

2127.

CONSERVANCY DISTRICT—ASSESSMENT AUTHORIZED BY SECTION 6828-44a, G. C., LEVIED ON ALL REAL ESTATE WITHIN DISTRICT.

*SYLLABUS:*

*The assessment referred to in the portion of section 6828-44a, General Code, which provides that:*

*"In the event of the issuance of bonds authorized by this section, the board shall levy an assessment uniformly at a level rate upon all the property of the district according to the assessed valuation thereof, payable in annual installments during the life of such bonds, in an amount sufficient to retire said bonds at maturity, which installments of assessments shall bear interest at the same rate as the said bonds."*

*is a special assessment on all the real estate in a conservancy district and is not a general tax levy on all the property, both real and personal, in such district.*

COLUMBUS, OHIO, January 2, 1934.

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

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

"Amended Senate Bill No. 96, passed by the Ninetieth General Assembly, effective August 31, 1933, provides that Boards of Directors of Conservancy Districts may issue bonds for the purpose of retiring any obligations incurred pursuant to the provisions of sections 6828-43 and 6828-44 G. C. In this Act, section 6828-44a was enacted, and the second paragraph of that section reads as follows:

'In the event of the issuance of bonds authorized by this section, the board shall levy an assessment uniformly at a level rate upon all the property of the district according to the assessed valuation thereof, payable in annual installments during the life of such bonds, in an amount sufficient to retire said bonds at maturity, which installments of assessments shall bear interest at the same rate as the said bonds.'

Question. Is the assessment referred to in this Act a special assessment on real estate, or a general tax levy on all the property included in the conservancy district?

The Board of Directors of the Mansfield Conservancy District are planning to issue bonds under this act, and cannot proceed until the question submitted has been answered."

Section 6828-44a, General Code, provides for the issuance of bonds by the board of directors of a conservancy district for the purposes of retiring any warrant or warrants or instruments evidencing indebtedness incurred pursuant to the provisions of sections 6828-43 and 6828-44, General Code, which have matured or are about to mature. Said section also provides that the board issuing such bonds "shall levy an assessment uniformly at a level rate upon all the property of the district according to the assessed valuation thereof, payable in

annual installments during the life of such bonds, in an amount sufficient to retire said bonds at maturity, which installments of assessments shall bear interest at the same rate as the said bonds." While this law provides for a levy uniformly at a level rate upon all the property of the district, it is seen that it uses the word "assessment." As stated in the first branch of the syllabus in the case of *Lima vs. Cemetery Association*, 42 O. S. 128:

"In a general sense, a tax is an assessment, and an assessment is a tax; but there is a well-recognized distinction between them, an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity, and levied with reference to special benefits to the property assessed."

In the case of *State, ex rel., vs. Moenter*, 99 O. S. 110, the court construed former section 6926, et seq., General Code, and on pages 115 and 116 the court said:

"Section 6928, General Code, provides that a portion of the cost and expense of the road improvement shall be paid out of the proceeds of levies upon the grand duplicate of the county against taxable property of the township, the balance of the cost and expense to be assessed upon and collected from the owners of the real estate, and from the real estate benefited by the improvement, in proportion to the benefit.

By the language of the statute it will be seen that the latter is not only an assessment in expressed terms, but is so in fact, and based upon proportional benefits to the real estate, while the former, the levy upon the grand duplicate of the county upon the taxable property of the township, is made irrespective of whether benefit accrues or not, and is upon the entire property of the township, both real and personal \* \* \*."

While the statute in question provides for a levy upon all the property in the district, the term "property" as used in the Conservancy Act is defined in section 6828-1, General Code, as follows:

"Wherever the terms 'land' or 'property' are used in this act they shall, unless otherwise specified, be held to mean real property, as the words 'real property' are used in and defined by the laws of the State of Ohio, and shall embrace all railroads, tramroads, roads, electric railroads, street and interurban railroads, streets and street improvements, telephone, telegraph, and transmission lines, gas, sewerage and water systems, pipe lines and rights of way of public service corporations, and all other real property whether public or private."

In the case of *Miami County vs. Dayton*, 92 O. S. 215, the court had under consideration section 6828-43, General Code. This section reads in part as follows:

"As soon as any district shall have been organized under this act, and a board of directors shall have been appointed and qualified, such board of directors shall have the power and authority to levy upon the property of the district not to exceed three-tenths of a mill on the

assessed valuation thereof as a level rate to be used for the purpose of paying expenses of organization, for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise. This tax shall be certified to the auditors of the various counties and by them to the respective treasurers of their counties."

In construing this portion of the above statute, the court said:

"Now the language of the act uses the word 'tax,' but the word 'tax' is a general term and is used frequently as a general tax, or as a local and special tax, in which latter instance it is more frequently spoken of as an 'assessment.' Indeed, it has been repeatedly held that the word 'tax' is sufficiently general and comprehensive to include the word 'assessment.' The very fact that personal property is excluded from bearing the cost of the improvement and that the word 'property' is held to mean by the terms of the act to be real property, forces us to the conclusion that it was the intention of the legislature to provide for the cost of the improvement by way of assessment, as in other drainage cases.

Courts will not limit themselves to the form and name of things. It is their duty to probe deep enough to get at the substance and the essence of the thing by whatever name or brand it may be known. The whole spirit of the law and its provisions in connection with its practical operation unmistakably indicate that the legislature used this word 'tax' in its local and special sense. In short as an *assessment*."

And in the fifth branch of the syllabus, the court held:

"While the letter of the act uses the word 'tax' in a general sense, the whole act, its spirit, its subject-matter and its actual operation, taken together, make it manifest that the word 'tax' as therein used is special and local and what is known under the laws of Ohio as an 'assessment.'"

The conclusion reached in that case certainly should apply to the portion of section 6828-44a quoted in your letter, as it uses the word "assessment" and not "tax", and since it is to be levied only on real estate, I am of the view that it is to be a special assessment and not a tax.

Section 6828-44a, General Code, further provides that the issuance, sale and characteristics of said bonds shall conform to section 11 of article XII of the Constitution. Of course, to comply with this section of the Constitution and section 2293, General Code, it is necessary that provision be made in the legislation authorizing such bond issue for levying and collecting annually a sufficient tax to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity, but the amount of tax to be levied in any year may be reduced by the amount available for such purposes from the special assessments.

Answering your question, therefore, I am of the opinion that the assessment referred to in the portion of section 6828-44a, General Code, which provides that:

"In the event of the issuance of bonds authorized by this section, the board shall levy an assessment uniformly at a level rate upon all

the property of the district according to the assessed valuation thereof, payable in annual installments during the life of such bonds, in an amount sufficient to retire said bonds at maturity, which installments of assessments shall bear interest at the same rate as the said bonds."

is a special assessment on all real estate in a conservancy district and is not a general tax levy on all the property, both real and personal, in such district.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2128.

COURTHOUSE—WHERE COST TO COUNTY LESS THAN \$25,000 UNNECESSARY TO SUBMIT TO ELECTORS QUESTION OF ISSUANCE OF BONDS.

*SYLLABUS:*

*Where the total cost of a county court house exceeds \$25,000.00, but the cost to the county is less than \$25,000.00, section 2333, General Code, does not require the submission to the electors of such county of the question of issuing bonds therefor.*

COLUMBUS, OHIO, January 2, 1934.

HON. FRANK A. ROBERTS, *Prosecuting Attorney, Batavia, Ohio.*

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

"Clermont County is interested in a proposed project to construct a new courthouse.

The question arises as to whether this building can be constructed without a vote of the people where the money to be obtained from the County is less than \$25,000.00, the remaining part of the cost to be obtained under money received from the Civil Works Administration.

The cost of the entire improvement will be considerably more than \$25,000.00, and the question is whether or not section 2333 of the General Code can be complied with where the county's cost is not to exceed \$25,000.00.

I have read your Opinion No. 1695, in which it is held that where the cost of the improvement exceeds \$25,000.00 a vote of the people is necessary. It appeared, however, that this opinion was based upon a presumption that the County itself was, by bond issue and otherwise, to bear the entire cost."

Section 2333, General Code, reads in part as follows:

"When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. \* \* \*"