

STATE OF MICHIGAN
BILL SCHUETTE, ATTORNEY GENERAL

CONST 1963, ART 9, § 6:

Constitutional limits on tax levies for
district libraries.

DISTRICT LIBRARY
ESTABLISHMENT ACT:

A millage levied by a district library established under the District Library Establishment Act (DLEA), 1989 PA 24, MCL 397.171 *et seq.*, is not subject to the mill limitations or the 20-year durational limit set forth in article 9, § 6 of the Michigan Constitution. But under section 13 of the DLEA, MCL 397.183, a district library may not levy more than 4 mills and any levy over two mills may be authorized only for a period not to exceed 20 years.

Opinion No. 7303

May 17, 2018

The Honorable John Bizon, M.D.
State Representative
The Capitol
Lansing, MI 48909

You have asked what is the maximum number of years for which voter approval of an operating tax levy for a district library may be sought, consistent with the limitations set forth in article 9, § 6 of the Michigan Constitution and the Property Tax Limitation Act, MCL 211.201 *et seq.*

Your request references a district library that was organized under the District Library Establishment Act (DLEA), 1989 PA 24, MCL 397.171 *et seq.*, on March 1, 1994.¹ In 2001, this district library proposed a renewal of its millage that

¹ Chapter 397 of the Michigan Compiled Laws includes a number of acts relating to the creation or operation of libraries. See, e.g., Library of Michigan Act, MCL 397.11 *et seq.*; regional libraries, MCL

purported to remain effective in perpetuity. The proposal passed overwhelmingly, and the two-mill tax has been levied since that time.²

Your question requires analysis of the interplay between the Michigan Constitution, specifically article 9, § 6, and the DLEA. Article 9, § 6 imposes limitations on the amount and duration of property taxation in the “15-18-50 mill/20-year limitation” provision. The first paragraph of § 6 creates the taxing limitations and provides, in part:

Except as otherwise provided in this constitution, the total amount of general ad valorem taxes . . . in any one year shall not exceed 15 mills Under procedures provided by law . . . separate tax limitations for any county and for the townships and for school districts therein, the aggregate of which shall not exceed 18 mills . . . may be adopted and thereafter altered by the vote of a majority of the qualified electors of such county These limitations may be increased to an aggregate of not to exceed 50 mills . . . for a period of not to exceed 20 years at any one time, if approved by a majority of the electors [Const 1963, art 9, § 6.]

The Legislature implemented the procedure for increasing the tax limitations set forth in the first paragraph of § 6 in the Property Tax Limitation Act (PTLA), 1933 PA 62, MCL 211.201 *et seq.*

397.151 *et seq.*; city, village, or township libraries, MCL 397.201 *et seq.*; county libraries, MCL 397.301 *et seq.*; township and village libraries, MCL 397.321 *et seq.*; privately-owned libraries, MCL 397.371; and public libraries, MCL 397.453, 397.471-397.472. This opinion addresses only libraries established under the DLEA.

² The tax rate, or millage, is the number of tax dollars a taxpayer must pay for each \$1,000 of taxable value. A mill equals one one-thousandth of a dollar (\$.001) or \$1 of tax for each \$1,000 of taxable value. If a local millage is 2 mills and the taxable value of the property is \$100,000, the formula would be 2 x 0.001 x \$100,000 for a property tax of \$200.

The second paragraph of § 6 creates two exceptions to the 15-18-50 mill/20 year limitation, and provides:

The foregoing limitations shall not apply [1] to taxes imposed for the payment of principal and interest on bonds approved by the electors or other evidences of indebtedness approved by the electors or for the payment of assessments or contract obligations in anticipation of which bonds are issued approved by the electors, which taxes may be imposed without limitation as to rate or amount; or [2], subject to the provisions of Section 25 through 34 of this article, 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. [Const 1963, art 9, § 6.]

This “nonapplication provision,” as it is sometimes called, excludes certain taxes—those levied to pay for certain public debts or, subject to certain conditions, imposed by cities, villages, charter counties, charter townships, charter authorities or other authorities—from the 15-18-50 mill/20-year limitation so long as an alternative limitation is contained in general law or charter provision. See *Butcher v Grosse Ile Twp*, 387 Mich 42, 65 (1972).

In 1989, the Legislature repealed the existing district libraries act, 1955 PA 164, and replaced it with the DLEA, 1989 PA 24. Very simply, the DLEA authorizes two or more “municipalities” to join together to provide library services through a “district library,” provided certain criteria are met. MCL 397.173(1).³ An “agreement” creating a district library must include a number of provisions,

³ The term “municipalities” is defined as a “city, village, school district, township, or county.” MCL 397.171(i).

including the creation of a district library “board,” MCL 397.174(1)(c), 397.172(b), and must be approved by the Michigan Department of Education before becoming operative. MCL 397.175; MCL 397.172(c), (d).⁴ With respect to district libraries established under the former act, 1955 PA 164, the DLEA provided for their reestablishment under the DLEA if the boards of such district libraries submitted organizational plans and revised their board structures to conform to the DLEA by May 22, 1990. MCL 397.176. If the board of a district library complied with those requirements, it would “be considered to be established pursuant to” the DLEA. *Id.* Section 24 of the DLEA, MCL 397.194, placed limitations on a municipality’s ability to withdraw from a district library, including a waiting period and, in most instances, the requirement of obtaining voter approval.

Relevant to your question, the Legislature provided in the DLEA that a “*district library* established pursuant to [the] act constitutes an *authority* under section 6 of article [9] of the state constitution of 1963.” MCL 397.177 (emphasis added).⁵ Thus, in the DLEA the Legislature utilized the “nonapplication provision” of the second paragraph of article 9, § 6 to exclude a “district library,” as an “authority,” from the 15-18-50 mill/20-year limitation set forth in the first paragraph of article 9, § 6. Of course, to do so the Legislature had to ensure that

⁴ As enacted, the DLEA required approval by the “state librarian”; however, those duties were transferred to the Department of Education by Executive Reorganization Order No. 2009-26, and the DLEA was amended to reflect that change by 2015 PA 108.

⁵ The prior act had included similar language, but it was the “*municipalities* which unite for the establishment and operation of a district library” that “constitute[d] an authority under section 6 of article [9].” 1955 PA 164, formerly MCL 397.274a (emphasis added).

“the tax limitations of” a district library “are provided by . . . general law.” Const 1963, art 9, § 6. The Legislature did so in various sections of the DLEA.

In section 12 of the DLEA, the Legislature provided that a district library board has the power to “[p]ropose and levy upon approval of the electors as provided in this act a tax for support of the district library.” MCL 397.182(1)(i). Section 13 provides with respect to a levy that:

(2) All or part of the money necessary for the establishment and operation of a district library may be supplied by a tax levied by the district library on the taxable property in the district. A district library shall not levy a tax authorized by this subsection unless the tax is approved as provided in section 15. . . .

(3) A districtwide tax or taxes authorized by subsection (2) shall not exceed 4 mills.

(4) That portion of the total districtwide tax or taxes that exceeds 2 mills shall be authorized to be levied for a period of not more than 20 years. . . . [MCL 397.183(2)–(4), as amended by 1994 PA 114.]⁶

Under section 13, a district library may levy up to four mills, but any levy over two mills may be authorized only for a period not to exceed 20 years.⁷ The DLEA, however, imposes no durational limit for a levy of two mills or less. This durational distinction based on the total number of mills levied is reflected in section 15, which provides that “[a] ballot proposal for a districtwide tax shall state the amount of the millage. *If section 13(4) limits the maximum duration of a portion*

⁶ In addition to, or instead of, a districtwide millage, the DLEA also authorizes the levy of local millages in the individual participating municipalities. See MCL 397.183(4), (5), and (6).

⁷ The 4-mill cap and the 20-year durational limit for levies over two mills was added to the DLEA by 1994 PA 114.

of the millage in a ballot proposal for a districtwide tax, the ballot proposal shall state the proposed duration of that portion of the millage.” MCL 397.185(1)
(emphasis added).

Thus, for any levy over two mills, the ballot proposal must state the duration of the additional mill or mills sought, not to exceed 20 years. But a ballot proposal seeking two mills or less could—but is not required to—include a durational limit for the levy. In the absence of a durational limit, any levy for two mills or less may be perpetual under the plain language of the DLEA. Here, the district library in question proposed a levy of two mills with no durational limit, and a majority of voters in the district approved the proposal. MCL 397.185(4) (“If a majority of the votes cast on the question of a districtwide tax is in favor of the proposal, the tax levy is authorized.”)

As noted in your request, this office previously issued several opinions interpreting the former district libraries act. But as discussed below, these opinions do not resolve your question regarding the DLEA because the current DLEA includes different language. In OAG, 1979-1980, No. 5506, p 199 (June 12, 1979), Attorney General Frank Kelley opined that district libraries did not constitute authorities for purposes of avoiding application of the 15-18-50 mill/20-year limitation set forth in the first paragraph of article 9, § 6. OAG 5506 concluded that the “nonapplication provision” of the second paragraph of article 9, § 6 did not apply to a district library organized under the former act, 1955 PA 164, because neither that act nor any other general law limited the taxes the district library was

authorized to levy. *Id.* at p 200. The opinion further observed that a district library organized pursuant to the act was not vested with the indicia of an “authority” as that term appears within the context of article 9, § 6; was not empowered to impose a prescribed tax; was not an independent corporate body; and was subject to the discretionary withdrawal of participating governmental units. *Id.* As a result, despite the Legislature’s designation of a district library as an “authority” for purposes of article 9, § 6, the Attorney General opined that “a district library organized under 1955 PA 164, [] is not vested with the indicia of an authority, including a tax limitation provided by law, so as to be exempt from the general taxation limits provided in the first paragraph of Const 1963, art 9, § 6.” *Id.*

In a related opinion issued two years later, OAG, 1981-1982, No. 5866, pp 87, 90-91 (April 7, 1981), Attorney General Kelley determined that the exception in the second paragraph of article 9, § 6 applied to community college districts established under 1955 PA 188, as amended by 1964 PA 237, because the act contained a tax limitation of five mills. The opinion further distinguished community college districts from district libraries created under the former act by stating that, “community college districts are bodies corporate and the boards of community college districts levy a tax rate within the maximum annual tax rates . . . not to exceed the statutory five mill ceiling.” Thus, the opinion ultimately concluded that the 15-18-50 mill/20-year limitation did not apply to community college districts.

In 1987, Attorney General Kelley was asked to opine on the lawful maximum number of years a district library’s tax levy could be effective. That opinion,

OAG, 1987-1988, No. 6433, p 65 (April 20, 1987), reiterated that 20 years is the maximum number of years that a district library may seek voter approval of an operating tax levy consistent with the limitations set forth in article 9, § 6 and the Property Tax Limitation Act. The opinion restated previous determinations that the former district libraries act, 1955 PA 164, did not establish any tax limitations that would exclude district libraries from the 20-year limitation in article 9, § 6.

Later that year, the Michigan Supreme Court held that a district library created under the former act was an “authority” for purposes of the Truth in Taxation Act, 1982 PA 5, MCL 211.24e. See *Jackson Dist Library v Jackson Co*, 428 Mich 371, 376-377 (1987). Although not required to address whether a district library created under the former district libraries act was an “authority” for purposes of article 9, § 6, the Court noted that such district library “authorities” may not qualify as authorities for purposes of article 9, § 6. *Id.* at 379-380, & n 15.

Within two years after OAG 6433 and the Michigan Supreme Court decision, the Legislature repealed 1955 PA 164 and enacted the DLEA. The 1989 legislation addressed the three primary limitations of the former act that Attorney General Kelley had identified as preventing a district library from qualifying as an “authority” under article 9, § 6.

First, as discussed above, the DLEA established the district library board as an entity capable of independently proposing and levying taxes, borrowing money, and issuing bonds. MCL 397.182. Second, the DLEA placed limitations on a

municipality's ability to withdraw from a district library. MCL 397.194. Third, and most importantly, the DLEA placed limitations on the amount of taxes a district library could levy. MCL 397.183. And finally, the Legislature changed the designation of "authority" so that it applies to the "district library" directly rather than to the municipalities that united to form the district library. MCL 397.177. See, e.g., *Capital Area Dist Library v Mich Open Carry, Inc*, 298 Mich App 220, 231-232 (2012) (deeming district libraries established under the DLEA both authorities and quasi-municipal corporations).

Because district libraries are authorities whose tax limitations are now set forth in the law, the exception in the second paragraph of article 9, § 6 applies to district libraries established under the DLEA, MCL 397.176 and 397.177, and the mill and 20-year durational limitations in the first paragraph of article 9, § 6 do not apply. The opinions in OAG 5506 and OAG 6433, which addressed the former act, are superseded with respect to district libraries established or reestablished under the DLEA.

It is my opinion, therefore, that a millage levied by a district library established under the DLEA is not subject to the mill limitations or the 20-year durational limit set forth in article 9, § 6 of the Michigan Constitution. But under section 13 of the DLEA, MCL 397.183, a district library may not levy more than 4

mills and any levy over two mills may be authorized only for a period not to exceed 20 years.⁸

A handwritten signature in black ink, reading "Bill Schuette". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

BILL SCHUETTE
Attorney General

⁸ You have not asked, and thus this opinion does not address, whether a participating municipality or voters in a library district created under the DLEA may seek by referendum or other ballot proposal to refer or otherwise modify an existing millage to include a durational limit.