

pitalization insurance for employees and their dependents. Had the legislature not used the word "joint" under the decision in *Ledwith v. Bankers Life Insurance Company*, supra, a conclusion could be drawn that the board of education of a school district may enter into a plan for hospital and surgical benefits for school employees and their dependents at the entire cost of the school district.

I do not read Sec. 617 of the School Code of 1955 to require that the board of education of a school district and the school employees share the cost of hospitalization and surgical benefit insurance on an equal basis, although it is clear that the employee must bear at least a part of the cost of the insurance as determined by the board of education.

Therefore, it is my opinion that a board of education is without authority to pay the complete cost of hospitalization insurance for school employees and their dependents under Sec. 617 of the School Code of 1955.

FRANK J. KELLEY,
Attorney General.

TAXATION: Excess of Roll Levy.

630425.1

A township supervisor and the assessing officer of each city or village is authorized under Section 39 of the General Property Tax Law to add to the amount of taxes to be raised not more than 1% for the purpose of avoiding fractions in computation. The amount resulting, where this procedure is employed, is known as "the excess of roll levy." A city treasurer has no authority to add to the amount of taxes to be collected by him an additional sum as an excess levy since Section 39 of the General Property Tax Law does not apply to the collection of taxes by the city treasurer.

No. 3660

April 25, 1963.

Honorable John C. Hitchcock
State Representative
438 E. Jarvis
Hazel Park, Michigan

While you were a member of the State Legislature you directed my attention to a situation existing in a number of communities in which the city treasurer, in the process of collecting taxes, includes in the total tax a sum represented to be produced by the "excess roll levy." From the information furnished to this office the following summary of the procedure may be made:

1. The assessed valuation of the district (the city) is determined from the assessment rolls.
2. The assessed valuation of the district is multiplied by an equalization factor (conversion factor) to determine the equalized valuation of the district.
3. The equalized valuation is multiplied by the various tax rates which determine the total basic tax to be spread.

4. The total basic tax is then multiplied by .0095 to determine the amount of the additional tax which can be produced by the "excess roll levy."

5. The equalization factor is then revised upward to an amount which when applied to the assessed valuation will produce a total equalized valuation of the district sufficiently large by the application of the tax rate to produce an excess sum mathematically equivalent to the amount determined at step 4 above.

From the statistical information furnished to this office, the following illustration has been prepared:

Assessed valuation of the district	\$25,157,365
Equalization factor	1.85908274
Adjusted equalization factor (determined from step 5 above)	1.87674403

Determination of the Tax from the Tax Bill

	Mills Levied	Tax Dollars
County General	5.25	\$ 28.06
Special Education	.50	2.67
School	22.25	118.92
School Debt	.25	1.34
Drain Debt	.0798636	.43
Total	<u>28.3298636</u>	<u>\$151.42</u>
Add City Excess Levy		1.44
Total General Tax		<u>\$152.86</u>

Assuming the assessed valuation of the taxpayer's property to be \$2,875, the determination of the amount of the total general tax can be further illustrated as follows:

Multiply the total mills levied (28.3298636) by the equalization factor of 1.8767 (this is the adjusted equalization factor set forth above) = 53.17 equalized mills.

53.17 mills × assessed valuation of \$2,875 = \$152.86, total tax.

It is to be noted that by the above method of computation the taxpayer has been required to pay \$1.44 which would not have been required of him had the equalization factor of 1.85908274 been used instead of the adjusted equalization factor. You have advised me that this excess amount exacted from all taxpayers in the assessment district is in the aggregate collected by the city treasurer and retained by the city. The sum so resulting is said to be produced by the "excess roll levy."

The two questions submitted by you are answered as follows:

"*Question 1.* Is it legally permissible for a city treasurer, when collecting county and school taxes to levy the 1% collection fee provided for in Section 44 of the General Property Tax Law, and in addition thereto, an excess roll of 1% as provided for in Section 39

of the General Property Tax Law when the combined total of these two fees collected far exceed the costs of collection?"

Section 44 of the General Property Tax Act to which you refer in question 1 was last amended by Act 144, P.A. 1961¹ and to the extent here pertinent provides:

"On receiving such tax roll the township treasurer or other collector shall proceed to collect such taxes. The township treasurer or other collector shall mail to each taxpayer at his last known address on his tax roll, on the receipt of such tax roll, a statement showing the description of the property against which the tax is levied, the assessed valuation of such property and the amount of the tax thereon. * * * On all sums voluntarily paid before January 20 of the succeeding year, he shall add 1% for collection fees, and upon all taxes paid on or after January 20 he may add to the tax and 1% fee, an additional collection fee equal to 3% of the tax."

Section 39 of the General Property Tax Act to which your first question also makes reference was likewise amended in 1961 by Act 82.² The relevant portion reads as follows:

"The supervisor of each township or ward, and the assessing officer of each city or village, as provided by law, shall proceed to assess the taxes apportioned to his township, or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll of the township, ward, village or city of the year. * * * For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than 1%; said excess shall belong to the contingent fund of the township, city or village."

Your question indicates that you understand the city treasurer "levies" the 1% collection fee provided for by Section 44 and in addition "levies" an excess roll of 1% as provided in Section 39 and that the combination of these two fees far exceeds the cost of collecting the taxes. Your question has been framed under a misconception of the functions and powers of the city treasurer. The city treasurer does not levy taxes, he is a collector. He is authorized to add the 1% for collection fees, but this sum is imposed upon the taxes already levied. What has been denominated as the "excess roll levy" is not determined or imposed by the city treasurer but is the product of the elimination by the township supervisor or city assessor of fractions in computing the amount of taxes spread by him against the several parcels of property on his assessment roll. The amount of taxes to be levied in a county for county, school, highway, drain, township, and other purposes is determined by the county board of supervisors at its annual meeting in October in the manner prescribed in Section 37 of the General Property Tax Law.³ Neither a city treasurer nor a township treasurer has any power to increase the taxes to be levied within his tax

¹ M.S.A. 1961 Cum. Supp. § 7.87.

² M.S.A. 1961 Cum. Supp. § 7.80.

³ Section 37 is codified as C.L. 1948 § 211.37, M.S.A. 1960 Rev. Vol. § 7.55.

assessing district. As said by our Supreme Court in the case of *In re Dodge Brothers*, 241 Mich. 665, at 669:

“Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer.”⁴

In order that there may be a better understanding as to how an “excess of roll levy” occurs in the spreading of taxes thereby resulting in an overage of tax payments, a generalized descriptive recital of the procedures which brings about this result follows. The board of supervisors at its annual session in October is required by Section 37 to determine the amount of money to be raised for county purposes. It shall also determine the moneys to be raised in the several townships for school, highway, drain, township and other purposes. The board shall direct that such of the several amounts of money proposed to be raised for township, school, highway, drain and all other purposes as shall be authorized by law, be spread upon the assessment roll of the proper townships, wards and cities. Pursuant to Section 38 of the General Property Tax Law, the clerk of the board of supervisors, immediately after the apportionment has been made, shall make out two certificates showing the amounts apportioned to each township for state, county and the various township purposes, each tax being kept distinct. One such certificate shall be delivered by the clerk to the county treasurer and the other to the supervisor of the proper township. Section 39 of the General Property Tax Law governs the action next to be taken by requiring the supervisor of each township or ward, and the assessing officer of each city or village to proceed to assess the taxes apportioned to his township or assessment district, according and in proportion to the valuations entered by the board of review in the assessment roll. Section 39 then says:

“For the purpose of avoiding fractions in computation, the assessor may add to the amount of the several taxes to be raised not more than 1%; said excess shall belong to the contingent fund of the township, city or village. Such taxes shall be separately assessed and shall be entered in separate columns, or if authorized by a resolution of the board of supervisors of the county, adopted by a majority of the members-elect thereof, said taxes in such county shall be entered either as one total sum, or in separate columns for each taxing unit.”

It is clear from the above recitation that the physical act of assessing the taxes apportioned to his assessment district against the valuations entered in the assessment roll is the responsibility of the township supervisor or the assessing officer as the case may be. Performance of this duty necessarily involves mathematical calculations and this fact gives meaning to that part of the statute which says “For the purpose of avoiding fractions in com-

⁴ “Tax collectors, it is truly said, are chosen because the machinery of government must be kept in motion, and to that end it is essential that the public revenue should be collected. They are chosen, therefore, and their duties imposed on public grounds, not on private.” *Raynsford v. Phelps*, 43 Mich. 342, at 345.

putation, the assessor may add to the amount of the several taxes to be raised not more than 1%; * * *." The statute expresses a permissible tolerance in the amount of the taxes to be exacted. After the supervisor or assessor has completed assessing the taxes against the several parcels of property shown on the assessment roll he shall deliver a copy of the assessment roll showing the taxes assessed and annex thereto a warrant signed by him commanding the township or city treasurer to collect the several sums constituting the taxes which have been spread.

The language of present Section 39 permitting the assessor to add to the amount of the several taxes to be raised not more than 1% for the purpose of avoiding fractions in computation, originated in Act 32 passed by the legislature at the Extra Session of 1858. Section 33 as amended by that act, in its entirety, read:

"The supervisor of each township shall proceed to assess taxes for the amount specified in such certificate, together with a tax for the amount of money to be raised by his township, adding thereto, and to all other taxes required by law to be assessed by him, not more than four nor less than two per cent., as shall be determined by the electors at their annual meeting, at the same time and in the same manner that overseers of highways are elected, for collecting expenses, upon the taxable property in the township, according and in proportion to the individual and particular estimate and valuation specified in the assessment roll of the township for the year, and for the purpose of avoiding fractions in excess in said tax, may add to the several amounts to be raised, on a sum not exceeding one hundred dollars, five per cent. or under, on a sum over one hundred dollars and not exceeding four hundred dollars, three and a half per cent. or under, on a sum not exceeding one thousand dollars and over four hundred dollars, two per cent. or under, and on any sum exceeding one thousand dollars, not over one per cent.; said excess, more or less, to be paid into and to belong to the contingent fund of the township or ward where assessed."⁵

A careful reading of the above quoted Section 33 will show that the amount which might be added by the supervisor for the purpose of avoiding fractions was not in the nature of a collection fee because the same section expressly stated how the expenses of collection were to be computed. The statutory purpose was to lessen the burden of mathematical calculations and it was clearly recognized in the statute that because of this, additional amounts would be raised resulting in a surplus or excess over the sum of the exact tax. Such excess was to be paid into and belong to the contingent fund of the township or city within which the taxes were assessed. It thus becomes clear that the excess is not in fact a true "levy" but is the excess of the roll levy brought about through the mathematical process in avoiding fractions. It is the product of the action taken by the supervisor or assessor

⁵ Section 33 was amended by Act 181, Laws of Michigan 1863 and as amended the pertinent sentence read: "For the purpose of avoiding fractions in excess in said tax, the supervisor may add to the several amounts to be raised not more than one per cent.; said excess, more or less, shall be paid into and belong to the contingent fund of the township in which it was assessed."

in assessing the taxes apportioned to his township or assessment district. Our Supreme Court has said:

“The supervisor is required to assess, that is, to set, fix or charge, a certain sum to each tax-payer in the proportion named.”

Seymour v. Peters, 67 Mich. 415, 418.

Because mechanical calculators are now in common use, it may be supposed that the need for avoiding fractions in computing taxes no longer exists. However, it must be recognized that the practice is still prevalent in many of the assessing districts through out the State of determining taxes by methods which result in an excess of the roll levy. This cannot be condemned as unlawful if the statute is properly followed since it is permitted. It has been recognized by our Supreme Court in the case of *City of Grand Rapids v. Welleman*, 85 Mich. 234, 242, and in the opinion of the Attorney General issued on November 7, 1922.⁶ The difficulty with the tax procedure which provoked your request and outlined in the forepart of this opinion, is that it clearly appears that the City Excess Levy which was added to each individual tax bill did not result from a mathematical adjustment to avoid fractions. As appears from an examination of the formula which was used, the equalization factor of 1.85908274 could have been rounded off to 1.86 to avoid fractions within the meaning and intent of the statutory provision. Instead, there was a deliberate upward adjustment by ninety-five one-hundredths of 1% in this equalization factor thereby increasing it to 1.87674403. This was obviously done for the purpose of producing additional revenues for the city. Such action is not within the authority granted by the statute and is not to be condoned.

“*Question 2.* Is it permissible for the city treasurer to levy an excess roll without a showing that the purpose is for the avoidance of fractions in computation and when the funds collected are budgeted as general income to the city and used to pay general city obligations?”

What has been said in answer to your first question is likewise applicable to this question. A somewhat analogous situation was before the Attorney General in 1957 where the county audit conducted by the auditor general's staff disclosed that in St. Joseph County the cities of Three Rivers and Sturgis had included an item designated as “Interest and Penalty Tax” as a part of their delinquent county, city and school tax returns to the county treasurer. The Attorney General condemned this practice holding that a city charter may not provide for the addition of any penalty or collection fee to county or school taxes when such taxes are returned to the county treasurer. The return in such instances must be made according to the general tax laws.⁷

There is no authority in the General Property Tax Law for a city treasurer to levy an excess roll irrespective of whether or not it is for the purpose of avoiding fractions in computation of taxes.

FRANK J. KELLEY,
Attorney General.

⁶ O.A.G. 1923-24, p. 48.

⁷ O.A.G. 1957-58, Vol. 1, p. 324.