fact that the county auditor refuses to certify a levy to meet the sinking fund requirements for this issue of bonds, this department will be compelled to disapprove the issue, and you are therefore advised not to accept said bonds.

Respectfully,

C. C. CRABBE,

Attorney General.

2714.

APPROVAL, BONDS OF KINGSTON VILLAGE SCHOOL DISTRICT, ROSS COUNTY, \$2,400.00.

COLUMBUS, OHIO, Aug. 13, 1925.

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

2715.

TAX LEVY—PROVISIONS OF SECTION ONE OF HOUSE BILL NO. 58
(5649-5 G. C.) CONSTRUED.

SYLLABUS:

Section 1 of house bill No. 58, provides that the commissioners of any county, any board of education other than the county board of education, the legislative body of any municipality and the trustees of any township, may provide for the submission to the electors to the question of levying taxes in excess of limitations "for the purpose of meeting the current expenses of the subdivision." The authority is not granted for the submission of the question for current expense for a particular function of government, but requires the submission of the question for such levy outside of limitations as will be required to meet the excess of all current expenses above limitations.

COLUMBUS, OHIO, Aug. 17, 1925.

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

GENTLEMEN:—This acknowledges receipt of your letter of June 29th, as follows:

"The board of park commissioners of the city of Hamilton desire a levy

outside of the limitation provided by law to be voted upon at the November election for the purpose of improving, equipping and maintaining parks and play grounds under the jurisdiction of the City Board of Park Commissioners and for all such other expenditures allowed by law to be made by said board of park commissioners, including the purchase of additional ground, if necessary.

"Section 1 of house bill No. 58 (Mr. Dodd) seems to authorize a levy for any purpose for which the bonds of a municipal corporation may be issued, which might be authority for the submission of the question of the levy for improving and equipping parks and for additions thereto. Another purpose for which levies may be exempted by vote of the people from all limitations is 'current expenses.' The ordinary operation expenses of the park department are 'current expenses,' but the bureau doubts whether the expenses of a particular function may be exempted from the limitations in view of the terms used in said section 1.

"Question: May the question of exempting tax levies for current expense for a particular function of the municipal government be submitted and exempted from all limitations of taxation by a vote of the people at the November election?

"The matter being of general interest the bureau will appreciate your views in relation thereto."

Section 1 of house bill No. 58, as passed by the eighty-sixth general assembly, provides as follows:

"The commissioners of any county, any board of education, other than a county board of education, the legislative body of any municipality, and the trustees of any township may, at any time prior to September 15th in any year, by a vote of two-thirds of all the members of said body declare by resolution that the amount of taxes which may be raised at the maximum rate authorized by section 5649-2, 5649-3a or 5649-3c or at the combined maximum rate authorized by section 5649-5b of the General Code will be insufficient to provide an adequate amount for the necessary requirements of the taxing district in question, and that it is necessary to levy taxes in excess of said limitations either (1) for the purpose of meeting the current expenses of the subdivision, (2) for the payment of the interest, principal and sinking fund charges on certain described bonds or notes of the subdivision issued subsequent to January 1, 1925; (3) for the payment of the interest, principal and sinking fund charges on bonds or notes issued and authorized to be issued prior to January 1, 1925, or (4) for the support of a municipal university in an amount not exceeding the levy authorized by section 7908 of the General Code, or (5) for any purpose for which the bonds of said subdivision may be issued. Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increased rate may be levied, which may or may not include the current year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of interest, principal and sinking fund charges on bonds or notes, the increased rate shall be for the life of the bonds."

As concluded by you in your communication, a levy can be authorized "for any purpose for which the bonds of said subdivision may be issued."

Section 3939, paragraph 21, General Code, as found in 110 O. L., page 374, provides:

“For purchasing and condemning the necessary land for parks, boulevards and public playgrounds, and for improving it as well as for improving or completing the improvement of any existing boulevard, park or parks, or public playgrounds.”

Section 3939, General Code, provides that bonds may be issued by the council of a municipal corporation for the foregoing purpose. It is, therefore, concluded that the levy may be authorized outside of limitations for the purposes designated in the foregoing law.

Your specific question, however, as to whether or not the question of exempting tax levies for current expense for a particular function of the municipal government, is more difficult to determine. The first purpose for which an additional levy may be authorized as designated by No. 1 in section 1 of the act is “for the purpose of meeting the current expenses of the subdivision.” It is therefore, concluded from the expression “current expenses” that the legislature intended that consideration should be given by the taxing authorities to the entire list of items making up “current expenses,” that would be required in operating the government and meeting the requirements of a taxing district.

The act further provides:

“Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increased rate may be levied, which may or may not include the current year.”

By the paragraph of the act here before referred to as No. 1, it is noted that “purpose” is a single term but provides for “current expenses” which is plural. It is, therefore, concluded that the “single purpose” and “the purpose thereof” above quoted must refer to the meeting of all current expenses as a class.

To provide for an increased levy for one particular item of current expense would necessarily preclude the submission of the question of a levy for other items of current expenses or would at least create an improper proceeding in view of the provisions of the act that the additional rate may be voted for any period of time not exceeding five years. To vote each item of current expense separately would probably require a number of questions to be submitted during this period of time.

This intention of the legislature cannot be safely read into the law. It is apparent that it is intended that one question is to be submitted for the purpose of meeting the requirements for all items of current expenses for one year or more, not exceeding five, and that it is not intended to submit the question for a separate item of current expense.

The law refers to all items as current expenses and makes no exceptions or distinction as to the various classes of the funds out of which the several divisions of such expenses are to be paid. It might be said, therefore, that all such subdivisions that make up the general class “current expenses” must be placed in the same position and that a proceedings that would endeavor to raise a tax to the exclusion of other items of such general class, would be improper if not illegal.

You are, therefore, advised that the question of exempting tax levies for current expenses for a particular function of the municipal government is not warranted by the provisions of house bill No. 58, but instead of such proceedings the

question should be submitted for exemption of such levy outside of limitations as will be required to meet the excess of all current expenses above limitations.

Respectfully,
C. C. CRABBE,
Attorney General.

.2716.

COMPENSATION OF FIREMEN SHOULD BE FIXED BY COUNCIL—NO AUTHORITY TO AWARD LUMP SUM TO DEPARTMENT FOR DISTRIBUTION AMONG ITS MEMBERS.

SYLLABUS:

Compensation received by firemen or volunteer firemen should be fixed by council and the statutes do not contemplate council awarding a lump sum to the members of the fire department, which is in turn distributed to the members thereof.

COLUMBUS, OHIO, Aug. 17, 1925.

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

GENTLEMEN:—Your recent inquiry requesting my opinion, reads as follows:

“Section 4390 G. C. reads:

‘Council may provide for the employment of such firemen as it deems best and fix their compensation, or for the services of volunteer firemen. All firemen, other than volunteers, shall be appointed by the mayor for terms of one year, with the advice and consent of the council.’

“Section 4219 G. C. reads:

‘Council shall fix the compensation and bonds of all officers, clerks and employes in the village government, except as otherwise provided by law. All bonds shall be made with sureties subject to the approval of the mayor. The compensation so fixed shall not be increased or diminished during the term for which any officer, clerk, or employe may have been elected or appointed. Members of council may receive as compensation the sum of two dollars for each meeting not to exceed twenty-four meetings in any one year.’

“The council of the village of Covington adopted an ordinance providing for the payment of \$200.00 annually to the volunteer fire department. Such volunteer fire department in turn distributed this amount among its membership as compensation for services rendered. The bureau advised the clerk of the village that council must fix the compensation of the members of such department, and is without power to make a donation for distribution among the membership for the reason that this amounted to a delegation of authority.

“Mr. J. Guy O'Donnell, legal adviser of the village, is of the opinion that section 4390 G. C. authorizes the present method of paying a lump sum to the volunteer fire department and has asked the bureau to reconsider the matter.

“Since the question is one of general public interest, we will very much appreciate your views in relation thereto.”