

690205.1

**TAX LIMITATION:
COUNTY BUILDING AUTHORITY:
INTERMEDIATE SCHOOL DISTRICT:**

County board of supervisors cannot by contract create lease obligation to county building authority requiring imposition of tax over 15 mill limitation, but after contracting within 15 mill limitation can, where temporarily necessary, meet lease obligation by taxation beyond limitation.

Where intermediate school district extends into more than one county, the controlling 15 mill tax limitation for the entire district is that applicable to the county in which the greatest part of the area of the district is located.

No. 4664

February 5, 1969.

Honorable Clifford H. Smart
State Representative
The Capitol
Lansing, Michigan

This answers your letter of November 27 asking the following questions:

"1. Does the County Board of Supervisors have the authority to create a debt or lease obligation with the Building Authority and then impose a tax over the 15 mills to retire the debt or satisfy the lease rental contract without a vote of the majority of the qualified electors in the county so affected?"

"2. Does an intermediate school district have the authority to impose a property tax above the 15 mills without a majority of the qualified electors in said district voting on it, simply because one section of the intermediate school district (less than the greatest area) extends into another county?"

It is necessary to consider the provisions of Article IX, Section 6 of the Michigan Constitution in dealing with each of the two questions you pose. The cited constitutional provision provides in pertinent part as follows:

"Except as otherwise provided in this constitution, the total amount of general ad valorem taxes imposed upon real and tangible personal property for all purposes in any one year shall not exceed 15 mills on each dollar of the assessed valuation of property as finally equalized. . . .

"The foregoing limitations shall not apply to taxes imposed for the payment of principal and interest on bonds or other evidences of indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued, which taxes may be imposed without limitation as to rate or amount; . . .

"In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district."

Turning now to your first question, I direct your attention to the provisions of Act 31, P.A. 1948, Ex. Sess., as amended, usually referred to as the building authority act, which provides for the incorporation of an

authority to acquire, furnish, equip, own, improve, enlarge, operate and maintain buildings and sites for the use of any county (*inter alia*) and to authorize the execution of contracts pertaining to such property and the use thereof.¹

The Michigan Supreme Court has held that revenue bonds issued by the authority are not full faith and credit obligations of the county, although the revenues of the authority include rentals paid from general funds of the county. In *Rude v. Muskegon County Building Authority*, (1953) 338 Mich. 363, the court held that the authority is a legal body separate from the county, not its alter ego, and that the assumption by the county of a reasonable debt for rentals is not an assumption of the debt by the county of the total sum of all rentals due throughout the term of the lease so as to exceed the county's debt limit. The court stressed that the annual rentals must be reasonable.

In *Walinske v. Detroit-Wayne Joint Building Authority*, (1949) 325 Mich. 562, the court specifically held that annual payments under the proposed lease where reasonable did not constitute a pledge of the credit of the county and city which had incorporated the authority and contracted to pay rent for a period of years. In that case the court found a taxpayer's contention that annual payments might exceed allowable millage limitations without merit where it appeared that the danger of the city exceeding such millage limitations was remote. At page 581, the court said:

“. . . Inasmuch as the bonds . . . are not faith and credit obligations of its incorporators, they need not be voted on by the electorate, nor are they subject to the debt limitations of the municipalities.”

Where a county building authority issues revenue bonds based upon a long-term lease contracts with a county, the validity of the lease contract depends upon the setting of annual rental payments in such amounts as represent the bona fide value of the rental service. The validity of such contracts further depends upon the setting of such annual rental payments in such sum as can be budgeted by the county within its allowable millage within the 15 mill limitation. The Municipal Finance Commission should and does analyze the financial relationship between the county and the building authority to be sure that the rentals are bona fide and can be paid within the allowable millage resources of the county before the notice of sale for the bonds is approved.

Subsequent to issuance of the bonds, taxes may be imposed without limitation as to rate or amount where temporarily necessary in order to meet the contract obligations, as permitted by the second paragraph of Article IX, Section 6 of the Michigan Constitution of 1963, for the reason that the lease contract between the county and the building authority is a “contract obligation in anticipation of which bonds have been issued.”

Therefore, the answer to your first question is that the county has no authority to enter into a long-term lease contract with the building authority which commits for rental purposes funds beyond the millage resources of the county. Notices of sale of building authority revenue bonds will not

¹ M.C.L.A. § 123.951 et seq.; M.S.A. 1961 Rev. Vol. & 1968 Cum. Supp. and Cur. Mat. § 5.301(1) et seq.

be approved by the Municipal Finance Commission, unless a showing is made that the annual rental payments can be made within the millage authority of the county.² Subsequent to the issuance of the bonds, however, the rental payments, being contractual obligations in anticipation of which bonds are issued, may be supported by taxes imposed without limitation as to rate or amount where temporarily necessary, as specifically provided by paragraph 2 of Section 6 of Article IX of the Michigan Constitution of 1963.³

Your second question asks whether an intermediate school district has the authority to impose a property tax above the 15 mills without a majority of the qualified electors in said district voting on it, "simply because one section of the intermediate school district (less than the greatest area) extends into another county?"

Paragraph 3, Article IX, Section 6 of the Michigan Constitution of 1963 provides as follows:

"In any school district which extends into two or more counties, property taxes at the highest rate available in the county which contains the greatest part of the area of the district may be imposed and collected for school purposes throughout the district."

I am mindful that many intermediate school districts in Michigan extend beyond the county in which the greater part of each such district lies, so that fractional portions of each such district extend into adjacent counties. I will answer your second question as to the two categories of counties involved:

1. With respect to the county in which the greatest part of the area of the district is located, the 15 mill tax limitation controls. The mere fact that the district extends beyond the county line does not justify such intermediate district in exceeding the limitation.

2. As to the county, or counties, into which the intermediate district extends, but which counties do not contain the greater part of the district, taxes must be imposed at the highest rate available in the county containing the greater part of the area of the district, even though such rate exceeds the 15 mill limitation in the county or counties containing the subordinate fraction or fractions of the district.

FRANK J. KELLEY,
Attorney General.

² The Municipal Finance Act is Act 202, P.A. 1943, as amended, being M.C.L.A. § 131.1; M.S.A. 1958 Rev. Vol. & 1968 Cum. Supp. § 5.3188(1) et seq. The powers of the Municipal Finance Commission are set forth at Chapter II, Section 2 thereof [M.C.L.A. § 132.2; M.S.A. 1968 Cum. Supp. § 5.3188(4)].

³ *Betz v. Berrien County Building Authority*, (1968) 12 Mich. App. 304, 312.