May 19, 1995

OPINION NO. 95-010

The Honorable Ronald L. Collins
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

Dear Prosecutor Collins:

You have submitted an opinion request in which you ask the following questions:

1.When a subdivision joins an Ambulance District are the current voted levies of the District extended upon the tax duplicate, since the voters of the joining subdivision have not voted on said levies?

2.If the levies are to be extended, for which tax year should the auditor place the levies on the tax duplicate? i.e. If a subdivision joins the district in July or even November of 1995, would the auditor levy the tax for tax year lien date January 1, 1995, or would the tax be levied beginning tax year lien date January 1, 1996?

In order to address your questions concerning the duties of the county auditor with respect to the preparation of the general tax list and duplicate, it is first necessary to examine the nature of a joint ambulance district and its ability to levy taxes, as well as the general scheme for the levying and collection of taxes within a subdivision.

Joint Ambulance District

R.C. 505.71 provides for the creation of a joint ambulance district by agreement between two or more townships or municipalities or among various combinations of municipalities and townships. Each such district is governed by a board of trustees comprised of representatives of the participating townships and municipalities. *Id.* R.C. 505.71 sets forth the powers of a joint ambulance district in part as follows:

> *To provide the services and equipment it considers necessary for the district, the board may levy taxes, subject to [R.C. Chapter 5705]*, and issue bonds and other evidences of indebtedness, subject to [R.C. Chapter 133], after submitting the question of such issuance to the electors of the district in the manner provided by [R.C. Chapter 133]. The district may purchase, lease, maintain, and use all materials, equipment, vehicles, buildings, and land necessary to perform its duties.
> *Any municipal corporation or township may join an existing district by the adoption of a resolution requesting such membership and upon approval of the board of the district.* Any municipal corporation or township may withdraw from a district by the adoption of a resolution ordering withdrawal. On or after the first day of January of the year following the adoption of the resolution of withdrawal, the municipal corporation or township withdrawing ceases to be a part of such district and the power of the district to levy a tax upon taxable property in the withdrawing township or municipal corporation terminates, except that the district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the district as it was comprised at the time the indebtedness was incurred.
> Upon the withdrawal of any township or municipal corporation from a district, the county auditor shall ascertain, apportion, and order a division of the funds on hand, moneys and taxes in the process of collection, except for taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation or township and the remaining territory of the district. (Emphasis added.)

In accordance with this section, the board of trustees of a joint ambulance district may levy taxes subject to R.C. Chapter 5705. R.C. 505.71 further provides for the expansion of a joint ambulance district through adoption of a resolution by the municipal corporation or township seeking membership and approval by the board of the joint ambulance district. No vote of the residents of either the subdivision seeking to join the district or the district itself is required in order for the subdivision to be admitted to the district. *Id.*

Levy of Taxes Outside the Ten-mill Limitation

Ohio Const. art. XII, § 2 and R.C. 5705.02 establish a limitation on the taxation of property within a subdivision. The court in *Bennett v. Evatt*, 145 Ohio St. 587, 62 N.E.2d 345 (1945) (syllabus, paragraph three), explained the limitations of Ohio Const. art. XII, § 2 as follows:

> The provision in Section 2, Article XII, that "no property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation," restrains state and local governments from levying taxes beyond the established limitation, without special authority from the voters, or from

> the charter of a municipal corporation.

The prohibition of Ohio Const. art. XII, § 2 is also set forth in R.C. 5705.02, which states:

> The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

Pursuant to R.C. 5705.07, however, "[t]he taxing authority of any subdivision may make tax levies authorized in excess of the ten-mill limitation *by a vote of the people* under the law applicable thereto, irrespective of all limitations on the tax rate." (Emphasis added.) For purposes of R.C. Chapter 5705, a joint ambulance district is a "subdivision," R.C. 5705.01(A), and the board of trustees of a joint ambulance district is its "taxing authority," R.C. 5705.01(C). Thus, a subdivision such as a joint ambulance district may impose a tax outside the ten-mill limitation with voter approval. *See* R.C. 5705.19 (permitting the taxing authority of a subdivision, other than a school district or a county school financing district, to declare by resolution the necessity of levying a tax in excess of the ten-mill limitation for specific purposes); R.C. 5705.191 (additional levies outside ten-mill limitation).

Pursuant to R.C. 5705.19, a tax levied under that section may, with certain exceptions, run for any number of years up to five. Once a tax under R.C. 5705.19 has been approved by the voters, R.C. 5705.25(D) establishes the procedure for extending the tax on the tax list, as follows:

> A levy voted in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of such levy, it shall be extended on the tax lists after the February settlement next succeeding such election. If such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax lists for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

I will assume for purposes of this opinion that the "voted levies" to which your question refers have been approved by the voters of the joint ambulance district pursuant to R.C. 5705.19.

Effect of Expansion of Joint Ambulance District on Levies Outside Ten-mill Limitation

With this background in mind, I turn to your first question, which asks: "When a subdivision joins an Ambulance District are the current voted levies of the District extended upon the tax

duplicate, since the voters of the joining subdivision have not voted on said levies?" A similar question was addressed in 1982 Op. Att'y Gen. No. 82-063, which concerned the addition of two subdivisions to a joint fire district whose voters had already approved a tax levy for the fire district under R.C. 5705.19. The question asked was whether it was necessary to obtain approval of the tax levy by the voters of the subdivision seeking to join the joint fire district. In answering this question, Op. No. 82-063 first cited the terms of R.C. 5705.26, which authorizes the taxing authority of a subdivision that has approved a tax levy under R.C. 5705.19 to levy that tax "within the subdivision," not within only part of the subdivision. The opinion also cited the cases of *Gigandet v. Brewer*, 134 Ohio St. 86, 15 N.E.2d 964 (1938) and *Kellenberger v. Bd. of Educ.*, 173 Ohio St. 201, 180 N.E.2d 834 (1962). In the *Gigandet* case, the court stated: "In the absence of specific constitutional inhibitions, the principle applies that where the boundaries of a school district or other political subdivisions are legally extended, the added territory becomes subject to the same obligation as the other territory in the district or subdivision." 134 Ohio St. at 92-93, 15 N.E.2d at 966. Op. No. 82-063 then concluded at 2-178 that "once the voters of a joint fire district have voted in favor of the levy of a tax outside the ten-mill limitation, the board of trustees is authorized to levy the voted tax throughout the district regardless of whether any particular area in the district was part thereof when the question was submitted for voter approval."

Op. No. 82-063 also noted that such conclusion was compelled by the portion of Ohio Const. art XII, § 2 which states that "[l]and and improvements thereon shall be taxed by uniform rule according to value." Pursuant to this constitutional provision, "any tax levied by a board of fire district trustees must be levied *uniformly throughout* the joint fire district." Op. No. 82-063 at 2-178 (emphasis added). *See* 1979 Op. Att'y Gen. No. 79-063.[1]

Applying the analysis of Op. No. 82-063 to the question you ask, I reach the same conclusion. Because the joint ambulance district about which you ask has levied a tax outside the ten-mill limitation pursuant to voter approval under R.C. 5705.19, although approved by the voters of the district prior to the admission of an additional subdivision, Ohio Const. art. XII, § 2 and R.C. 5705.26 require such tax to be levied uniformly throughout the entire joint ambulance district, including the property of the new member subdivision. *See Kellenberger v. Bd. of Educ*.

Time for Levying Taxes Outside Ten-mill Limitation

Your second question asks: "If the levies are to be extended, for which tax year should the auditor place the levies on the tax duplicate? i.e. If a subdivision joins the district in July or even November of 1995, would the auditor levy the tax for tax year lien date January 1, 1995, or would the tax be levied beginning tax year lien date January 1, 1996?" I assume that you are asking when

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[1] The conclusion reached in 1982 Op. Att'y Gen. No. 82-063 was reexamined in 1989 Op. Att'y Gen. No. 89-021, which approved and followed the 1982 opinion. Op. No. 89-021 concluded in syllabus, paragraph two: "There is no requirement that voters of territory proposed for addition to a joint fire district must approve an existing tax imposed by the district before the territory may be added to the district."

the tax levy authorized by the voters of the joint ambulance district should be assessed against the property in the new member subdivision.

The method for levying taxes in a school district where the territory of the school district is enlarged during the life of the tax levy was addressed in 1956 Op. Att'y Gen. No. 7420, p. 805. The opinion began with a brief discussion of the statutory schemes governing the assessment and levy of taxes upon real property and each subdivision's adoption of an annual tax budget, as follows:

> [R.C. 319.28] provides for the annual preparation of a general tax list and duplicate on or before the first Monday of August, which shall contain separate lists of the holders in whose names real property has been listed in each township, municipal corporation, special district or separate school district, indicating a description of each tract, lot, or parcel, the value of each tract, lot, or parcel, and the value of improvements. The county auditor, after being advised the rates or amounts of taxes to be levied by each taxing authority for the current year, is directed by [R.C. 319.30] to determine the sums to be levied against each tract or lot of real property and enter this sum upon the general tax list and duplicate, which is certified to the county treasurer on or before October first of each year, as required in [R.C. 319.28].
>
> Concurrently with the preparation of the general tax list and duplicate for the current year, the taxing authorities of the various taxing subdivisions which include the boards of education, the county auditor, and the budget commission are required to carry out the procedure provided in [R.C. Chapter 5705] for the levy of taxes upon the real property in the county. Briefly stated, the taxing authority is required to adopt a tax budget on or before July 15, and submit the same to the county auditor on or before July 20. [R.C. 5705.28 and R.C. 5705.30]. The tax budgets are presented to the budget commission and reviewed by the commission; and the proper tax levy for each taxing subdivision is then certified to each taxing authority.... [R.C. 5705.27-.35]. Each taxing authority is then required by ordinance or resolution to levy the tax, and certify the levy made to the county auditor before October 1, or such later date as approved by the Board of Tax Appeals [now the Tax Commissioner]. [R.C. 5705.34]. It is this levy which is extended upon the general tax list and duplicate by the county auditor and certified to the county treasurer for collection. [R.C. 319.28 and R.C. 319.30].

Id. at 808-09.

With this statutory scheme in mind, my predecessor then addressed the specific problems that arise when the boundaries of a school district change after the school district's certification of a tax levy under R.C. 5705.34, and stated:

> The problem presented by the instant request is the interjection of a change in the territory included within a taxing unit into this statutory scheme for assessment and levy of taxes on real property for the current year. The problem is therefore one of determining the time at which taxes on real property are levied, or the time at which

> the tax authority has finally exercised its authority as to the levy of taxes upon real property in the taxing unit. Although [R.C. 5719.01 (now R.C. 323.11)] provides for the attaching of the lien for real property taxes as of January 1, of each year, this date is not significant in the actual procedure for the levy of taxes, or the time when such taxes are levied.
> *The significant and substantive step in the procedure required for the levy of taxes, and the final exercise of authority by the taxing authority, is authorization by such taxing authority of the levy previously approved by the Budget Commission by resolution or ordinance and its certification to the auditor. [R.C. 5705.34]. It is at this point that the taxing authority pursuant to statute and in due course of law imposes a tax upon all property within its territory; any subsequent changes both as to territory or the tax authority itself cannot affect this levy, and upon the extension of the levy upon the general tax list and duplicate, and its certification to the treasurer for collection, the taxes on real property for the current year have accrued.*
> In each of the situations presented by this request, it appears that the effective dates of the transfers of territory or the mergers of the various districts were subsequent to the time at which the procedure for the levy of taxes was completed as required in [R.C. 5705.27, *et seq.*] by the boards of education of the school districts as previously constituted, and the duplicate certified to the county treasurer for collection by the county auditor. *The county auditor, pursuant to [R.C. 319.30],*[2] *must extend upon the general tax list and duplicate those rates certified to him by the existing taxing authorities and such extension can be made only upon those lots or parcels within the various school districts as they were constituted at that time.* Upon certification of the duplicate to the county treasurer for collection pursuant to [R.C. 319.28], the county auditor can make no fundamental or substantive change to the general tax list or duplicate. The authority of the county auditor to make any changes in the general tax list or [duplicates] is limited solely to clerical errors. [R.C. 319.35].[3] (Emphasis and footnotes added; various citations omitted.)

Id. at 809-10. Thus, 1956 Op. No. 7420 concluded that R.C. 319.30 requires the county auditor to

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[2] R.C. 319.30 also provides a procedure whereby the auditor, in order to avoid delay in preparing the tax list and duplicate, uses an estimated rate for those levies that have not been certified to the county auditor in accordance with R.C. 5705.34 and for which an appeal of the action of the budget commission with respect to the tax rate has been initiated under R.C. 5705.341. Further provision is made in R.C. 319.30 for situations where the county auditor or county treasurer or a taxing district is involved in litigation where the collection of real property taxes may be enjoined.

[3] *See also* R.C. 319.39 (requiring the county auditor to keep records of "additions and deductions," in which he shall enter all corrections of the duplicates made after delivery of such duplicates to the county treasurer, which either increase or diminish the amount of a tax or assessment, as stated in such duplicates).

levy the taxes certified to him by a taxing authority upon each tract or lot of real property that is located in that subdivision as of the date the tax is certified. *See* 1956 Op. Att'y Gen. No. 6307, p. 139 (syllabus) ("[w]here a transfer of territory to a school district has been completed by vote of the electors concerned as provided in [R.C. 3311.29], prior to the authorization, by _ordinance or resolution_ as provided in [R.C. 5705.34], of a real property tax levy within such district, such levy at the rate so authorized should be applied to the entire district as thus enlarged for the current year."); 1928 Op. Att'y Gen. No. 2358, vol. III, p. 1745 (syllabus) ("[w]here proceedings for the annexation of territory to a municipal corporation are completed ..., tax levies thereafter authorized by the council of the municipal corporation to meet its annual budget under [G.C. 5625-25 (now at R.C. 5705.34)], and certified to the county auditor before the first day of October, should be extended for collection on all the taxable property in said municipal corporation including that in the territory annexed"); *see also State ex rel. Summit County Bd. of Educ. v. Medina County Bd. of Educ.*, 45 Ohio St. 2d 210, 343 N.E.2d 110 (1976) (syllabus, paragraph one) ("[p]ursuant to R.C. 5705.03, only the taxing authority of the taxing subdivision in which property is located *on the date of the tax levy* is authorized to levy real and personal property taxes thereon for the year" (emphasis added)).

Thus, whether a parcel of property is subject to a tax levied by a subdivision or taxing unit depends upon whether the property is part of the subdivision or taxing unit on the date the taxing authority certifies the tax. Only if a parcel is located within a subdivision or taxing unit on the date the tax is certified by that subdivision or taxing unit is the parcel subject to such levy. In answer to your second question, therefore, I conclude that if a subdivision is part of a joint ambulance district at the time the district certifies its tax rate to the county auditor in accordance with R.C. 5705.34, the property in that subdivision is subject to the tax levied by the joint ambulance district under R.C. 5705.19 for that tax year, even though that subdivision was not part of the district at the time the voters of the district approved the tax levy.

You also ask, "[i]f a subdivision joins the district in July or even November of 1995, would the auditor levy the tax for tax year lien date January 1, 1995, or would the tax be levied beginning tax year lien date January 1, 1996?" Pursuant to R.C. 323.11, "[t]he lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually, or as provided in [R.C. 5727.06], and continue until such taxes, including any penalties, interest, or other charges accruing thereon, are paid." As explained in *City of Cleveland v. Limbach*, 40 Ohio St. 3d 295, 296, 533 N.E.2d 336, 338 (1988): "Taxes are not required to be calculated until September in each year (R.C. 319.28), and they are not due until December 31 of that year (R.C. 323.12). Yet under R.C. 323.11, they become a lien on the property on January 1 in each year...." *See also State ex rel. Summit County Bd. of Educ. v. Medina County Bd. of Educ.*, 45 Ohio St. 2d at 213, 343 N.E.2d at 112 n. 2 ("[p]roperty taxes levied in the fall of any particular year are collected and distributed during the following year, and finance operations in the latter year, that is, in the year in which the taxes are collected and distributed"). Thus, the taxes certified to the county auditor by October 1, 1995, are for tax year 1995, the tax lien for which attached on January 1, 1995. *See generally* 1986 Op. Att'y Gen. No. 86-021; 1954 Op. Att'y Gen. No. 4653, p. 677.

As discussed above, the date that determines whether a lot or parcel of property is subject to taxes levied by a particular taxing authority, including the board of trustees of a joint ambulance district, is the date on which the taxing authority certifies its levy to the county auditor in accordance with R.C. 5705.34. Pursuant to R.C. 5705.34, each taxing authority, "by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor *before the first day of October in each year, or at such later date as is approved by the tax commissioner*" with certain exceptions. If a subdivision joins a joint ambulance district prior to that certification date, the property in that subdivision is subject to a tax levied by the joint ambulance district for that tax year. If a subdivision joins after the certification date, it will not be subject to taxes levied by the joint ambulance district until the following tax year.

In the situation you describe, if the joint ambulance district has already certified its tax rate to the county auditor by October 1, 1995, and a subdivision joins the district in November 1995, the taxes levied by the joint ambulance district will not be levied against the property of the newly added subdivision until the preparation of the next general tax list in 1996. Thus, there may be some concern that the newly added subdivision will receive services for some time before the property in that subdivision is taxed for that service. The joint ambulance district may, therefore, wish to consider this fact in deciding when to admit the subdivision as a member of the district. *Cf.* R.C. 505.71 (scheme for levying of taxes in a joint ambulance district when a member subdivision withdraws from the district).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. When a subdivision joins a joint ambulance district that has levied a tax outside the ten-mill limitation pursuant to R.C. 5705.19, the taxable property in the newly added subdivision becomes subject to such tax, and no additional voter approval is required in order to levy such tax upon the property in the newly added subdivision.

2. If a subdivision is part of a joint ambulance district at the time the district certifies its tax rate for that year to the county auditor in accordance with R.C. 5705.34, the property in that subdivision is subject to a tax levied under R.C. 5705.19 for that tax year by the joint ambulance district, even though that subdivision was not part of the district at the time the voters of the district approved the tax levy.

3. If a subdivision becomes part of a joint ambulance district after the district has certified its tax rate for that year to the county auditor in accordance with R.C. 5705.34, the property in that subdivision becomes subject to a tax levied under R.C. 5705.19 by the joint ambulance district for the following tax year, even though that subdivision was not part of the district at the time the voters of the district approved the levy.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 19, 1995

The Honorable Ronald L. Collins
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125 East High Avenue
New Philadelphia, Ohio 44663

SYLLABUS: 95-010

1. When a subdivision joins a joint ambulance district that has levied a tax outside the ten-mill limitation pursuant to R.C. 5705.19, the taxable property in the newly added subdivision becomes subject to such tax, and no additional voter approval is required in order to levy such tax upon the property in the newly added subdivision.

2. If a subdivision is part of a joint ambulance district at the time the district certifies its tax rate for that year to the county auditor in accordance with R.C. 5705.34, the property in that subdivision is subject to a tax levied under R.C. 5705.19 for that tax year by the joint ambulance district, even though that subdivision was not part of the district at the time the voters of the district approved the tax levy.

3. If a subdivision becomes part of a joint ambulance district after the district has certified its tax rate for that year to the county auditor in accordance with R.C. 5705.34, the property in that subdivision becomes subject to a tax levied under R.C. 5705.19 by the joint ambulance district for the following tax year, even though that subdivision was not part of the district at the time the voters of the district approved the levy.