March 1, 2012

The Honorable Morris J. Murray
Defiance County Prosecuting Attorney
500 Court Street, Suite C
Defiance, Ohio 43512

SYLLABUS: 2012-007

1. There are no statutory limits on the number of times a tax levy imposed pursuant to R.C. 5705.194-.197 may be renewed.

2. The board of education of a school district that seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district is not required to set forth or explain the circumstances necessitating the tax levy in either the board's authorizing resolution or the tax levy's ballot language.

3. If the board of education of a school district seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district, a county board of elections does not have a duty or responsibility to investigate the assertion in the authorizing resolution that the moneys requested in the tax levy are necessary for the emergency requirements of the district.

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OPINION NO. 2012-007

The Honorable Morris J. Murray
Defiance County Prosecuting Attorney
500 Court Street, Suite C
Defiance, Ohio 43512

Dear Prosecutor Murray:

I am in receipt of your request for an opinion relating to various aspects of school district tax levies under R.C. 5705.194-.197. Your opinion request indicates that, in December 2011, both the Central Local School District and the Defiance City School District presented resolutions to the Defiance County Board of Elections seeking to place renewal tax levies on the March 2012 ballot. These resolutions were adopted pursuant to R.C. 5705.194-.197 and both tax levies are for the "emergency requirements" of the school districts. You also state these levies have been in place over twenty years. In this context, you ask the following questions:

1. Can a school district tax levy imposed pursuant to R.C. 5705.194-.197 for the emergency requirements of the district be renewed multiple times?

2. If a school district seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district, is the board of education of the school district required to justify or explain the circumstances necessitating the tax levy in either the authorizing resolution or ballot language?

3. If a school district seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district, does a county board of elections have a duty or responsibility to investigate the assertion in the authorizing resolution that the moneys requested in the tax levy are, in fact, necessary for the emergency requirements of the district?

4. What effect, if any, will our opinion have on the two proposed tax levies referenced in your opinion request if they are approved by school district voters?

School districts are subdivisions for purposes of R.C. Chapter 5705, R.C. 5705.01(A), and the board of education of a school district is its taxing authority, R.C. 5705.01(C). Thus, the board of education of a school district has the authority, with voter approval, to levy taxes in excess of the ten-mill limitation contained in Article XII, § 2 of the Ohio Constitution and R.C. 5705.02. *See* R.C.

5705.07 (the "taxing authority of any subdivision may make tax levies 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"). A number of provisions in R.C. Chapter 5705 specifically address school district levies. *See* R.C. 5705.194-.197; R.C. 5705.198; R.C. 5705.21-.2111.

Your opinion request relates to tax levies imposed pursuant to R.C. 5705.194-.197. R.C. 5705.194 is entitled "[r]esolution to submit emergency school levy," and you indicate a question was raised regarding the appropriateness of an emergency tax levy being renewed multiple times over an extended period of years. The commonly understood meaning of the term, "emergency," is "an *unforeseen* combination of circumstances or the resulting state that calls for immediate action." *Merriam-Webster's Collegiate Dictionary* 407 (11th ed. 2005) (emphasis added). Thus, if one simply considers that term in isolation, it is reasonable to question whether a tax levy imposed pursuant to R.C. 5705.194-.197 may be renewed multiple times.

To determine the requirements and limitations of a tax levied pursuant to R.C. 5705.194-.197, however, we must examine the statutory language. R.C. 5705.194 states, in relevant part:

> The board of education of any city, local, exempted village, cooperative education, or joint vocational school district at any time may declare by resolution that the revenue that will be raised by all tax levies which the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the emergency requirements of the school district or to avoid an operating deficit, and that it is therefore necessary to levy an additional tax in excess of the ten-mill limitation. The resolution shall be confined to a single purpose and shall specify that purpose. If the levy is proposed to renew all or a portion of the proceeds derived from one or more existing levies imposed pursuant to this section, it shall be called a renewal levy and shall be so designated on the ballot. If two or more existing levies are to be included in a single renewal levy but are not scheduled to expire in the same year, the resolution shall specify that the existing levies to be renewed shall not be levied after the year preceding the year in which the renewal levy is first imposed. Notwithstanding the original purpose of any one or more existing levies that are to be in any single renewal levy, the purpose of the renewal levy may be either to avoid an operating deficit or to provide for the emergency requirements of the school district. The resolution shall further specify the amount of money it is necessary to raise for the specified purpose for each calendar year the millage is to be imposed; if a renewal levy, whether the levy is to renew all, or a portion of, the proceeds derived from one or more existing levies; and the number of years in which the millage is to be in effect, which may include a levy upon the current year's tax list. The number of years may be any number not exceeding ten.

Thus, R.C. 5705.194 contemplates a situation in which the board of education of a school district believes that—after accounting for all revenues to be received from current school district tax levies and from state and federal sources—there will be insufficient funds to provide for the emergency requirements of the school district or to avoid an operating deficit. The board of education

must enact a resolution declaring that such a situation exists. R.C. 5705.194. The resolution must be confined to a single purpose, specify the purpose for which the funds will be used, and specify the amount of money the board of education believes is needed for each calendar year the tax is to be imposed. *Id.* The resolution may propose levying a tax for up to ten years. *Id.* R.C. 5705.194 also makes repeated references to the renewal of a single tax levy or multiple tax levies previously imposed pursuant to R.C. 5705.194-.197. *See id.*

Once passed, the board of education of a school district certifies the resolution to the county auditor. R.C. 5705.195. The county auditor then must estimate the annual levy amount, expressed both in dollars and cents for each one hundred dollars of valuation and in mills, that is necessary to produce the annual amount of funds set forth in the board of education's resolution. *Id.*; *see also* 1980 Op. Att'y Gen. No. 80-011 (syllabus) ("[l]evies proposed by counties pursuant to [R.C. 5705.19, R.C. 5705.191 and R.C. 5705.25] must be fixed rate levies. The only sections in R.C. Chapter 5705 that allow for variable rate levies are R.C. 5705.194, 5705.195, 5705.196 and 5705.197"). Upon receiving the certification from the county auditor, the board of education will decide whether to proceed with the submission of the tax levy to the electorate. R.C. 5705.195. If the board of education decides to proceed, it certifies the resolution, together with the annual levy estimates prepared by the county auditor, to the county board of elections. *Id.* The board of elections is then responsible for preparing the ballots and making the other necessary arrangements for submitting the tax levy to the voters of the school district. *Id.* R.C. 5705.196 sets forth the requirements for conducting the vote on the tax levy, and R.C. 5705.197 sets forth the requirements for the form of the ballot.

Your first question asks whether a school district tax levy imposed pursuant to R.C. 5705.194-.197 for the emergency requirements of the district may be renewed multiple times. "The paramount consideration in determining the meaning of a statute is legislative intent." *State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶34. "To determine the legislative intent, we first review the statutory language. In reviewing the statutory language, we accord the words used their usual, normal, or customary meaning." *Gutmann v. Feldman*, 97 Ohio St. 3d 473, 2002-Ohio-6721, 780 N.E.2d 562, at ¶14 (citations omitted). "Where the wording of a statute is clear and unambiguous, [the] only task is to give effect to the words used." *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994).

R.C. 5705.194 specifically authorizes renewal levies and sets certain, additional requirements when the proposed tax levy is a renewal levy. *See* R.C. 5705.194 ("[i]f the levy is proposed to renew all or a portion of the proceeds derived from one or more existing levies imposed pursuant to this section, it shall be called a renewal levy and shall be so designated on the ballot. If two or more existing levies are to be included in a single renewal levy but are not scheduled to expire in the same year, the resolution shall specify that the existing levies to be renewed shall not be levied after the year preceding the year in which the renewal levy is first imposed. Notwithstanding the original purpose of any one or more existing levies that are to be in any single renewal levy, the purpose of the renewal levy may be either to avoid an operating deficit or to provide for the emergency requirements of the school district. The resolution shall further specify … if a renewal levy, whether the levy is to renew all, or a portion of, the proceeds derived from one or more existing levies"). There are, however, no statutory restrictions on the number of times a tax levy imposed pursuant to R.C. 5705.194-.197 may

be renewed. In the absence of any restrictions in the text of R.C. 5705.194-.197, it would be improper to conclude one exists. *See Lynch v. Gallia Cty. Bd. of Comm'rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) (a "reviewing court must not construe a statute so as to supply words that are omitted"); *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265 (1944) (syllabus, paragraph 8) ("[t]here is no authority under any rule of statutory construction to add to, enlarge, expand, supply, extend or improve the provisions of the statute to meet a situation not provided for").

Further, R.C. 5705.194 provides that a tax levy or renewal tax levy may be imposed for up to ten years, and this duration was recently increased from five years to ten years. *See* Am. Sub. H.B. 562, 127th Gen. A. (2008) (eff. Sept. 23, 2008). Thus, the General Assembly has specifically contemplated, and approved of, the general concept that a tax levy imposed pursuant to R.C. 5705.194-.197 for the emergency requirements of a school district may be in place for many years. This further supports the conclusion that there are no statutory restrictions to the number of times a tax levy imposed pursuant to R.C. 5705.194-.197 may be renewed.

Your second question asks whether the board of education of a school district that seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district is required to set forth or explain the circumstances necessitating the tax levy in either the board's authorizing resolution or the tax levy's ballot language. Applying the same principles of statutory construction discussed above, R.C. 5705.194 states a board of education may declare by resolution that the board believes projected revenues will be insufficient either to provide for the emergency requirements of the school district or to avoid an operating deficit, and that an additional tax levy is necessary. R.C. 5705.194-.197 do not require that the authorizing resolution by a board of education either justify the need for additional revenue or explain the financial circumstances of the school district in further detail. As there is no such requirement in the text of R.C. 5705.194.-197, it would be improper to conclude one exists. *See Lynch v. Gallia Cty. Bd. of Comm'rs*, 79 Ohio St. 3d at 254; *State ex rel. Foster v. Evatt*, 144 Ohio St. 65 (syllabus, paragraph 8).

With regard to ballot language, it is the county board of elections, not the board of education, that prepares the ballot. *See* R.C. 5705.195 (the board of elections "shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters"). R.C. 5705.197 sets forth the exact ballot form to be used, and this form is mandatory. *See* R.C. 5705.197 (the "form of the ballot to be used at the election provided for in [R.C. 5705.195] shall be as follows"). Information to be provided in the ballot includes the school district name, the purpose of the tax levy, the annual dollar amount the levy is to produce, the estimated millage of the levy, the number of years the millage is to be imposed, and whether the tax levy is a renewal tax levy. *Id.* The ballot form does not require, or provide for, an explanation of the school district's financial circumstances.[1] Thus, it would

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[1] R.C. 5705.197 provides in relevant part:

> The form of the ballot to be used at the election provided for in section 5705.195 [5705.19.5] of the Revised Code shall be as follows:

be improper to read such a requirement into R.C. 5705.197. *See Lynch v. Gallia Cty. Bd. of Comm'rs*, 79 Ohio St. 3d at 254; *State ex rel. Foster v. Evatt*, 144 Ohio St. 65 (syllabus, paragraph 8). In addition, election laws generally require strict compliance with their terms. *See, e.g.*, *State ex rel. Edwards Land Co., Ltd. v. Delaware Cty. Bd. of Elections*, 129 Ohio St. 3d 580, 2011-Ohio-4397, 954 N.E.2d 1193, at ¶41. Accordingly, even if a board of education were to provide a fuller explanation of the school district's financial circumstances and wanted it included in the ballot language, it is questionable whether a board of elections could include such language and remain in compliance with R.C. 5705.197. This further supports the conclusion that such an explanation is not required in the ballot language of a tax levy to be imposed pursuant to R.C. 5705.194-.197.

Your third question asks whether, if a school district seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district, a county board of elections has a duty or responsibility to investigate the assertion in the authorizing resolution that the moneys requested in the tax levy are, in fact, necessary for the emergency requirements of the district. A county board of elections is the body tasked with holding elections within the county. *See* R.C.

> "Shall a levy be imposed by the ..... (here insert name of school district) for the purpose of ..... (here insert purpose of levy) in the sum of ..... (here insert annual amount the levy is to produce) and a levy of taxes to be made outside of the ten-mill limitation estimated by the county auditor to average ..... (here insert number of mills) mills for each one dollar of valuation, which amounts to ..... (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for a period of ..... (here insert the number of years the millage is to be imposed) years?["]
>
> ….
>
> If the levy submitted is a proposal to renew all or a portion of an existing levy, the form of the ballot specified in this section may be changed by adding the following at the beginning of the form, after the words "shall a levy":
>
> (A) "Renewing an existing levy" in the case of a proposal to renew an existing levy in the same amount;
>
> (B) "Renewing ..... dollars and providing an increase of ..... dollars" in the case of an increase;
>
> (C) "Renewing part of an existing levy, being a reduction of ..... dollars" in the case of a renewal of only part of an existing levy.
>
> If the levy submitted is a proposal to renew all or a portion of more than one existing levy, the form of the ballot may be changed in any of the manners provided in division (A), (B), or (C) of this section, or any combination of those manners, as appropriate, so long as the form of the ballot reflects the number of levies to be renewed, whether the amount of any of the levies will be increased or decreased, the amount of any such increase or decrease for each levy, and that none of the existing levies to be renewed will be levied after the year preceding the year in which the renewal levy is first imposed.

3501.06; R.C. 3501.11. A county board of elections is a creature of statute and has only those powers expressly provided by statute or as may exist by necessary implication. 2003 Op. Att'y Gen. No. 2003-036, at 2-297. The statutory responsibilities of a county board of elections include establishing election precincts, R.C. 3501.11(A); fixing and providing the places for registration of voters and for holding primaries and elections, R.C. 3501.11(B); providing for the purchase, preservation, and maintenance of election fixtures and equipment used in registration, nominations, and elections, R.C. 3501.11(C); advertising and contracting for the printing of all ballots and supplies used in registrations and elections, R.C. 3501.11(F); providing for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided, R.C. 3501.11(G); reviewing, examining, and certifying the sufficiency and validity of petitions and nomination papers, R.C. 3501.11(K); receiving the returns of elections, canvassing the returns, making abstracts thereof, and transmitting such abstracts to the proper authorities, R.C. 3501.11(L); and issuing certificates of election on forms to be prescribed by the Secretary of State, R.C. 3501.11(M). *See also* 1990 Op. Att'y Gen. No. 90-084, at 2-362 to 2-363.

Numerous Attorney General opinions and court cases have concluded that a county board of elections has no authority to investigate the substantive claims of a taxing authority or evaluate the merits of a proposed tax levy or ballot issue; rather, the responsibilities of a county board of elections are limited to ensuring that applicable statutory procedures have been complied with and that ballot issues are properly presented to the electorate. *See* 2005 Op. Att'y Gen. No. 2005-011, at 2-116 ("[p]rovided that the municipality has complied with relevant procedures and has properly submitted an issue to the board of elections, it is the duty of the board of elections to place the issue on the ballot and conduct the election"); 1990 Op. Att'y Gen. No. 90-084, at 2-364 ("a county board of elections is not required to make a determination as to the merits of … the levying of a tax proposed by a port authority, but rather is statutorily charged with the limited duty of properly presenting these issues to the electors"); 1974 Op. Att'y Gen. No. 74-006, at 2-24 (Attorney General could find nothing in the Revised Code "which would authorize a board of elections to make a determination of the correctness or wisdom of a proposal of a board of education. Rather, the primary concern of a board of elections is to insure that the issues are properly presented on the ballot and that the election is conducted efficiently"); *see also State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App. 2d 1, 5-6, 361 N.E.2d 477 (Cuyahoga County 1976) (a board of elections has a duty to scrutinize whether a proposed ballot measure complies with all procedural requirements, but "has no power to determine that an issue should not be placed on the ballot because if passed it would be unconstitutional or otherwise illegal"), *aff'd per curiam*, 48 Ohio St. 2d 173, 357 N.E.2d 1079 (1976); *State ex rel. McGovern v. Bd. of Elections of Cuyahoga Cty.*, 24 Ohio Misc. 135, 263 N.E.2d 586 (C.P. Cuyahoga County 1970) (syllabus, paragraph 1) ("[t]he powers of a board of elections as prescribed by R.C. 3501.11 do not include the authority to refuse to place on the ballot an issue submitted by lawful procedures for a vote of the electors of a municipality, because of the board's determination that the resulting charter amendment would be illegal"). We find this long line of authority persuasive.

Accordingly, a county board of elections has the authority to determine whether a resolution certified by the board of education of a school district complies with the requirements in R.C. 5705.194-.197. The question of whether the moneys requested in a tax levy proposed pursuant to R.C. 5705.194-.197 are truly necessary for the emergency requirements of a school district, however,

goes to the merits or underlying wisdom of the proposed tax levy. This is the type of substantive inquiry that is beyond the authority of a county board of elections. A county board of elections, therefore, has no duty or responsibility to investigate the assertion in an authorizing resolution by a board of education that the moneys requested in a proposed tax levy pursuant to R.C. 5705.194-.197 are necessary for the emergency requirements of the school district.[2]

Your last question asks what effect, if any, our opinion will have on the tax levies proposed by the Central Local School District and the Defiance City School District if the tax levies are approved by school district voters. We cannot determine definitively whether the actions by the Central Local School District, the Defiance City School District, and the Defiance County Board of Elections comply in all respects with applicable election laws. *See* 2011 Op. Att'y Gen. No. 2011-009, at 2-73 (it is beyond the scope of the formal opinion process to determine the lawfulness of actions taken by a governmental entity); 2005 Op. Att'y Gen. No. 2005-043, at 2-472 (same as previous parenthetical). Based on the facts as represented in your opinion request, however, there is nothing to indicate any party has failed to comply with a specific requirement in R.C. 5705.194-.97.

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[2] Underlying your questions appears to be a concern that a taxing authority's ability to cite "emergency requirements" as justification for a tax levy should be subject to meaningful oversight or restrictions. While the requirements for and limitations on the imposition of a particular tax levy are matters for the General Assembly, the scheme established by R.C. 5705.194-.197 does provide oversight and restrictions. First and foremost, a tax levy proposed pursuant to R.C. 5705.194-.197 is subject to voter approval. Thus, while there is no statutory requirement that a board of education set forth in detail the emergency requirements of the school district necessitating the imposition of additional taxes, the board may voluntarily provide this information in response to demands of the electorate. In short, whether a school district truly has an emergency need for the revenue requested in a tax levy pursuant to R.C. 5705.194-.197 is a political question that will be answered ultimately by the voters of the district. Second, a tax levy imposed pursuant to R.C. 5705.194-.197 must be for a single purpose. *See* R.C. 5705.194 (the resolution by the board of education "shall be confined to a single purpose and shall specify that purpose"). A tax levy for the emergency requirements of a school district is a special levy, and the proceeds of such a levy must, pursuant to R.C. 5705.10, be paid into a special fund. 1979 Op. Att'y Gen. No. 79-024 (syllabus, paragraph 3). Accordingly, the proceeds from a tax levy for the emergency requirements of a school district cannot be used for any purpose a school board wishes, but instead may be used for emergency requirements only. *See id.* (syllabus, paragraph 4) ("[t]he proceeds of a levy to satisfy emergency needs or to prevent school closings, passed under R.C. 5705.194, may be used to pay salary increases for teachers and nonteaching employees only if the board of education has reason to believe, with due regard to the circumstances and interests of the district, that such increases constitute an emergency need or are necessary to prevent school closings"); *see also* 2000 Op. Att'y Gen. No. 2000-048, at 2-296 ("[i]n determining whether resources generated from [a special] tax levy may be used for [a particular] purpose, we must examine … the resolution and ballot language placing the question of the levy before the voters").

In conclusion, it is my opinion, and you are hereby advised as follows:

1. There are no statutory limits on the number of times a tax levy imposed pursuant to R.C. 5705.194-.197 may be renewed.

2. The board of education of a school district that seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district is not required to set forth or explain the circumstances necessitating the tax levy in either the board's authorizing resolution or the tax levy's ballot language.

3. If the board of education of a school district seeks to impose a tax levy pursuant to R.C. 5705.194-.197 for the emergency requirements of the district, a county board of elections does not have a duty or responsibility to investigate the assertion in the authorizing resolution that the moneys requested in the tax levy are necessary for the emergency requirements of the district.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General