

OPINION NO. 94-027

Syllabus:

If a majority of the voters of a village have approved a tax levy for current expenses under R.C. 5705.19(A) "at a rate not exceeding two mills for each

dollar of valuation," R.C. 5705.26 authorizes the village council to levy that tax at the rate of two mills or at any lesser rate.

To: John R. Lentes, Meigs County Prosecuting Attorney, Pomeroy, Ohio
By: Lee Fisher, Attorney General, May 17, 1994

You have submitted an opinion request in which you ask:

1. Whether or not a village council has the authority to authorize a reduction in the collection of a voted mill from 2 mills to 1.7 mills.
2. If the council does have that authority, does that action have to be approved by the County Auditor, the County Budget Commission or some other entity?

Your letter states that in 1991, a village passed a 2 mill current expense levy. You have informed this office that this levy was passed under R.C. 5705.19(A). Since passage of the levy, the village has collected the levy at the rate of only 1.7 mills. According to your letter, "[r]ecently, the Village Council passed a resolution indicating that they had been made aware of the 1.7 collection rate, that the Village had not suffered from that collection rate, and that the Village did not anticipate it would suffer if the rate were continued to be collected at the 1.7 rate as opposed to the 2 mill levy."

Current Expense Levy under R.C. 5705.19(A).

R.C. 5705.19 states, in pertinent part:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections ... that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following expenses:

(A) For current expenses of the subdivision

....

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose thereof, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, [with certain exceptions].

Pursuant to R.C. 5705.01(A), a village is a "subdivision," as that term is used in R.C. 5705.19. Further, the "taxing authority" of a village for purposes of R.C. 5705.19 is the council or other legislative authority of the village. R.C. 5705.01(C). R.C. 5705.19(A), therefore, authorizes the council of a village to declare by resolution that it is necessary to levy a tax in excess of the ten-mill limitation to provide for the current expenses of the village. See generally R.C. 5705.01(F) (defining "current expenses" as meaning "the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest,

sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision").

After passage of a resolution to levy a tax for the purposes specified in R.C. 5705.19(A), R.C. 5705.25(A) provides for submission of the proposal to the electors of the subdivision. R.C. 5705.25(B), which specifies the ballot language for such a proposal, requires the ballot to state, among other things, the name of the subdivision to benefit from the tax, the purpose for which the tax is proposed, and that the tax will be levied "at a rate *not exceeding* mills for each one dollar of valuation" (emphasis added). This ballot language indicates that the rate of tax to be approved by the electors is merely the maximum rate that the taxing authority may impose.

Further, R.C. 5705.26 expressly states:

[I]f the majority of the electors voting on a levy authorized by [R.C. 5705.19-.25] vote in favor of such levy at such election, the *taxing authority* of the subdivision *may levy a tax* within such subdivision at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution, *or at any less rate*, or for any of said years or purposes [with certain exceptions] (Emphasis added.)

Accordingly, once a levy under R.C. 5705.19(A) is approved by a majority of the electors in the subdivision, R.C. 5705.26 permits the taxing authority of the subdivision to levy the tax within the subdivision "at the additional rate in excess of the ten-mill limitation ... or at any less rate." *See generally* 1982 Op. Att'y Gen. No. 82-026 at 2-107 (citing R.C. 5705.26 as an instance in which "the General Assembly has given taxing authorities the discretion not to levy voter approved taxes if they so choose").

Applying the above analysis to the situation you describe, if a majority of the voters of a village approve a tax levy for current expenses under R.C. 5705.19(A) "at a rate not exceeding two mills for each one dollar of valuation," R.C. 5705.26 authorizes the village council to levy that tax at the rate of two mills or at any lesser rate.

Your second question asks: "if the Council does have that authority, does that action have to be approved by the County Auditor, the County Budget Commission or some other entity"? Because nothing in R.C. 5705.26 requires a taxing authority to obtain the approval of any other entity in order to levy one of the taxes specified therein at a rate lower than the maximum rate approved by the voters, a village council need not obtain the approval of the county auditor, the county budget commission, or any other entity in order to levy a tax under R.C. 5705.19(A) at a rate lower than the maximum rate that has been approved by the voters.¹

¹ R.C. 5705.341 prohibits a county budget commission from certifying a tax levy which would produce revenue in excess of what will be needed for the following fiscal year. *See generally Village of South Russell v. Budget Comm'n*, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984). Accordingly, should the county budget commission find that the rate at which a village council has decided to levy a tax under R.C. 5705.19(A), even if at a rate lower than the maximum rate approved by the voters, will produce revenue in excess of the village's needs for the following fiscal year, it may not certify the levy at the rate fixed by the village council.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that if a majority of the voters of a village have approved a tax levy for current expenses under R.C. 5705.19(A) "at a rate not exceeding two mills for each dollar of valuation," R.C. 5705.26 authorizes the village council to levy that tax at the rate of two mills or at any lesser rate.