

CITIZENS RESEARCH COUNCIL OF MICHIGAN

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September 1990

THE TAXING AUTHORITY OF THE DETROIT PUBLIC LIBRARY

Introduction The Detroit Library Commission has directed the city clerk to place a library operating millage proposition on the November 6, 1990, ballot. The proposed one mill would be in addition to one mill originally approved by the voters in 1984 and currently being levied by the library and to .64 mill being levied by the Detroit School District and passed through to the library.

PROPOSAL L

In order to provide funds necessary to operate and maintain the library system and to meet the changing needs of the community, shall the limitation of the total amount of taxes which may be imposed in any one year upon property in the City of Detroit be increased for purposes of the Detroit Public Library System by 1 mill (\$1.00 per \$1,000) on assessed valuation as finally equalized, for five (5) years, July 1, 1991 through June 30, 1996?

YES

NO

As the Detroit Public Library seeks to increase the ad valorem property tax in the city of Detroit levied for the support of the library, some important questions need to be answered. What is the legal status of the library and what is the legal basis of the tax being levied for the library? Is the library tax within or outside of the 50-mill limit and can the city of Detroit levy taxes within the 50-mill limit? What is the maximum tax rate that may be levied for Detroit Public Library operations?

State Statutes Define the Detroit Public Library Public Act 133 of 1986 amended Public Act 164 of 1877 and gave city councils the authority, subject to voter approval, to levy up to 2 mills for the maintenance of a city library. This two-mill levy is in addition to any tax limitation imposed in the city's charter. This authority does not apply to the Detroit Public Library because it is not a city library; city libraries are established by city councils under Public Act 164 of 1877 as amended. Mayors, with the approval of city councils, appoint the boards of city libraries.

The Detroit Public Library was established under Local Act 233 of 1869, which addressed free (public) schools in the city of Detroit. In 1881, the Detroit Board of Education was authorized to appoint a board of library commissioners and transfer the public library to their supervision. In 1901, Local Act 359 provided for the incorporation of the Detroit Library Commission; it was established as a separate municipal corporation to administer the Detroit Public Library. That act also provided that the Board of Education appoint the members of the library commission.

Local Act 359 of 1901 was amended by Local Acts 390 of 1903 and 460 of 1905, which directed the library commission to transmit to the city council, through the city controller, an estimate of the amount of money the library commission deemed necessary for the proper maintenance of the libraries.

It shall be the duty of the Detroit Library Commission to transmit to the common council through the city controller ... an estimate of the amount of money which said commission may deem necessary for the proper maintenance of the public libraries of the city of Detroit, during the fiscal year next ensuing ... together with an estimate of the revenues to be derived during the fiscal year next ensuing, from sources other than taxation. **So much of the said estimate as the common council and the board of estimates of the city of Detroit shall approve shall be levied and collected the same as other taxes of the said city: Provided, however, that the amount so approved,** together with the revenues to be derived from other sources than taxation, except gifts, grants, devises, bequests, fines for the breach of the penal laws of the State and funds from other than public sources, **shall not be less than one-fifth of a mill on the dollar on property assessed for city purposes.** (Emphasis added)

It is this section which legal counsel for the library interprets as giving the library the authority to impose taxes. The Research Council believes this section directs the city to levy taxes on behalf of the library, as the school district was later authorized, by statute, to levy taxes on behalf of the library.

Public Act 26 of 1921, which applies to library commissions in cities of over 250,000 population, makes the library territory coterminous with the boundaries of the city and requires that the library commission submit the library budget to the city for approval.

The Attorney General has stated (OAG 1983-84, No. 6224) that

[f]ollowing the adoption of the so-called 15-mill property tax limitation amendment in 1932 ... the tax levy in support of the commission as a non-charter local unit has been subject to the 15-mill limit implemented by the Property Tax Limitation Act.

Public Act 62 of 1933 as amended by Public Act 102 of 1975 (the property tax limitation act) Section 11(d) establishes that the county tax allocation board shall allocate tax rates within the 15-mill limit for the county, schools, and townships. The act requires that

[o]f the millage allocated to a first-class school district, .64 mill shall be collected and paid by the school district to the public library commission existing in the district for services of an educational nature rendered by the library to the residents of the school district.

This 'general' statutory requirement applies only to the Detroit School District, which is by definition the only first class school district in Michigan.

Statutes that have provided funding to the Detroit Public Library from taxes have done so by requiring local units that have taxing authority--the city and the school district--to pass through part of the taxes they collect. No state law provides the Detroit Public Library with the power to impose taxes.

A Municipal Corporation Today, the Detroit Public Library is a public corporation, its commission members appointed by the board of education. The library controls its own hiring

and labor relations, purchasing, and other internal matters, but state law places budgeting, accounting, and payments from the library fund under the control of the city of Detroit.

In August of 1984, Detroit voters approved a one-mill, five-year property tax for the support of the Detroit Public Library; that tax was subsequently renewed in 1988 for another five years. The ballot issue which requested approval of the library millage was based on a state Attorney General opinion.

The Opinion of the Attorney General Public Act 62 of 1933 defines local units as organizations of government established by law and which have power to levy taxes. The Attorney General opinion (OAG 1983-84, No. 6224) states that organizations of government established by law are local units and fails to consider the second part of the definition. In effect, the Attorney General has opined that all local units have taxing authority even when no statutory authority exists. There is no specific statutory authority giving the Detroit Public Library the power to levy taxes, although counsel for the library argues that the 1905 amendment to the local act gives the library taxing authority.

That opinion treated the .64 mill school tax for library purposes as though it were a library tax. The .64 mill is clearly a school tax (see above quote), for which the board of education receives state school aid, which it keeps.

The Attorney General's opinion concluded that a tax increase for the library commission must be sought within the 15-mill limit from the Wayne County Tax Allocation Board, and that "[t]he right to any additional levy over .64 mills depends on a favorable election to increase the tax rate limitation." The Attorney General's interpretation seems to be that because the library is a municipal corporation that it therefore automatically has taxing authority, and that because the law directs the board of education to pass through school taxes to the library, that the .64 mill is a library tax and the library taxing authority is, like the school district, within the 15/50-mill limit. The opinion further concluded that the ballot question should be certified by the library commission to the city clerk.

The 50-Mill Limit The 1963 Constitution establishes limits on the property taxes that may be imposed by unchartered counties, townships and schools (the 15/50 mill limit), and states that those limits do not apply to debt service or

to taxes imposed for any other purpose by any city, village, charter county, charter township, charter authority or other authority, the tax limitations of which are provided by charter or by general law.

Section 8-401 of the Detroit City Charter establishes the maximum operating millage rate for the city, which as a city is outside the 50-mill limit.

The city is authorized to levy property taxes at the rate of 2% of assessed value of all real and personal property in the city or to such other maximum limit as may be permitted by law.

The city is currently levying 20 mills for operations, plus three mills for garbage collection and disposal authorized by Public Act 127 of 1976. The one-mill levy for library operations approved by the voters in 1984 is now included in the tax levy resolution of the city in addition

to the 20-mill charter limit, and is included as a city tax in the calculation of Detroit's relative tax effort for purposes of state revenue sharing.

The library mill, along with school millage, is collected by the city and the one mill is passed through to the library. In addition, the city contributes from its general revenues to the operations of the library, in accordance with Section 9-504 of the Detroit City Charter:

The city may make appropriations to, and exercise its power in aid of, the Detroit library commission for the operation of libraries within the city.

The 1990-91 budget for the library includes a city general fund contribution of \$1,076,320.

**DETROIT PUBLIC LIBRARY
BUDGETED REVENUES FOR 1990-91**

Current Year Property Taxes	\$ 7,929,113
Prior Year Property Taxes, Penalties and Interest	587,097
State Equity Grant (Cultural Reimbursement)	7,200,000
Other Grants	1,490,961
Court Fines	1,100,000
General Fund Contribution	1,076,320
Single Business Tax-Inventory Reimbursement	664,498
All Other Sources	<u>1,968,195</u>
Total Revenues	\$21,429,087

After adoption of the city budget, a state appropriation of \$1.2 million was approved to reopen five branch libraries which had been closed due to budget constraints.

Conclusion If the Detroit Public Library were a charter or other authority for tax purposes, or a city library constituted pursuant to Public Act 164 of 1877 as amended in 1986, and therefore outside the 50-mill constitutional limit, the applicable tax limitation would be included in the library's charter or in the statute which authorized it. The city of Detroit could, of course, levy taxes within its 20-mill operating levy (which is outside the constitutional 15/50-mill limit) for the benefit of the library, but it is not clear whether the city can levy taxes within the 50-mill limit.

If taxes for the library were not excluded from the 50-mill limit, as they would be for a charter authority or a city library, those taxes would fall within the 50-mill limit. It is clear that the Detroit School District can levy taxes for the Detroit Public Library within the 50-mill limit and could, with voter approval, levy additional taxes within the 50-mill limit.

In fact, the Detroit Library Commission does not have a charter or authorizing statute which grants it taxing authority and does not have a tax limitation, nor any independent tax authority, granted by general law. It does not have taxing authority outside the 50-mill limit; it does not have taxing authority within the 50-mill limit.

Since the Detroit Public Library was created by a local act of the state legislature, any clarification of the authority to levy taxes by or for the library would have to be accomplished by state law.