

2035.

SCHOOL DISTRICT—STATE PUBLIC SCHOOL FUND—MINIMUM LEVY WITHIN TEN MILL LIMITATION—STATUS TO RECEIVE ADDITIONAL AID THREE MILLS—LIMITATION FOR CURRENT EXPENSES AND DEBT SERVICE—BUDGET.

SYLLABUS:

The minimum levy within the ten mill limitation fixed by Section 7595-1b, General Code, for a school district to be entitled to receive additional aid from the State Public School Fund, is three mills, and a total tax levy of the taxing district of which said school district is a part of at least ten mills for all purposes; and that, a school district may have a levy of more than three mills and be entitled to receive additional aid.

That, the minimum levy under Section 5625-23, General Code, for current expenses and debt service within the ten mill limitation that the budget commission must approve is a levy equal to two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such taxing unit requests an amount requiring a lower rate, or, the levies required by paragraphs (b) and (c) of Section 5625-23, General Code, equal or exceed such definite minimum levy, or, such definite minimum levy is greater than a rate necessary to provide an amount sufficient to satisfy requirements of the school district as shown by the budget of the board of education of the certain school district (including the ten per cent reserve balance) and therefore, contrary to the provisions of Section 5625-21, General Code.

In a case where the minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit can not be allowed by the budget commission for the reason that the levies required by paragraphs (b) and (c) equal or exceed the minimum levy, the operating levy for a school district must be not less than 45% of the millage available within the ten mill limitation after the deduction of the levies required by paragraphs (b) and (c). If such 45% or more of the millage results in an operating levy for the school district of more than three mills the budget commission is authorized to approve such a budget; if it results in an operating levy for the school district less than three mills the budget commission can not approve a budget for three mills or more.

COLUMBUS, OHIO, March 8, 1938.

HONORABLE MARVIN A. KELLY, *Prosecuting Attorney, Portsmouth, Ohio.*

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

"We are submitting to you the following question pertaining to the setting of rates by the Budget Commission of Scioto County with regard to local school districts receiving additional aid from the State Public School Fund.

"Section 7595, General Code, sets up the purpose of the State Public School Fund in these words: 'For the support and maintenance of the public school system and for the *equalization* of educational advantages throughout the State.'

"Section 5625-24, General Code, reads as follows: 'The Budget Commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies.' Under this section it would appear that the Budget Commission has the authority to adjust the rates of taxation within the 10-mill limitation to conform to the purpose of Section 7595 General Code, said purpose being 'For the equalization of educational advantages throughout the State.' Section 5625-24 General Code, states further, 'But no levy shall be reduced below a minimum fixed by law.'

"The specific question in this case is: 'What is the minimum levy within the 10 mill limitation fixed by law for a school district receiving additional aid from the State Public School Fund?'

"Former Section 7505-1, General Code, repealed, provided that school districts, to participate in the state school equalization fund, must levy for current operation a minimum of eight mills from local real taxes, or a minimum of nine and one-half mills in the event the district had no levy for bonded indebtedness. Section 7595-1b provides that any school district may participate in an additional aid which has a minimum levy of three mills for current school operation, and defined and fixes the amount of such additional aid to which such school district is entitled based upon *three mills* of local taxes.

"Section 5625-23d sets up a minimum rate for current operating and debt charges (within the limitation) equal to two-thirds the average rates of such school district for the last five years during which the fifteen mill limitation was in effect. This two-thirds average in these former 'State Aid' School Districts produces operating rates at higher than the three mills necessary to qualify for additional aid under Section 7591-1b, which excess millage produces an amount in excess of the amount fixed by law in the present Section 7595-1. Furthermore this millage in excess of three mills was set up by statute for a purpose (i. e. participation in the state equalization fund) which no longer exists."

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 ten mill limitation.

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

"(c) The levies prescribed by Sections 4605 and 4621 of the General Code.

"(d) A minimum levy within the ten mill limitation for the current expenses and debt service of each subdivision or taxing unit which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such subdivision or taxing unit requests an amount requiring a lower rate. Provided, however, that if the levies required in paragraphs (b) and (c) for said subdivision or taxing unit

equal or exceed the entire minimum levy of said subdivision as hereinbefore fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the budget commission to provide for said levies and in addition thereto an operating levy for said subdivision. Such additional levy thus required shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45 per cent of the millage available within the ten mill limitation after all the levies in (b) and (c) have been provided for.

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

Section 7595-1b, General Code, provides, in part, as follows:

“If, in any school district which has a tax levy for current school operation of at least three mills, the revenue resources of any district are insufficient to enable the board of education thereof to conduct the schools in such district upon the minimum operating cost of a foundation program, as defined by or established pursuant to law, such district shall be entitled to receive additional aid, to be apportioned from the state public school fund by the director of education, as hereinafter provided.

“The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district, less the deductions made by the county auditor pursuant to sections 288, 7678, 1465-66, 7828* and 7834 of the General Code, and plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education and state aid for special classes; provided, further, however, that no school district shall be entitled to receive additional aid unless the total tax levies of the taxing district of which said school district is a part are at least 10 mills for all purposes. * * * ”

It is to be observed from a reading of Section 5625-23, *supra*, that it is mandatory upon the budget commission to make a minimum levy within the ten mill limitation for the current expense and debt service

of each subdivision or taxing unit equal to the definite, ascertainable rate of two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such taxing unit requests an amount requiring a lower rate, or, the levies required by paragraphs (b) and (c) of Section 5625-23, supra, equal or exceed such definite minimum levy, or, such definite minimum levy is greater than a rate necessary to provide an amount sufficient to satisfy requirements of the subdivision as shown by the budget of the board of education of the certain subdivision (including the ten per cent reserve balance) and therefore contrary to the provisions of Section 5625-21, General Code.

This statute received the same interpretation and construction by my predecessor in office in two opinions rendered by him and appearing in Opinions of the Attorney General for the year 1935, Volume II. In the one opinion, at Page 1008, he stated:

“Upon an analysis of paragraph (d) above, it will be noted that the first sentence of this paragraph fixes a minimum levy within the ten mill limitation for the current expense and debt service of each subdivision or taxing unit which the budget commission must allow to be a definite ascertainable rate ‘unless such subdivision or taxing unit requests an amount requiring a lower rate.’

“It is manifest that so far as this provision of the statute is concerned, the required minimum levy for each subdivision or taxing unit is limited to a rate sufficient to produce such an amount only as the subdivision or taxing unit requests, as shown by its budget which it files with the county auditor and which is later presented by the auditor to the county budget commission for its information in adjusting the tax levies for the several taxing units and subdivisions in the county so as to bring all those levies within the ten mill limitation.”

The syllabus of that opinion reads as follows:

“In no event, under the terms of Section 5625-23, General Code, as amended in House Bill No. 466 of the 91st General Assembly, should the tax levy allowed by a county budget commission for an operating levy for a school district within the county be greater than at a rate necessary to produce an amount sufficient to satisfy the requirements of the school district for operating purposes as shown by the budget of the board of education of the district.’

In the opinion appearing on Page 1326, it was held:

“Section 5625-23 (d), General Code, requires that in cases where the minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit can not be allowed by a county budget commission because of the fact that levies for debt charges and firemen’s and policemen’s pension funds required by paragraphs (b) and (c) of said statute equal or exceed the requirement of said minimum levy an operating levy shall be provided for each such subdivision or taxing unit and the minimum levy for current expenses as fixed therein reduced accordingly, so that in the adjustment of said levies the ten mill limitation shall not be exceeded; but in no case shall the operating levy for a school district be reduced below a figure equivalent to 45% of the millage available within the ten mill limitation after levies required for debt charges and firemen’s and policemen’s pension funds as required by paragraphs (b) and (c) of the statute as provided for.

“The 45% provision for school districts referred to above, and mentioned in the last sentence of paragraph (d) of Section 5625-23, General Code, has no application whatever, where a minimum levy for current expenses and debt service for the district may be allowed under the terms of the first sentence of said paragraph (d).”

It is to be observed that the provisions of Section 7595-1b make it mandatory that a school district have a minimum tax levy “for current school operation of at least three mills, and the total tax levies of the taxing district of which said school district is a part, are at least ten mills for all purposes,” in order to be entitled to receive additional aid; and that, there is not anything in Section 7595-1b, *supra*, that can be interpreted or construed as establishing a definite and fixed levy of three mills in order to receive additional aid. In fact, the words *of at least three mills*, negates any construction other than three mills is the minimum levy and the school district may have a levy of more than three mills and yet be entitled to receive additional aid.

I am unable to find any conflict between Sections 5625-23 and 7595-1b, *supra*. Paragraph (d) of Section 5625-23, *supra*, establishes a definite ascertainable minimum rate that the budget commission must allow a school district but it does not prevent the budget commission approving a tax levy for a school district higher than the minimum levy specified in the first sentence (d) of said section, if the levies required

in paragraphs (b) and (c) do not equal or exceed the rate of the minimum levy. It is incumbent upon a school district to state its requirements in its budget so that, if possible, a tax levy of at least three mills for current school operation can be approved by the budget commission in order that the school district can be qualified for receiving additional

It is further to be observed that if the tax levy of the school district approved by the budget commission is for more than three mills, there is not anything to prevent the school district from receiving additional aid.

However, in the case where the minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit can not be allowed by the budget commission for the reason that the levies required by paragraphs (b) and (c) equal or exceed the minimum levy, then the operating levy for a school district can not be reduced below a figure equivalent to 45% of the millage available within the ten mill limitation after deduction of the levies required by paragraphs (b) and (c).

It is to be noted that under such circumstances the minimum levy for a school district is limited to 45% of the millage available; and that, the budget commission can approve a levy for a school district that is equivalent to more than 45% of the millage available provided that deduction of the levies required by paragraphs (b) and (c) have been made, and the ten mill limitation will not be exceeded. If such 45%, or, a percentage greater than 45%, of the millage available within the ten mill limitation after deduction of the levies required in paragraphs (b) and (c) results in an operating levy of a school district for more than three mills the budget commission is authorized to approve such a budget; if it results in an operating levy for the school district of less than three mills the budget commission is not authorized to approve a levy of three mills, regardless of the fact that the school district will be deprived of the right to share in additional aid.

I am aware of the fact that under the provisions of Section 5625-23, supra, the two-thirds "average rate of such school district for the last five years during which the fifteen mill limitation was in effect" results in many school districts receiving a levy of more than three mills and being entitled to additional aid, it gives such school districts an advantage over the school districts that have a levy of only three mills. However, the legislature did not provide that the tax levy for current school operation must be limited to three mills in order to be entitled to receive additional aid. As stated above, the school district may have a tax levy of more than three mills, and be entitled to receive additional aid. It therefore must be said that advantage that a school district may receive over other school districts by reason of the provisions of Sections 7595-1b

and 5625-23, supra, is a matter for the legislature to remedy. The function of statutory interpretation is to carry out the intention of the Legislature, in accordance with the words used. As is stated in 37 Ohio J., Page 650:

“The wisdom, or the want of wisdom, is not a question for the courts, but solely for the Legislature.”

Therefore, in specific answer to your question, it is my opinion:— that, the minimum levy within the ten mill limitation fixed by Section 7595-1b, General Code, for a school district to be entitled to receive additional aid from the State Public School Fund, is three mills, and a total tax levy of the taxing district of which said school district is a part of at least ten mills for all purposes; and that, a school district may have a levy of more than three mills and be entitled to receive additional aid.

That, the minimum levy under Section 5625-23, General Code, for current expenses and debt service within the ten mill limitation that the budget commission must approve is a levy equal to two-thirds of the average levy for current expenses and debt service allotted within the fifteen mill limitation to such subdivision or taxing unit during the last five years said fifteen mill limitation was in effect, unless such taxing unit requests an amount requiring a lower rate, or, the levies required by paragraphs (b) and (c) of Section 5625-23, General Code, equal or exceed such definite minimum levy, or, such definite minimum levy is greater than a rate necessary to provide an amount sufficient to satisfy requirements of the school district as shown by the budget of the board of education of the certain school district (including the ten per cent reserve balance) and therefore, contrary to the provisions of Section 5625-21, General Code.

In a case where the minimum levy provided for by the statute within the ten mill limitation for current expenses and debt service for each subdivision or taxing unit can not be allowed by the budget commission for the reason that the levies required by paragraphs (b) and (c) equal or exceed the minimum levy, the operating levy for a school district must be not less than 45% of the millage available within the ten mill limitation after the deduction of the levies required by paragraphs (b) and (c). If such 45% or more of the millage results in an operating levy for the school district of more than three mills the budget commission is authorized to approve such a budget; if it results in an

operating levy for the school district less than three mills the budget commission can not approve a budget for three mills or more.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2036.

APPROVAL—BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$2,000.00, PART OF ISSUE DATED MARCH 1, 1914.

COLUMBUS, OHIO, March 8, 1938.

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

GENTLEMEN:

RE: Bonds of City of Cleveland,
Cuyahoga County, Ohio, \$2,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of electric light bonds in the aggregate amount of \$800,000 of a \$2,000,000 authorization, dated March 1, 1914, bearing interest at the rate of 4½ % per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.