

2148

1. EDUCATION, BOARD OF—AUTHORIZED TO LEVY TAX UPON TAXABLE PROPERTY OF DISTRICT FOR SUPPORT OF SCHOOL DISTRICT LIBRARY—IRRESPECTIVE OF PARTICIPATION IN PROCEEDS OF CLASSIFIED PROPERTY TAXES PROVIDED FOR IN SECTION 5625-20 G. C.—SECTIONS 7639, 4840-3 G. C.
2. BOARD NOT REQUIRED TO PROVIDE BY TAX LEVY AMOUNT NECESSARY FOR FULL AMOUNT CERTIFIED BY LIBRARY TRUSTEES AS NEEDED FOR MAINTENANCE AND OPERATION OF LIBRARY—SECTIONS 7639, 4840-3 G. C.—HOUSE BILL 125, 97 GENERAL ASSEMBLY.

## SYLLABUS:

1. Both under the provisions of Section 7639, General Code, and under the provisions of Section 4840-3, General Code, upon its becoming effective on September 4, 1947, a board of education is authorized to levy a tax upon the taxable property of the district for the support of a school district library, irrespective of its participation in the proceeds of classified property taxes, as provided in Section 5625-20, General Code.

2. A board of education is not required either by the provisions of Section 7639, General Code, or by the terms of Section 4840-3, General Code, as enacted in House Bill No. 125 to become effective September 4, 1947, to provide by tax levy an amount necessary to provide the full amount certified by the library trustees as needed for the maintenance and operation of such library.

Columbus, Ohio, August 20, 1947

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“In the case of *State, ex rel. v. Lutz*, 129 O.S., page 201, the court, in construing Section 5639, General Code, stated as follows:

‘A mere superficial examination of the statutes might lead to a conclusion that the preference allowed the public libraries is unreasonable and discriminatory, thereby raising a serious question as to whether such construction can be justified.

However, this difficulty disappears when it is remembered that the Legislature has completely deprived the public libraries of their former revenue from other sources, and they are now compelled to rely solely upon the proceeds of classified property taxes, while the municipal corporations, the county and school districts still derive their principal income from various other taxes.'

This comment was later quoted in *State, ex rel. v. Davis*, 131 O.S., 380.

At the time these cases were decided, Section 7639, General Code, existed, and so exists today, and reads as follows:

'Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided.'

"This section is repealed by H. B. No. 125, effective September 4th, 1947, and Section 4840-3, General Code, was enacted, and reads as follows:

'The board of library trustees of a school district free public library may annually, during the month of May, certify to the board of education of the school district the amount of money required to maintain and operate said free public library during the ensuing year and the amount of revenue anticipated from all sources other than a tax levy on the taxable property of said school district. The board of education may annually levy a tax on the taxable property of the school district, not to exceed one and one-half mills for the purpose of providing funds for library operation pursuant to said certification. The tax so levied shall be in addition to all other levies authorized by law and subject to no limitation of tax rates as herein provided.'

Section 5625-20, General Code, provides that any board of library trustees may adopt rules and regulations extending its services to all inhabitants of the county and when such rules and regulations are adopted the library becomes qualified to participate in the distribution of intangible taxes.

Said section further provides:

'In all cases in which such rules and regulations have

been so certified and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes and in its budget of expenditures the full amount requested therefrom by such board of library trustees.'

May we respectfully request your opinion upon the following questions :

May a board of education levy a tax upon the taxable property of the school district for the support of a school district library?

If the answer to the above question is in the affirmative, in cases where the requested needs of the library are for an amount greater than the amount allocated by the budget commission to the library from the intangible taxes, is it mandatory that the budget commission and board of education provide by tax levy the amount necessary to provide the full amount certified by the library trustees as needed for the maintenance, etc. of the library?"

You have set out the full text of Section 7639 of the General Code, and also of Section 4840-3, General Code, enacted in House Bill No. 125, by the 97th General Assembly, which is to become effective September 4, 1947. As you have stated, this act in addition to enacting Section 4840-3, repeals Section 7639, General Code.

The two sections are in the main quite similar. The differences do not affect the questions we are here considering. The act itself, is a recodification and revision of the laws relating to public libraries generally.

There are, however, slight variations to which attention may properly be called. In Section 7639, it is provided that the board of library trustees annually during the month of May "shall" certify the amount of money needed for library purposes, and also that the board of education annually "shall" levy a tax for such purpose. The new act substitutes the word "may" for "shall" in both cases. In other words, under the law shortly to become effective, the board of library trustees *may* certify to the board of education the amount required and the board of education *may* levy a tax. As you have stated in your letter, Section 7639 *supra* was in full force at the time that the cases of *State, ex rel. v. Lutz*, 129

O. S., 201, and State, ex rel. v. Davis, 131 O. S., 380, were decided. The statement which you have quoted from the first of the above cases, was observed and commented upon by my immediate predecessor in an opinion found in 1943 Opinions of the Attorney General, page 156. The then Attorney General said:

“This comment was quoted later in State, ex rel. v. Davis, 131 O. S., 380. In each case the comment was obiter dictum, and I am unable to find in the enactments of the Legislature any basis for the statement.”

In that opinion it was held that a county owning a library, might pursuant to Section 2456, General Code, levy a tax for its support and might in addition thereto, participate in the distribution of classified property taxes under the provisions of Section 5625-20, General Code.

Section 5639, General Code, which the court was considering in the two cases mentioned, provides for the distribution of the undivided classified property tax fund, and as the court stated, it appeared to give qualified libraries a decided preference over the other participating authorities. But a careful reading of the section as it stood then or in its present form, fails to disclose any provision excluding libraries from any other sources of revenue.

It should be kept in mind that while Section 5625-20, General Code, does give public libraries the opportunity to avail themselves of a very substantial allowance from the classified property taxes, that privilege is conditioned strictly on the library extending the benefits of its service to all the inhabitants of the county. A public library, however, is not compelled by law to take that course, but may if it chooses confine its library service to its own area. Is it to be said that a library so choosing, is deprived of all means of support? Certainly, that conclusion is in direct contradiction to the clear provision of Section 7639, and to the whole policy of the law with reference to other libraries than public school libraries, for we find in the statutes quite similar provisions giving other public libraries the right of support from the levy of taxes, entirely independent of the provisions of said Section 5625-20. See Section 2456, General Code, as to county libraries; Section 3404, as to township libraries. Furthermore, Section 5625-3, General Code, furnishes general authority for the levy of taxes for all current operating expenses, which certainly includes all libraries authorized by law.

An examination of Sections 5625-20 conferring this special benefit on libraries which decide to offer a county-wide service, does not disclose any provision whatever which in terms or by implication deprives such library of the normal support which is given it by way of a tax levy. Apparently, the purpose of the General Assembly was to furnish a library with a very substantial added source of income by way of compensation for widening the scope of its service. Section 5625-20, General Code, in so far as pertinent, reads as follows:

“The board of trustees of any public library, desiring to participate in the proceeds of classified property taxes collected in the county, shall adopt appropriate rules and regulations extending the benefits of the library service of such library to all the inhabitants of the county (excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes) on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules and regulations to the taxing authority with its estimate of contemplated revenue and expenditures. In all cases in which such rules and regulations have been so certified and in which the adoption of such rules and regulations is not required, the taxing authority shall include in its budget of receipts such amounts as shall have been specified by such library trustees as contemplated revenue from classified property taxes, and in its budget of expenditures the full amounts requested therefrom by such board of library trustees. The board of trustees of any public library participating in the proceeds of classified property taxes may supply library services to the inhabitants of the county on the same basis that said board is empowered to supply library services to the inhabitants of the subdivision maintaining said library. The board of trustees of a public library may establish branch libraries, library stations, and may provide traveling book service, and may do any and all other things necessary to provide county wide library service as it is empowered to do in rendering service to the residents of the subdivision maintaining said library, except in another subdivision maintaining a public library participating in the proceeds of classified property taxes.”

It may be noted in this connection that in House Bill No. 125 above referred to, this section has also undergone amendment. The only change made, so far as libraries are concerned, is the elimination of the words which were enclosed in parenthesis and the elimination of the last two sentences beginning: “The board of trustees of any public library participating,” etc. I cannot discover in the section as it now stands or as

it is shortly to be in effect, anything which gives any basis for the remark made by the court in the cases above noted.

The general purpose of the law in providing public libraries of every character with the right to receive support by the levy of taxes, and conditioned on their extending their service to the entire county excepting to the inhabitants of subdivisions maintaining a public library participating in the proceeds of classified property taxes, is shown by the fact that in the new act referred to which is a recodification of existing library legislation, provision is made in Section 2454-2 for a tax to be levied for the support of a county library; in Section 3404, for a like tax for the support of a township library; and in Section 7643-3 for the support of a county-district library. As already pointed out, these provisions, with the exception of the so-called county-district library, which is a new creation, were already to be found in the previously enacted statutes in substantially the same terms. It thus appears that there has been a continuing policy so far as the General Assembly is concerned, to provide the normal support for all public libraries by way of tax levy, and in addition thereto to give them the right, upon their compliance with a certain condition, to obtain additional revenue from the classified property tax.

Your second question is whether it is mandatory on the budget commission and the board of education to provide by tax levy an amount sufficient to provide the full sum certified by the library trustees as needed for the maintenance, etc., of the library. This question appears to have been directly met and answered in an opinion by one of my predecessors, found in 1922 Opinions of the Attorney General, page 357, where it was held:

“The board of education is not required by Section 7639, General Code to make a tax levy sufficient to realize the amount of money certified to it by the board of library trustees, but it may in a proper case raise that amount by taxation if it can be done by a levy not exceeding one and one-half mills.”

In support of that conclusion the Attorney General called attention to the fact that prior to its amendment in 1921, Section 7639 had provided that the board of education should levy a tax to meet the request of the library trustees not exceeding one and one-half mills “as shall be necessary to realize, *without reduction*, the amount so certified.” He further

called attention to the fact that in 1921 the section was amended by omitting the words, "without reduction," thus evidencing the clear purpose on the part of the legislature to give the board of education discretion to levy less than the library trustees requested.

That conclusion appears to me to be logical, and it is my opinion that Section 7639 does not require the board to levy the full amount requested. The Attorney General in the opinion just referred to, further held that the board of education could not arbitrarily refuse to levy the tax, but that it had the power of finally deciding (1) the necessity for funds; (2) the amount that should be raised. There has been no change in the wording of Section 7639 since the opinion was rendered.

Accordingly, and in specific answer to your request it is my opinion:

1. Both under the provisions of Section 7639, General Code, and under the provisions of Section 4840-3, General Code, upon its becoming effective on September 4, 1947, a board of education is authorized to levy a tax upon the taxable property of the district for the support of a school district library, irrespective of its participation in the proceeds of classified property taxes, as provided in Section 5625-20, General Code.

2. A board of education is not required either by the provisions of Section 7639, General Code, or by the terms of Section 4840-3, General Code, as enacted in House Bill No. 125 to become effective September 4, 1947, to provide by tax levy an amount necessary to provide the full amount certified by the library trustees as needed for the maintenance and operation of such library.

Respectfully,

HUGH S. JENKINS,  
Attorney General.