

(1284)

THE STATE OF ALABAMA,
Baldwin County

CIRCUIT COURT

TO Elaine Robinson

KNOW YE: That we, having full faith in your prudence and competency, have appointed you Commissioner, and by these presents do authorize you, at such time and place as you may appoint, to call before you and examine M. H. Wilkins

as witnesses in behalf of Complainant in a cause pending in our Circuit Court of Baldwin County, of said State, wherein M. H. Wilkins, individually and as Tax Collector of Baldwin County, Alabama is

Complainant
and Baldwin County Board of Education et als are

Defendant

on oath to be by you administered, upon Oral examination
to take and certify the deposition of the witness and return the same to our Court, with all Convenient speed, under your hand.

Witness 21st day of March, 19 .

R. S. Duck
REGISTER

Commissioner's Fee \$ 7.50

Witness' Fees, \$

NO. _____

THE STATE OF ALABAMA

Baldwin County

CIRCUIT COURT

M. H. Wilkins, individually

and as Tax Collector of

Baldwin County, Alabama

Complainant

vs.

Baldwin County Board of

Education, et als.

Defendant

Commission To Take Deposition

COMMISSIONER:

Witnesses:

THE STATE OF ALABAMA }
Baldwin County

Circuit Court of Baldwin County, Alabama.
(In Equity)

M. H. Wilkins, individually and as
Tax Collector of Baldwin County,
Alabama, _____
COMPLAINANT

vs.
Baldwin County Board of
Education, et als, _____
RESPONDENT

I, Elaine Robinson

as ~~Deponent~~ Commissioner _____

have called and caused to come before me M. H. Wilkins

witness _____ named in the requirement for Oral Examination, on the 24th day of March
1945, at the office of H. E. Smith, Attorney At Law

in Bay Minette, Ala., Alabama, and having first sworn said witness _____ to speak the
truth, the whole truth, and nothing but the truth, the said _____

M. H. Wilkins _____ doth depose and say as follows:

My name is M. H. Wilkins. I, individually and as Tax Collector of Baldwin County, Alabama brought and filed in this cause my bill of complaint against the Baldwin County Board of Education and against S. M. Tharp as Superintendent of Education of Baldwin County, Alabama and against E. S. Tunstall of Baldwin County, Alabama.

1. I am over the age of twenty-one years, am a bona fide resident of Baldwin County, Alabama, and am duly qualified and acting, and am incumbent for the present term of office, as Tax Collector of said County and State. Baldwin County Board of Education is a public corporation or body created by local Act of the Legislature of said State and has its office in Bay Minette, Baldwin County, Alabama. The said S. M. Tharp is over the age of twenty-one years, is a resident of Baldwin County, Alabama, and is duly qualified and acting as Superintendent of Education of Baldwin County, Alabama. The said E. S. Tunstall is over the age of twenty-one years, is a resident of Baldwin County, Alabama, and is duly qualified and acting, and is incumbent for the present term of office, as Tax Assessor of Baldwin County, Alabama.

2. The County Commission of Baldwin County, Alabama, on the 6th day of February, 1945, adopted and passed into law so far as this County is concerned a tax levy, a copy of which is hereto attached, marked Exhibit "A", is hereby expressly referred to and made a part hereof as if expressly here set out. The said Commission on the 1st day of February, 1944, adopted and passed into law so far as this County is concerned a tax levy, a copy of which is hereto attached, marked Exhibit "B", is hereby expressly referred to and made a part hereof as is expressly here set out.

Date	Description
1900	...
1901	...
1902	...
1903	...
1904	...
1905	...
1906	...
1907	...
1908	...
1909	...
1910	...
1911	...
1912	...

...

...

...

I, Elaine Robinson ~~Register~~ Commissioner hereby certify

that the foregoing deposition on Oral Examination was taken down in writing by me in the words of

the witness _____ and read over to him and he signed the same in the presence of my-

self and H. E. Smith, Solicitor for Complainant and H. M. Hall, Solicitor for Respondent, E. S. Tunstall

at the time and place herein mentioned; that I have personal knowledge of personal identity of said

witness _____ or had proof made before me of the identity of said witness _____; that I am not of

Counsel or of kin to any of the parties to said cause, or any manner interested in the result thereof.

I enclose the said Oral Examination in an envelope to the Register of said Court.

Given under my hand and seal, this 24th day of March 1945.

Elaine Robinson (L. S.)
Commissioner

No. _____ Page _____

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN CIRCUIT COURT, IN EQUITY

M. H. Williams, Administrator and ad

Jep. Wallace of Baldwin County, Alabama
COMPLAINANT

Baldwin County Board
vs.

Education, et al
RESPONDENT

ORAL DEPOSITION

Filed 3-24, 1945

R. S. Walker, Register.

RECORDED IN

_____ Record

Vol. _____ Page _____

_____, Register

On motion of J. E. Gaston seconded by J. B. Childress, the following tax levy was made by the County Commission for the year ending September 30, 1945;

* * * * *

BE IT FURTHER RESOLVED, that there is hereby levied a tax of two mills on each dollar worth of taxable property or other subjects of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1944 and ending September 30, 1945, as authorized by an Act of the Legislature of Alabama approved February 29, 1901, the same to be used exclusively for public school purposes in accordance with the said act and to be paid over in the manner prescribed or required by law.

* * * * *

STATE OF ALABAMA
BALDWIN COUNTY

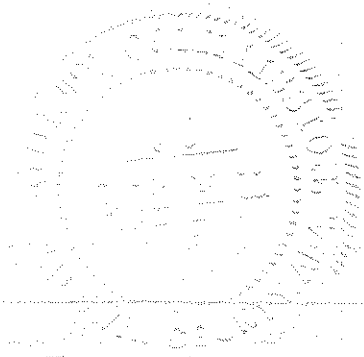
I, G. Mac Humphries, as Clerk of the County Commission of Baldwin County, Alabama, hereby certify that the above and foregoing is a true and correct copy of a resolution in part, as the same appears of record on page 454 of Minute Book 1, Minutes of County Commission Baldwin County, Alabama.

Given under my hand this February 12, 1945.

G. Mac Humphries
Clerk County Commission
Baldwin County Alabama.

EXHIBIT "A"

Elaine Robinson
Commissioner



On motion of J. E. Gaston seconded by J. B. Childress, the following tax levy was made by the County Commission for the year ending September 30, 1944;

* * * * *

BE IT FURTHER RESOLVED, that there is hereby-levied a tax of two mills on each dollar worth of taxable property or other subjects of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1943 and ending September 30, 1944, as authorized by an Act of the Legislature of Alabama approved February 29, 1901, the same to be used exclusively for public school purposes in accordance with the said act and to be paid over in the manner prescribed or required by law.

* * * * *

STATE OF ALABAMA
BALDWIN COUNTY

I, G. Mac Humphries, as Clerk of the County Commission of Baldwin County, Alabama, hereby certify that the above and foregoing is a true and correct copy of a resolution in part, as the same appears of record on page of Minute Book 1, Minutes of County Commission Baldwin County, Alabama.

Given under my hand this February
12, 1945.

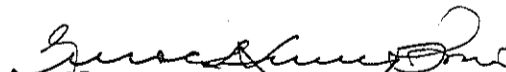

Clerk County Commission
Baldwin County, Alabama

EXHIBIT "B".


Commissioner

M. Hall

July 28, 1941.

Hon. M. H. Wilkins,
Tax Collector,
Baldwin County,
Bay Minette, Alabama.

Baldwin County - Tax Assessor and
Tax Collector - Commissions -

The two-mill tax levied by the Baldwin County governing body under authority of Act No. 609, H. 1167, approved February 28, 1901 (General & Local Acts, 1900-01, page 1446), is not a "collection for the general fund of the State and county," and the commissions of the tax assessor and tax collector are, therefore, not to be paid on a sliding scale basis, but should be calculated on the two per cent basis provided by the General Acts of 1939, pages 466 and 467 (Code 1940, Tit. 51, §§30 and 191).

Opinion by Assistant Attorney General
Loeb.

Dear Sir:

Your request for an official opinion is as follows:

"In 1901 the General Assembly of Alabama passed a law (Local Acts 1900-01, page 1446) as follows:

EXHIBIT "C"

Elaine Robinson
Commissioner

"Section 1. Be it enacted by the General Assembly of Alabama, that the Court of County Commissioners of Baldwin County be, and it is hereby directed and required to levy and have collected for the year 1901 a special school tax of one-half of a mill, and to increase such one-half of a mill each year thereafter until such special tax reaches two mills per annum, and when said special tax reaches two mills per annum, to levy a special school tax of two mills per annum

each year thereafter; provided, that such special tax when added to the assessment for other county purposes shall not exceed the constitutional limit for county taxation; said special tax shall be used only for the support and maintenance of public schools in said county as hereinafter provided.

"Section 2. - - -

"Section 3. Be it further enacted, that it shall be the duty of the tax collector of said county to pay over to the county superintendent of education as herein provided, all school moneys collected by him and on hand for public schools on the first day of November, 1901, and on the first day of each month thereafter, until the same shall have been paid in, showing with each payment what amount is collected from white and what amount from colored tax payers.'

"The Legislature of the State of Alabama, in 1939, passed acts governing the Tax Collector and Tax Assessor's commissions (1939 Acts, pages 466 and 467) providing: ' - - - In counties where collections, not including taxes on real estate bid in by the State at tax sales, and taxes which would be due on property except for the provisions of the presently applicable law exempting homesteads from State taxes, do not exceed \$12,000.00, the rate of commission shall be 10% on the first \$5,000.00, 5% on the next \$4,000.00, and 4% on the remainder. The Commission herein provided for is to be calculated on all collections for the general fund of the State and County. In counties where the collections, not including taxes on real estate bid in by the State at tax sales and taxes which would be due on property except for the provisions of the present applicable law exempting homesteads from State taxes exceed \$12,600.00, the commissions shall be as above declared up to \$12,000.00, and 1½% on the remainder up to \$15,000.00, and 1% on the remainder above \$15,000.00.'

"The said Acts also provide: '- - - He shall also be entitled to receive 2% on all collections made by him on special taxes, whether such special taxes be levied for the State or County, to be paid out of such special taxes. The Tax Collector (and Tax Assessor) shall receive 2% commissions on all Special County or District taxes levied for school purposes.'

"The County Commission of Baldwin County, Alabama, has annually, for each year, made the following levy: 'BE IT RESOLVED, that there is hereby levied by this County Commission for the year commencing October 1, 1939 and ending September 30, 1940, a GENERAL TAX of three (3) mills on each dollar worth of taxable property in Baldwin County, Alabama, and on all other subjects of taxation in the said county as assessed for revenue to the State as shown by Assessment Books for 1939;

"'BE IT FURTHER RESOLVED, that there is hereby levied a tax of two mills on each dollar worth of taxable property, or other subjects of taxation, in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1939 and ending September 30, 1940, as authorized by an Act of the Legislature of Alabama, approved February 28, 1901, the same to be used exclusively for public school purposes in accordance with said Act, and to be paid over in the manner required by law.'

"I have, in accordance with the Act of the Legislature of Alabama, approved February 28, 1901, been collecting the two mill tax and paying the same over to the Superintendent of Education of Baldwin County, Alabama.

"I will appreciate it, very much, if you will, at your earliest convenience, let me have an official opinion on the following questions:

"1. Is the two mill school tax collected by me, as Tax Collector, part of the collections for the general fund of the State and/or County?

Hon. M. H. Wilkins,
Page 4.

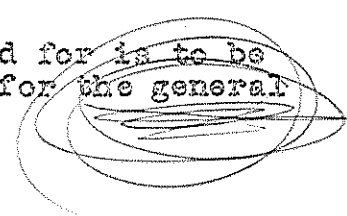
"2. Is the levy made by the County Commission of Baldwin County, Alabama, authorized by the Act of the Legislature of Alabama, approved February 28, 1901, a part of the levy of the County for general purposes?

"3. What commission is the Tax Collector and the Tax Assessor of Baldwin County, Alabama, entitled to on moneys collected on the two mill tax levied by the County Commission of Baldwin County, Alabama, as authorized by the Act of the Legislature of Alabama, approved February 28, 1901, which according to the provisions of said act, is used exclusively for public school purposes, in accordance with said act and is paid over in the manner required by law?"

In an opinion rendered under date of December 6, 1939, to Hon. B. P. Singleton, Chief Examiner of Accounts (Quarterly Report Vol. XVII, page 347), it was held that the two-mill tax levied by Baldwin County for school purposes under Local Acts, 1900-01, page 1446, was to be considered within the five-mill tax levied for general county purposes, and, of consequence, commissions earned thereon should be computed on a sliding scale basis. While reference is made in the opinion to Act No. 325, H. 321, approved August 31, 1939 (General Acts, 1939, page 466), and Act No. 326, H. 322, approved August 31, 1939 (General Acts, 1939, page 467), which acts amended Sections 161 and 22, respectively, of the 1935 Revenue Laws, it does not appear that the full effect of these amendatory acts was given consideration. Accordingly, for the reasons hereinafter set forth, the opinion must be overruled insofar as it concludes that under the 1939 Acts, supra, the commissions of the tax assessor and tax collector on the two-mill levy for school purposes are to be computed on the "sliding scale" basis.

In your letter of inquiry you have set forth the pertinent provisions of Act No. 325 and Act No. 326, supra. In each of the acts I find that there was inserted, by way of amendment, the following provision:

"The commission herein provided for is to be calculated on all collections for the general fund of the state and county."



The "commission" to which reference is made is the commission calculated on the "sliding scale" basis. It must follow, therefore, that the allowance of 2% on collections of "special taxes" applies with respect to collections of all other taxes than those for the general fund of the state and county. Any other line of reasoning would impel the conclusion that the Legislature intended the tax assessor and tax collector to perform services with respect to this tax without compensation. No basis for such a result is to be found in the statutes.

It is apparent, therefore, that the Legislature, by amending Sections 22 and 161 of the 1955 Revenue Law, has specifically defined the taxes, upon which the tax collector and tax assessor shall be entitled to two per cent commission, as being all taxes other than those collected for the general fund of the state or county. Act No. 325, and Act No. 326 appear in the Code of 1940, as §§191 and 30 of Tit. 51, respectively.

Since, to determine whether the tax collector and tax assessor are entitled to commissions on a sliding scale or upon a flat two per cent basis it is necessary to determine whether such taxes are collected for the general fund of the state and county, it becomes necessary to consider the character and disposition of the special school tax levied by your county.

The requirement that Baldwin County levy a special school tax is found in Act No. 609, H. 1167, approved February 28, 1901 (General & Local Acts 1900-01, page 1446). The pertinent provisions of this act are quoted in your letter of inquiry, and will not again be set out. Suffice it to say that it is provided by Section 3 of the act that "it shall be the duty of the tax collector of said county to pay over to the county superintendent of education, as herein provided, all school monies collected by him * * * on the first day of each month * * *."

In Section 5 it is provided that the superintendent of education "shall keep the apportionment and disbursement of the county school money separate from the state school funds."

Act No. 609, supra, was considered in the opinion in Vol. XVII, page 347, it there being held that the act was constitutional, valid and now in operation.

It is my opinion that the taxes required to be levied by Act No. 609, supra, will not, when collected, go to the general fund of the state or county. This conclusion seems obvious in view of the specific direction of Act No. 609, supra, that such taxes shall be paid to the county superintendent of education.

Hon. M. H. Wilkins,
Page 6.

Since the collections will not be for the general fund of the state or county, the tax assessor and tax collector should receive a flat two per cent commission thereon, rather than a commission calculated by the "sliding scale" provided for in Act No. 325 and Act No. 326, supra.

Yours very truly,

Thos. S. Lawson,
Attorney General.

WEL:VH

September 20, 1944

Hon. Ben F. Singleton
Chief Examiner of Public Accounts
C A P I P O I

Code 1940, Tit. 51, §§ 30, 191 -
Tax Assessor's and Collector's
Commissions - Special Taxes created
by Local Act - Constitution, 1901,
§§ 104(15), 215 -

So-called special taxes authorized
by local act to be levied by counties
from the five mills permitted to be
levied under the Constitution, 1901,
§ 215, are legislative appropriations
from the counties' general fund, and
not special taxes within Code 1940,
Tit. 51, §§ 30 and 191 on which tax
assessors' and collectors' commissions
are calculated at the rate of two per
cent.

Opinion of Attorney General, Quarterly
Reports, Vol. 24, p. 102 overruled.

Opinion by Assistant Attorney General
Matthews.

Dear Sir:

I have your letter of August 28 reading as follows:

"Please refer to your Opinions on pages 61
and 347 of Volume 17, page 102, Volume 24,
and your Opinion of August 1, 1944, addressed
to Mr. M. Lawrence, Field Supervisor of
Accounts, in answer to Mr. Lawrence's request
Number 411.
9/1

EXHIBIT "D"

Elaine Robinson
Commissioner

"From a reading of the above four opinions you will see that the one on page 102 of Volume 24 reaches a different conclusion from that reached in the other three. The letter to Mr. Lawrence dealt with commissions of the Tax Assessor and the Tax Collector in Escambia County. As a matter of fact, Conecuh, Escambia, and Baldwin Counties each have special laws dealing with the allocation of the general Tax Levy of 5 mills authorized by Section 215 of the 1901 State Constitution.

"In the light of the fact that the Opinion in Volume 24, differs with the other opinions, I should like your specific consideration as to whether or not the Volume 24 Opinion now controls, insofar as your Office is concerned, in the light of the two previous Opinions above mentioned and your Opinion under date of August 1, 1944."

The opinion above referred to, in Quarterly Reports, Attorney General, Vol. 24, p. 102, rendered July 28, 1941, to Hon. M. E. Wilkins, Tax Collector of Baldwin County, in effect discredited and overruled the two opinions in Vol. 17, pp. 61 and 347. It was based upon the fact that there had been inserted by way of amendment of the general law as to commissions of tax assessors and collectors, with reference to "sliding-scale" commissions a sentence reading as follows:

"The commission herein provided for is, to be calculated on all collections for the general fund of the State and County."

From this the deduction was made that as to all other collections, including so-called "special taxes" created by local law out of the five mills referred to in Section 215 of the Constitution, the flat two per cent commission would apply.

The general trend of decision in the Supreme Court would seem to indicate that such so-called "special taxes" created by local act and taken and set aside in special funds,

out of the five-mill limitation under the Constitution, are merely legislative appropriations, or "allocations" out of the "constitutional limit of one-half of one per cent authorized to be levied by the county for general purposes." Comm'rs. Court v. City of Anniston, 176 Ala. 605, 58 So. 252; Board of Revenue v. State ex Rel City of Birmingham, 177 Ala. 138, 54 So. 757; So. Ry. Co. v. St. Clair County, 124 Ala. 481, 27 So. 23; Francis v. So. Ry. Co., 124 Ala. 544, 27 So. 22.

Thus, it would seem that for many years, both legislatively and judicially, it has been considered that the 5-mills ordinarily levied and authorized as a limit of county taxation, except for the 2½ mill road, bridge and building special tax, and special county wide and district school taxes, is a levy for general purposes, although the legislature may authorize or direct application of parts thereof to "special" purposes and to the creation of "special funds."

Only on this theory may the validity of such taxes be sustained. If the legislature by local act should undertake to direct assessment and collection of such taxes in a manner at variance with general law, the attempt would be abortive under subdivision 15 of Section 104 of the Constitution which forbids local legislation "regulating either the assessment or collection of taxes" except in cases not material here.

With reference to said Subdivision 15 it has been said that it is "aimed at local legislation tending to confuse the authorities in the administration of the elaborate system of laws regulating the assessment and collection of taxes." Sisk v. Cargile, 138 Ala. 164, 172.

In Bridges v. McWilliams, 228 Ala. 135, 137, 152 So. 457, it was said:

"The dominating purpose of section 104 of the Constitution was to destroy the practice of 'legislative courtesy' in the enactment of legislation on the subjects enumerated therein; and to compel the enactment of general laws covering these subjects, providing a uniform system applicable to the state as a whole, in respect to the agencies provided for the assessment and collection of taxes."

Hon. Ben F. Singleton

Page 4

If the legislature by local act may designate as special taxes various fractions or parts of the five mills permitted under Section 215 of the Constitution, there would seem to be no good reason why in certain counties it could not so designate the entire five mills ordinarily levied for general purposes and in that case under the reasoning indulged in our opinion in Volume 24, p. 102 of the Quarterly Reports, the effect would be to create by local Act a scheme for assessment and collection in violation of the Constitution.

Moreover, in my opinion, in framing the legislation as to commissions payable to tax assessors and collectors (Code 1940, Tit. 51, §§ 30, 191) and fixing a flat rate of two per cent on "special taxes" and "special county and district school taxes levied for school purposes," the legislature, aside from the school taxes, had in mind only the special road, bridge and building tax permitted under section 215 of the Constitution. If it had intended the flat rate to apply to the type of so-called special taxes created by local act in the counties of Conecuh, Escambia and Baldwin, that situation could have been easily provided for and clarified by the use of a few apt words.

I am of opinion, therefore, that the two opinions in Volume 17 of the Quarterly Reports to which you refer should be followed in the matter of computing commissions for tax assessors and collectors, and that the opinion in Volume 24 should be withdrawn as ill advised.

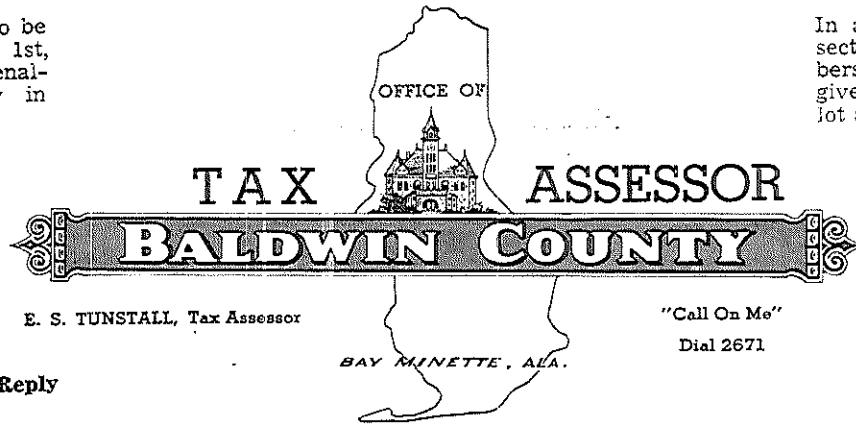
Yours very truly

William N. McQueen
Acting Attorney General

JFM:fw

Law requires assessments to be made each year. October 1st, January 1st. 10 per cent penalty accrues third Monday in January.

In asking for information give section, township, range numbers. For town or city property give name of sub-division and lot and block numbers.



Enclose Postage For Reply

February 7, 1945

Hon. M. H. Wilkins
Tax Collector
Baldwin County
Bay Minette, Alabama

Dear Mr. Wilkins:-

You have, for the past several years, been collecting the Special School Tax as provided by the Local Act of the Legislature of 1901 and the Annual Special Levy of the County Commission, and paying over to me the commission of two percent as provided by the 1901 Act.

You have, for the current year, held out the commission in favor of the opinion of the Attorney General, released as of September 20, 1944. I am of the conclusion that the Special School Tax is a Special Tax and that I am entitled to two percent straight commission.

I will appreciate it and this is my demand upon you to pay over to me the amount now held by you, and being two percent of the amount collected by you under the Local Act of 1901 and the levy as made by the County Commission.

Yours very truly,

E. S. Tunstall,
Tax Assessor.

EST;b

EXHIBIT " E "

Commissioner

MEMORANDUM BRIEF
DEFINING "SPECIAL TAXES"

"No county in this State shall be authorized to levy a larger rate of taxation, in any one year, on the value of the taxable property therein, than one-half of one per centum; * * *"
Art. XI, Sec. 5, Const.
1875.

"No county in this State shall be authorized to levy a larger rate of taxation, in any one year, on the value of the taxable property therein, than one-half of one per centum; * * *"
Section 215, Const. 1901.

"...Section 6. The said Commission shall have the duty, power, jurisdiction, authority and privilege;... to levy a general tax, for general, and a special tax, for special county purposes, according to the provisions of the laws of Alabama; ..."
Local Acts 1931 at p.103.

"Section 1. Be it enacted by the General Assembly of Alabama, That the court of county commissioners of Baldwin County be, and it is hereby directed and required to levy and have collected for the year 1901 a special school tax of one-half of a mill, and to increase such tax one-half of a mill each year thereafter until such special tax reaches two mills per annum, and when said special tax reaches two mills per annum, to levy a special school tax of two mills per annum each year thereafter; provided, that such special tax when added to the assessment for other county purposes shall not exceed the constitutional limit for county taxation; said special tax shall be used only for the support and maintenance of public schools in said county as hereinafter provided.

Section 2. (Duty of State Superintendent)

Section 3. Be it further enacted, that it shall be the duty of the tax collector of said county to pay over to the county superintendent of education as herein provided, all school moneys collected by him and on hand for public schools on the first day of November, 1901, and on the first day of each month thereafter, until the same shall have been paid in, showing with each payment, what amount is collected from white and what amount from colored tax payers.

Section 4. (School Districts)

Section 5. (County Superintendent and Board; duties)

Section 6. (Duties of Board)

Section 7. (Compensation of Superintendent)

Section 8. (Of members of Board)

Section 9. (Repeal and Proviso)..."

Local Acts 1900-01 p.1446.

"BE IT FURTHER RESOLVED, That there is hereby levied a tax of two(2) mills on each dollar of taxable property or other subjects

of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officers for the year commencing October 1, 1938 and ending September 30, 1939, as authorized by an Act of the Legislature of Alabama approved February 28, 1901, the same to be used exclusively for public school purposes in accordance with said act, and to be paid over in the manner required by law."

Tax Levy Baldwin County Commission.

"The eleventh article of the constitution is devoted to the subject of taxation, and as was observed by Somerville, J., in *Hare v. Kennerly*, 83 Ala. 608-611, 3 South, 683, its several provisions "are not grants of power to levy taxes, but limitations upon that taxing power, which has always been inherent in the state, and vested in the legislative branch of the state government, which is the depository of all authority on the subject." And in exposition of the article it was observed: "It fully recognizes three classes of taxes on property, and three distinct systems of taxation: (1) State taxes, levied for state purposes, and commensurate with the entire limits of the state; (2) county taxes, levied on property, and subjects of taxation in the county, for county purposes; and (3) municipal taxes authorized by law to be levied for municipal purposes." The fifth section of the article is devoted to county taxation, and the first clause prohibits the grant to a county of authority "to levy a larger rate of taxation in any one year, on the value of the taxable property therein, than one-half of one per centum." The prohibition by its terms, is a limitation or restraint of legislative power, and not of power residing in the county. Counties are involuntary political or civil divisions of the state, created by statute, to aid in the administration of government. Whatever of power they may possess, or whatever of duty may develop upon them, originates in and is derived from legislation. They have no inherent power of taxation, nor are they by the constitution invested with such power. All the constitution contemplates is the legislative delegation of such power; and the statutes have delegated the power to the court of county commissioners the agency by which all the powers of the county are exercised. Code 1896, Sections 958, 3985. A fallacy of the argument of counsel, fatal to it, lies in the supposition that the constitution grants to a county power of taxation, and that the power of taxation which legislation may delegate to them is in any proper sense a constitutional power. It is power derived from legislation, and may be withheld or changed or modified at legislative discretion, no element of contract with third persons intervening, compelling a levy and appropriation of taxes. *Edwards v. Williamson*, 70 Ala. 145."

State v. Street, 117 Ala. 203,
23 So. 807.

"State taxes are not levied under the law, but by the law.... Only county taxes are levied under the law."

Calhoun Co. v. Woodstock...Co.
82 Ala. 157
2 So. 132.

"GENERAL AND SPECIAL TAXES. Taxes, with respect to the purposes for which they are levied, are also designated as "general," that is, taxes which are imposed throughout the state or some civil division thereof, for the purpose of raising revenue for the support of the government and for general purposes, and which are levied on the ground of general public benefits, or as "special," that is, taxes which are levied for a special or local purpose for the benefit of a part only of the body politic, and which rest upon the supposition that a portion of the public is specially benefitted in the increase of value to the persons against whom the tax is levied."

61 C. J. p. 75.

"...His compensation, as specified in section 401 of the Code, is for these services. It is in the form of a percentage, or rate of commission, on the amount of taxes received by the tax collector for the state, and also the like rate of commission "upon the amount of the county taxes." lb. c. 401. We are of opinion that this means the amount of general taxes, or such as are levied and collected for the ordinary current expenses of the county. It can not be construed to include special taxes, or such as are levied for specific or particular purposes...."

East et al. vs. Eichelberger.

69 Ala. 187.

"GENERAL. . . .Comprehending the whole, or directed to the whole; as distinguished from anything applying to or designed for a portion only. . . ."

Black's Law Dictionary, p. 533-4.

"SPECIAL. Relating to or designating a species, kind, or sort; designed for a particular purpose; confined to a particular purpose, object, person, or class. The opposite of "general".

Black's Law Dictionary, p. 1109.

As before indicated, the court of county commissioners exercised the authority conferred by section 215 of the constitution to levy a special tax of one-fourth of one per centum, to raise a special road and bridge fund, which that body undertook to pledge to the payment of such annually maturing legal obligations of the county, assumed under the contracts heretofore mentioned, and issued interest-bearing warrants which were received by the contractors in payment for the work severally done by them under their respective contracts with the county. The pledge of the funds annually produced by the special tax levied for the particular purpose of affording a fund to meet the annually maturing obligations imposed by these contracts of the county were valid and binding when made (Board of Revenue vs. Farson, 197 Ala. 375, 379, 72 South, 613, 615, L. R. A. 1918B, 881; Littlejohn vs. Littlejohn, *supra*), to the extent that such contracts, in order of their making, did not exceed the debt limit fixed in section 224 of the Constitution, as that section of the organic law has been interpreted in Hagan vs. Com'rs, 160 Ala. 544, 49 South, 417, 37 L. R. A. (N.S.) 1027, and Gunter vs. Hackworth, 182 Ala. 205, 62 South 101, among others.

In construing a similar tax, our Supreme Court through Judge Tyson, says in the last paragraph of the decision as follows:

"... The act authorizing the levy of the special tax for school purposes is constitutional, ... Southern Railway Company vs. St. Clair Co. 27 So. 23..."

Ala. G. S. R. Co...vs. Reed,
Tax Collector, 27 So. 19.
124 Ala. 253.

In other words, in classifying such a tax, the Supreme Court has designated the same as a special tax.

The legislative act itself, that is, Local Act 1900-C1, page 1446, defines the tax twice as a "special school tax", and twice as a "special tax". This designation, if not conclusive, is at least highly persuasive.

Section 22 and 161 of Act No. 326, (General Acts, 1939) approved August 31, 1939, and Act No. 325 (General Acts, 1939) approved August 31, 1939, fix the commissions of the Tax Assessor and Tax Collector, respectively, as follows:

FIRST: The "sliding scale", a portion of which reads "... The commission herein provided for is to be calculated on all collections for the general fund of the State and County..."

SECOND: "...two per cent on all collections made by the tax collector of special taxes, whether such taxes be levied for the State or County..."

THIRD: "... two per cent on all special County or district taxes levied for school purposes..."

The operation of the "sliding scale" as to such commissions is therefore restricted to "collections for the general fund of the State and County".

By Section 1 of Act No. 609, H. 1167, approved February 28, 1901 (Acts 1900-1901, page 1446) the levy is directed and required to be made and collected as "a special school tax", to "... be used only for the support and maintenance of public schools in said county..." and Section 3 of said Act requires "... that it shall be the duty of the tax collector of said county to pay over to the county superintendent of education... all schools moneys collected by him..." We therefore submit that the collection of this two mill tax is not a collection for the general fund either of the State or of the County, but that said tax is "a special county tax levied for school purposes", and that the Tax Collector and Tax Assessor of this County are entitled to receive as commission a flat two per cent on the collection thereof.

In closing, attention is again called to the Legislative delegation of power of taxation to the Baldwin County Commission, namely: "... to levy general taxes for general, and special taxes for special county purposes..." (Local Acts Alabama 1931 at page 103).

Respectfully yours,

F. E. Smith

HES/ner

M. H. Wilkins, individually.....
Complainant,
VS.
Baldwin County Board of Education
et als. Respondent.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA,
IN EQUITY.

NO.....

DEMAND FOR ORAL EXAMINATION.

COMES the Complainant, by attorney, and represents to the Court as follows:

1. That the following named witnesses reside within one hundred miles from
Bay Minette,, in the County of Baldwin

Alabama, the place of trial of said cause, to-wit:.....

M. H. Wilkins, Complainant

2. That said complainant requires an oral examination of said witnesses before a commissioner appointed by the Register of this Court.

H. E. Smith

Solicitor for Complainant.

NOTE:

Complainant suggests the name of Elaine Robinson.....

as a suitable and competent person to act as commissioner upon the examination of said witnesses.

H. E. Smith

Solicitor for Complainant.

BT-6-40-500

DEMAND FOR ORAL EXAMINATION.

.....M. H. Wilkins, individually
and as Tax Complainant,
Collector of Baldwin County, Alabama

Vs.

.....Baldwin County Board of
Education, et als. Respondent.

IN THE CIRCUIT COURT OF BALDWIN
COUNTY, ALABAMA—IN EQUITY.

Filed this 24 day of March,

1943.....

.....Ps. Welch
Register.

RECORDED

M. H. Wilkins, individually and as
Tax Collector of Baldwin County,
Alabama, Complainant.

VS.

Baldwin County Board of Education;
et als.

THE STATE OF ALABAMA,
BALDWIN COUNTY

IN EQUITY
CIRCUIT COURT OF BALDWIN COUNTY

This cause is submitted in behalf of Complainant upon the original Bill of Complaint, _____

Decree pro confesso on personal Service against
Baldwin County Board Of Education and S. M. Tharp, as Superintendent
Of Education of Baldwin County, Alabama, Answer of E. S. Tunstall
as Tax Assessor of Baldwin County, Alabama, and Oral Deposition
of M. H. Wilkins, complainant

and in behalf of Defendant upon None

H. E. Smith
Solicitor for Complt.

R. S. Shuck Register.

No. _____

The State of Alabama,
BALDWIN COUNTY

IN EQUITY

CIRCUIT COURT OF BALDWIN COUNTY

M. H. Wilkins, individually

and as Tax collector of

Baldwin County, Alabama
VS.

Baldwin County Board of

Education, et als,

NOTE OF TESTIMONY

Filed in Open Court this 24

day of March 1945

R. S. Luck
Register.

1284

of the ...
in the ...
from the ...
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Filed

3-24-45

R.S. Lucke

By Mrs. R.S. Lucke
D.C.

RECORDED

M. H. Wilkins, individually and
as Tax Collector of Baldwin
County, Alabama,
Complainant,

vs.

Baldwin County Board of Education;
S. M. Tharp, as Superintendent
of Education of Baldwin County,
Alabama, and E. S. Tunstall, as
Tax Assessor of Baldwin County,
Alabama,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

IN EQUITY

DECREE

This cause coming on to be heard on the Original Bill of Complaint, Decree Pro Confesso on Personal Service against Baldwin County Board of Education and S. M. Tharp as Superintendent of Education of Baldwin County, Alabama, answer of E. S. Tunstall as Tax Assessor of Baldwin County, Alabama, and testimony as noted by the Register, the Court is of the opinion that the Complainant is entitled to relief, whereupon,

IT IS ORDERED, ADJUDGED, DECREED AND DECLARED by the Court that the two-mill tax levied by the County Commission of Baldwin County, Alabama, on February 1, 1944 and the two-mill tax levied by said Commission on February 6, 1945, and assessed by E. S. Tunstall as Tax Assessor of Baldwin County, Alabama, and collected and to be collected by M. H. Wilkins as Tax Collector of Baldwin County, Alabama, are, and are hereby declared to be, special county taxes levied, assessed and collected exclusively for school purposes.

IT IS FURTHER ORDERED, ADJUDGED, DECREED AND DECLARED by the court that the respondent, E. S. Tunstall as Tax Assessor of Baldwin County, Alabama, have and recover of M. H. Wilkins as Tax Collector of Baldwin County, Alabama, two percent commissions on the said special county school taxes and that the complainant, the said M. H. Wilkins, have and retain for his own account two percent commissions on the said special county school taxes.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that complainant, the said M. H. Wilkins, pay the costs of this cause, for which let execution issue.

DONE this the ^{5th} day of March, 1945.


Judge.

THE STATE OF ALABAMA,
COUNTY OF BALDWIN.

JOHN W. WILKINS, Sheriff,
Baldwin County, Alabama.

VS.
BALDWIN COUNTY BOARD OF
EDUCATION, et al.

COMPLAINT

That the undersigned, JOHN W. WILKINS, Sheriff of Baldwin County, Alabama, do hereby certify that the following is a true and correct copy of the original complaint filed in the office of the Clerk of the Court of Baldwin County, Alabama, on the 1st day of January, 1911, to-wit:

That the undersigned, JOHN W. WILKINS, Sheriff of Baldwin County, Alabama, do hereby certify that the following is a true and correct copy of the original complaint filed in the office of the Clerk of the Court of Baldwin County, Alabama, on the 1st day of January, 1911, to-wit:

That the undersigned, JOHN W. WILKINS, Sheriff of Baldwin County, Alabama, do hereby certify that the following is a true and correct copy of the original complaint filed in the office of the Clerk of the Court of Baldwin County, Alabama, on the 1st day of January, 1911, to-wit:

That the undersigned, JOHN W. WILKINS, Sheriff of Baldwin County, Alabama, do hereby certify that the following is a true and correct copy of the original complaint filed in the office of the Clerk of the Court of Baldwin County, Alabama, on the 1st day of January, 1911, to-wit:



M. H. Wilkins, individually
and as Tax Collector of
Baldwin County, Alabama
Complainant

Baldwin County Board of
Education, et als.

Defendant

M. H. Wilkins, individually
Complainant, *etc*

In the Circuit Court.

Vs.

Baldwin County Board of Educa-
tion, et als. Respondent.

In Equity No. _____.

DECREE PRO CONFESSO ON PERSONAL SERVICE.

In this cause, it appears to the Register, that service was had on the Respondent Baldwin
County Board of Education And S. M. Tharp as Superintendent of
Education of Baldwin County, Alabama

by the Sheriff of Baldwin County, on the 20th day of February,
194_____.

And it further appears to the Register, that the said Baldwin County Board of
Education and S. M. Tharp as Superintendent of Education of
Baldwin County, Alabama.

_____, the Respondent, having to the date hereof,
failed to plead, demur to or answer the Bill of Complaint filed in this cause, it is now, therefore,

on motion of H. E. Smith, Solicitors

for Complainant, ordered, and decreed by the Register that the Bill of Complaint in this cause be,

and it hereby is, in all things taken as confessed against the said Baldwin County Board

of Education and S.M. Tharp, as Superintendent of Education of Baldwin
County, Alabama

This 21st day of March, 194 5.

R. S. Luck
Register.

No. _____

**CIRCUIT COURT OF
BALDWIN COUNTY,
ALABAMA.
IN EQUITY**

M. H. Wilkins, individually

and as Tax Collector of Baldwin
County, Alabama Complainant,

Vs.

Baldwin County Board of

Education , et als.

Respondent.

**DECREE PRO CONFESSO ON
PERSONAL SERVICE.**

Issued this 21 day of March,
1946TH.

R.S. Luck

Register.

Baldwin Times Print

RECORDED

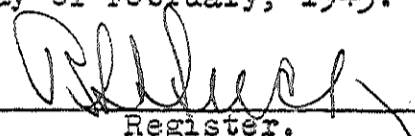
STATE OF ALABAMA,)
BALDWIN COUNTY.)

IN THE CIRCUIT COURT. IN EQUITY.

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby com-
manded to summon Baldwin County Board of Education; S. M. Tharp,
as Superintendent of Education of Baldwin County, Alabama; and
E. S. Tunstall, as Tax Assessor of Baldwin County, Alabama; and
each of them, to be and appear in this Court within thirty days
after service hereof and there to answer, plead or demur to a
bill of complaint, hereto annexed, filed in this Court against
them by M. H. Wilkins, individually and as Tax Collector of
Baldwin County, Alabama. And you are further commanded to make
return of this writ with your endorsement thereon to our said
Court in accordance with law.

WITNESS my hand this 20th day of February, 1945.



Register.

TO THE HONORABLE F. W. HARE, JUDGE OF SAID COURT:

Comes your orator, M. H. Wilkins, individually and as Tax
Collector of Baldwin County, Alabama, and brings this his bill
of complaint against the Baldwin County Board of Education, and
against S. M. Tharp, as Superintendent of Education of Baldwin
County, Alabama, and against E. S. Tunstall, as Tax Assessor of
Baldwin County, Alabama, and respectfully alleges and represents
unto your Honor and the Court as follows:

1. Orator is over the age of twenty-one years, is a bona
fide resident of Baldwin County, Alabama, and is duly qualified
and acting, and is incumbent for the present term of office, as
Tax Collector of said County and State. Baldwin County Board of
Education is a public corporation or body created by Local Act
of the Legislature of said State and has its office in Bay Mi-
nette, Baldwin County, Alabama. The said S. M. Tharp is over the
age of twenty-one years, is a resident of Baldwin County, Alabama,
and is duly qualified and acting as Superintendent of Education
of Baldwin County, Alabama. The said E. S. Tunstall is over the
age of twenty-one years, is a resident of Baldwin County, Alabama,
and is duly qualified and acting, and is incumbent for the present
term of office, as Tax Assessor of Baldwin County, Alabama.

2. The County Commission of Baldwin County, Alabama, on the
6th day of February, 1945, adopted and passed into law so far as
this County is concerned a tax levy, a copy of which is hereto at-
tached, marked Exhibit "A", is hereby expressly referred to and
made a part hereof as if expressly here set out. The said Com-
mission on the 1st day of February, 1944, adopted and passed into
law so far as this County is concerned a tax levy, a copy of which
is hereto attached, marked Exhibit "B", is hereby expressly refer-
red to and made a part hereof as is expressly here set out.

3. The said levies were made under and pursuant to Local
Acts of Alabama 1900-01 page 1446. The said County Commission was
created under Local Acts of Alabama. The respondent, Baldwin Coun-
ty Board of Education was also created under Local Acts of Alabama.
All of said laws and the said levies are constitutional and valid
under the laws and Constitution of the State of Alabama.

4. On, to-wit: August 6th, 1941, orator received from the office of the Attorney General of Alabama Exhibit "C", a copy of which is hereto attached, hereby expressly referred to and made a part hereof as if here fully set out.

5. On, to-wit: September 27th, 1944, orator received from the office of the Attorney General of Alabama Exhibit "D", a copy of which is hereto attached, hereby expressly referred to and made a part hereof as if here fully set out.

6. The said E. S. Tunstall has made demand on orator for the payment to him of the balance of his commissions due him for assessments of property under Exhibit "B", stating that he was and is due commissions for said services at the rate of two per cent on the amount or amounts assessed and collected under said levy instead of at the rate of one per cent as orator, by virtue of Exhibit "D", had paid to said E. S. Tunstall as such Tax Assessor. The said E. S. Tunstall has also made demand that orator pay him in future on both Exhibits "A" and "B" for his commissions on amounts collected and assessed thereunder at the rate of two per cent instead of at the rate of one per cent. A copy of the said demand is hereto attached and marked Exhibit "E", hereby expressly referred to and made a part hereof as if fully here set out. Orator alleges and so states that he, orator, is entitled to retain as and for orator's own commissions on the collection of the said special tax two per cent of the amount collected under and by virtue of said levies instead of one per cent. Orator further alleges that the assessment and collection of the taxes due by said levies is not a collection for the general fund of the state or county but is a special tax levied, assessed and collected for school purposes and paid over by orator to said Baldwin County Board of Education.

7. Orator, the said E. S. Tunstall and other respondents are the only parties who have, or could have, and claim, or could claim, any interest in this proceeding.

8. Orator has retained in his official account all amounts of money due or that might be due to anyone in this proceeding.

9. Therefore, orator alleges that it is necessary that the Court declare and define the rights and status of orator and the respondents under the allegations hereof.

WHEREFORE, the premises considered, orator prays that the said Baldwin County Board of Education, the said S. M. Tharp as Superintendent of Education of Baldwin County, Alabama, and the said E. S. Tunstall as Tax Assessor of Baldwin County, Alabama, be made parties respondent to this his bill of complaint and that due process of law forthwith issue from this Court for service upon them and each of them. And orator further prays that upon the final hearing hereof your Honor and the Court will adjudge, declare and decree that the said E. S. Tunstall as such Tax Assessor is entitled to receive from orator two per cent commissions of and for the assessment of taxes assessed and that orator is entitled to retain for his own account two per cent commissions of and for taxes collected under and by virtue of the special tax levies described in Exhibits "A" and "B" hereto attached and that said commissions continue so long as said levies are made and passed by the County Commission of Baldwin County, Alabama; and orator prays for such other, further and different relief, orders, judgments and decrees as he may be entitled to, the premises considered, etc.

H. E. Smith
Solicitor for Orator.

* * * * *

BE IT FURTHER RESOLVED, that there is hereby levied a tax of two mills on each dollar's worth of taxable property or other subjects of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1944 and ending September 30, 1945, as authorized by an Act of the Legislature of Alabama approved February 29, 1901, the same to be used exclusively for public school purposes in accordance with the said act and to be paid over in the manner prescribed or required by law.

* * * * *

EXHIBIT "A".

* * * * *

BE IT FURTHER RESOLVED, that there is hereby levied a tax of two mills on each dollar's worth of taxable property or other subjects of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1943 and ending September 30, 1944, as authorized by an Act of the Legislature of Alabama approved February 29, 1901, the same to be used exclusively for public school purposes in accordance with the said Act and to be paid over in the manner prescribed or required by law.

* * * * *

EXHIBIT "B".

July 28, 1941.

Hon. M. H. Wilkins,
Tax Collector,
Baldwin County,
Bay Minette, Alabama.

Baldwin County-Tax Assessor and Tax Collector-Commissions

The two-mill tax levied by the Baldwin County governing body under authority of Act No. 609, H. 1167, approved February 28, 1901 (General & Local Acts, 1900-C1, page 1446), is not a "collection for the general fund of the State and county," and the commissions of the tax assessor and tax collector are, therefore, not to be paid on a sliding scale basis, but should be calculated on the two per cent basis provided by the General Acts of 1939, pages 466 and 467 (Code 1940 Tit. 51, Sec. 30 and 191).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

Your request for an official opinion is as follows:

"In 1901 the General Assembly of Alabama passed a law (Local Acts 1900-C1, page 1446) as follows:

"Section 1. Be it enacted by the General Assembly of Alabama, that the Court of County Commissioners of Baldwin County be, and it is hereby directed and required to levy and have collected for the year 1901 a special school tax of one-half of a mill, and to increase such one-half of a mill each year thereafter until such special tax reaches two mills per annum, and when said special tax reaches two mills per annum, to levy a special school tax of two mills per annum each year thereafter; provided, that such special tax when added to the assessment for other county purposes shall not exceed the constitutional limit for county taxation; said special tax shall be used only for the support and maintenance of public schools in said county as hereinafter provided.

"Section 2. - - - -

"Section 3. Be it further enacted, that it shall be the duty of the tax collector of said county to pay over to the county superintendent of education as herein provided, all school moneys collected by him and on hand for public schools on the first day of November, 1901, and on the first day of each month thereafter, until the same shall have been paid in, showing with each payment what amount is collected from white and what amount from colored tax payers."

"The Legislature of the State of Alabama, in 1939, passed acts governing the Tax Collector and Tax Assessor's commissions (1939 Acts, pages 466 and 467) providing: - - - In counties where collections, not including taxes on real estate bid in by the State at tax sales, and taxes which would be due on property except for the provisions of the presently applicable law exempting homesteads from State taxes, do not exceed \$12,000.00, the rate of commission shall be 10% on the first \$5,000.00, 5% on the next \$4,000.00, and 4% on the remainder. The Commission herein provided for is to be calculated on all collections for the general fund of the State and County. In counties where the collections, not including taxes on real estate bid in by the State at tax sales and taxes which would be due on property except for the provisions of the present applicable law exempting homesteads from State taxes exceed \$12,000.00, the commissions shall be as above declared up to \$12,000.00, and 1½% on the remainder up to \$15,000.00, and 1% on the remainder above \$15,000.00."

"The said Acts also provide: - - - He shall also be entitled to receive 2% on all collections made by him on special taxes, whether

such special taxes be levied for the State or County, to be paid out of such special taxes. The Tax Collector (and Tax Assessor) shall receive 2% commissions on all Special County or District taxes levied for school purposes.'

"The County Commission of Baldwin County, Alabama, has annually, for each year, made the following levy: 'Be It Resolved, that there is hereby levied by this County Commission for the year commencing October 1, 1939 and ending September 29, 1940, a GENERAL TAX of three (3) mills on each dollar worth of taxable property in Baldwin County, Alabama, and on all other subjects of taxation in the said county as assessed for revenue to the State as shown by Assessment Books for 1939;

"BE IT FURTHER RESOLVED, that there is hereby levied a tax of two mills on each dollar worth of taxable property, or other subjects of taxation in Baldwin County, Alabama, as the same is assessed for taxes by proper officials for the year commencing October 1, 1939 and ending September 30, 1940, as authorized by an Act of the Legislature of Alabama, approved February 28, 1931, the same to be used exclusively for public school purposes in accordance with said Act, and to be paid over in the manner required by law;

"I have, in accordance with the Act of the Legislature of Alabama, approved February 28, 1901, been collecting the two mill tax and paying the same over to the Superintendent of Education of Baldwin County, Alabama. I will appreciate it, very much, if you will, at your earliest convenience, let me have an official opinion on the following questions:

"1. Is the two mill school tax collected by me, as Tax Collector, part of the collections for the general fund of the State and/or County?

"2. Is the levy made by the County Commission of Baldwin County, Alabama, authorized by the Act of the Legislature of Alabama, approved February 28, 1901, a part of the levy of the County for general purposes?

"3. What commission is the Tax Collector and the Tax Assessor of Baldwin County, Alabama, entitled to on moneys collected on the two mill tax levied by the County Commission of Baldwin County, Alabama, as authorized by the Act of the Legislature of Alabama, approved February 28, 1901, which according to the provisions of said act, is used exclusively for public school purposes, in accordance with said act and is paid over in the manner required by law?"

In an opinion rendered under date of December 6, 1939, to Hon. B.P. Singleton, Chief Examiner of Accounts (Quarterly Report Vol. XVII, page 347), it was held that the two-mill tax levied by Baldwin County for school purposes under Local Acts, 1900-01, page 1446, was to be considered within the five mill tax levied for general county purposes, and, of consequence, commissions earned thereon should be computed on a sliding scale basis. While reference is made in the opinion to Act No. 325, H. 321, approved August 31, 1939 (General Acts, 1939, page 466), and Act No. 326, H. 322, approved August 31, 1939 (General Acts, 1939, page 467), which acts amended Sections 161 and 22, respectively, of the 1935 Revenue Laws, it does not appear that the full effect of these amendatory acts was given consideration. Accordingly, for the reasons hereinafter set forth, the opinion must be overruled insofar as it concludes that under the 1939 Acts, supra, the commissions of the tax assessor and tax collector on the two-mill levy for school purposes are to be computed on the "sliding scale" basis.

In your letter of inquiry you have set forth the pertinent provisions of Act No. 325 and Act No. 326, supra. In each of the acts I find that there was inserted, by way of amendment, the following provision:

"The commission herein provided for is to be calculated on all collections for the general fund of the state and county."

The "commission" to which reference is made is the commission calculated on the "sliding scale" basis. It must follow, therefore, that the allowance of 2% on collections of "special taxes" applies with respect to collections of all other taxes than those for the general fund of the state and county. Any other line of reasoning would impel the conclusion that the legislature intended the tax assessor and tax collector to perform services with respect to this tax without compensation. No basis for such a result is to be found in the statutes.

It is apparent, therefore, that the Legislature, by amending Sections 22 and 161 of the 1935 Revenue Law, has specifically defined the taxes upon which the tax collector and tax assessor shall be entitled to two per cent commission, as being all taxes other than those collected for the general fund of the state or county. Act. No. 325, and Act No. 326 appear in the Code of 1940, as Sec. 191 and 30 of Tit. 51, respectively.

Since, to determine whether the tax collector and tax assessor are entitled to commissions on a sliding scale or upon a flat two per cent basis it is necessary to determine whether such taxes are collected for the general fund of the state and county, it becomes necessary to consider the character and disposition of the special school tax levied by your county.

The requirement that Baldwin County levy a special school tax is found in Act No. 609, H. 1167, approved February 28, 1901 (General & Local Acts 1900-C1, page 1446). The pertinent provisions of this act are quoted in your letter of inquiry, and will not again be set out. Suffice it to say that it is provided by Section 3 of the act that "it shall be the duty of the tax collector of said county to pay over to the county superintendent of education, as herein provided, all school monies collected by him *** on the first day of each month***".

In Section 5 it is provided that the superintendent of education "shall keep the apportionment and disbursement of the county school money separate from the state school funds."

Act No. 609, supra, was considered in the opinion in Vol. XVII, page 347, it there being held that the act was constitutional, valid and now in operation.

It is my opinion that the taxes required to be levied by Act No. 609, supra, will not, when collected, go to the general fund of the state or county. This conclusion seems obvious in view of the specific direction of Act No. 609, supra, that such taxes shall be paid to the county superintendent of education.

Since the collections will not be for the general fund of the state or county, the tax assessor and tax collector should receive a flat two per cent commission thereon, rather than a commission calculated by the "sliding scale" provided for in Act No. 325 and Act No. 326, supra.

Yours very truly,

Thomas S. Lawson,
Attorney General.

September 20, 1944.

Hon. Ben P. Singleton
Chief Examiner of Public Accounts,
C A P I T O L

Code 1940, Tit. 51, Sec. 30, 191-
Tax Assessor's and Collector's
Commissions - Special Taxes created
by Local Act - Constitution, 1901
Sec. 104(15), 215 -

So-called special taxes authorized
by local act to be leciid by counties
from the five mills permitted to be
levied under the Constitution, 1901,
Sec. 215, are legislative appropriations
from the counties' general fund, and
not special taxes within Code 1940,
Tit. 51, Sec. 30 and 191 on which tax
assessors' and collectors' commissions
are calculated at the rate of two per
cent.

Opinion of Attorney General, Quarterly
Reports, Vol. 24, p. 102 overruled.

Opinion by Assistant Attorney General
Matthews.

Dear Sir:

I have your letter of August 28 reading as follows:

"Please refer to your Opinions on pages 61
and 347 of Volume 17, page 102, Volume 24,
and your Opinion of August 1, 1944, addressed
to Mr. M. H. Lawrence, Field Supervisor of
Accounts in answer to Mr. Lawrence's request
Number 461.

"From a reading of the above four opinions
you will see that the one on page 102 of
Volume 24 reaches a different conclusion
from that reached in the other three. The
letter to Mr. Lawrence dealt with commissions
of the Tax Assessor and the Tax Collector in
Escambia County. As a matter of fact, Conecuh,
Escambia, and Baldwin Counties each have
special laws dealing with the allocation of
the General Tax Levy of 5 mills authorized
by Sec. 215 of the 1901 State Constitution.

"In the light of the fact that the Opinion
in Volume 24. differs with the other opinions,
I should like your specific consideration as
to whether or not the Volume 24 Opinion now
controls, insofar as your Office is concerned,
in the light of the two previous Opinions above
mentioned and your Opinion under date of August
1, 1944."

EXHIBIT "D")
Page 1)

The Opinion above referred to, in Quarterly Reports,
Attorney General, Vol. 24, p. 102, rendered July 28, 1941, to
Hon. M. H. Wilkins, Tax Collector of Baldwin County, in effect
discredited and overruled the two opinions in Vol. 17, pp. 61
and 347. It was based upon the fact that there had been insert-
ed by way of amendment of the general law as to commissions of
tax assessors and collectors, with reference to "sliding scale"
commissions a sentence reading as follows:

"The commission herein provided for is, to be calculated on all collections for the general fund of the State and County."

From this the deduction was made that as to all other collections, including so-called "special taxes" created by local law out of the five mills referred to in Section 215 of the Constitution, the flat two per cent commission would apply.

The general trend of decision in the Supreme Court would seem to indicate that such so-called "special taxes" created by local act and taken and set aside in special funds out of the five-mill limitation under the Constitution, are merely legislative appropriations, or "allocations" out of the "constitutional limit of one-half of one per cent authorized to be levied by the county for general purposes." Comm'rs. Court v. City of Anniston, 176 Ala. 605, 58 So. 252; Board of Revenue v. State ex rel City of Birmingham, 177 Ala. 138, 54 So. 757; So. Ry. Co. v. St. Clair County, 124 Ala. 491, 27 So. 23; Fraccis v. So. Ry. Co., 124 Ala. 544, 27 So. 22.

Thus, it would seem that for many years, both legislatively and judicially, it has been considered that the 5-mills ordinarily levied and authorized as a limit of county taxation, except for the 2½ mill road, bridge and building special tax, and special county wide and district school taxes, is a levy for general purposes, although the legislature may authorize or direct application of parts thereof to "special" purposes and to the creation of "special funds".

Only on this theory may the validity of such taxes be sustained. If the legislature by local act should undertake to direct assessment and collection of such taxes in a manner at variance with general law, the attempt would be abortive under subdivision 15 of Section 104 of the Constitution which forbids local legislation "regulating either the assessment or collection of taxes" except in cases not material here.

With reference to said Subdivision 15 it has been said that it is "aimed at local legislation tending to confuse the authorities in the administration of the elaborate system of laws regulating the assessment and collection of taxes." Sisk v. Cargile, 138 Ala. 164, 172.

In Bridges v. McWilliams, 228 Ala. 135, 137, 152 So. 457, it was said:

"The dominating purposes of section 104 of the Constitution was to destroy the practice of 'legislative courtesy' in the enactment of legislation on the subjects enumerated therein; and to compel the enactment of general laws covering these subjects, providing a uniform system applicable to the state as a whole, in respect to the agencies provided for the assessment and collection of taxes."

If the legislature by local act may designate as special taxes various fractions or parts of the five mills permitted under Section 215 of the Constitution, there would seem to be no good reason why in certain counties it could not so designate the entire five mills ordinarily levied for general purposes and in that case under the reasoning indulged in our opinion in Vol. 24, p. 102 of the Quarterly Reports, the effect would be to create by local Act a scheme for assessment and collection in violation of the Constitution,

Moreover, in my opinion, in framing the legislation as to commissions payable to tax assessors and collectors (Code 1940, Tit. 51 Sec. 30, 191) and fixing a flat rate of two per cent on "special taxes" and "special county and district school taxes levied for school purposes," the legislature, aside from the school taxes, had in mind only the special

road, bridge and building tax permitted under action 215 of the Constitution. If it had intended the flat rate to apply to the type of so-called special taxes created by local act in the counties of Conecuh, Escambia and Baldwin, that situation could have been easily provided for and clarified by the use of a few apt words.

I am of opinion, therefore, that the two opinions in Volume 17 of the Quarterly Reports to which you refer should be followed in the matter of computing commissions for tax assessors and collectors, and that the opinion in Volume 24 should be with-drawn as ill advised.

Yours very truly,

William N. McQueen
Acting Attorney General

JFM:fw

EXHIBIT "D" page 3.

Bay Minette, Ala.
February 7, 1945.

Hon. M. H. Wilkins,
Tax Collector
Baldwin County
Bay Minette, Alabama

Dear Mr. Wilkins:-

You have, for the past several years, been collecting the Special School Tax as provided by the Local Act of the Legislature of 1901 and the Annual Special Levy of the County Commission, and paying over to me the commission of two percent as provided by the 1901 Act.

You have, for the current year, held out the commission in favor of the opinion of the Attorney General, released as of September 20, 1944. I am of the conclusion that the Special School Tax is a Special Tax and that I am entitled to two percent straight commission.

I will appreciate it and this is my demand upon you to pay over to me the amount now held by you, and being two percent of the amount collected by you under the Local Act of 1901 and the levy as made by the County Commission.

Yours very truly,

E. S. Tunstall,
Tax Assessor.

EST;b

EXHIBIT "E".

No. 1284

Executed 2/21 1945
by serving copy of within Summons and
Complaint on Bill of

M. H. Wilkins, Individually
and as Tax Collector of
Baldwin County, Alabama,
Complainant,

Frank Earle - Chairman
Board of Educ.

vs

S.M. Tharp Supt of Educ.
E.S. Tunstall,

Baldwin County Board of
Education; S. M. Tharp,
as Superintendent of Edu-
cation of Baldwin County,
Alabama; and E. S. Tunstall,
as Tax Assessor of Baldwin
County, Alabama,

Tax Assessor Sheriff
By C. E. Garrett Deputy Sheriff

Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY.

BILL OF COMPLAINT.

Filed February 20 1945.

[Signature]
Register.

RECORDED