November 16, 1993

OPINION NO. 93-042

The Honorable Frank Pierce
Belmont County Prosecuting Attorney
Courthouse Annex No. 1
147 West Main Street
St. Clairsville, Ohio 43950

Dear Prosecutor Pierce:

You have asked for an opinion on the following question: "Can a county, pursuant to Ohio Revised Code 5705.19(J), place a tax levy on the ballot to be used by a Sheriff solely for the funding of equipment, including but not limited to, police cruisers, gasoline, repairs, etc.?" In order to answer your question, it is first necessary to determine whether the proposed uses, as described in your letter, fall within the purposes authorized by R.C. 5705.19(J).

Authority of County to Levy Tax under R.C. 5705.19(J)

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 not less than seventy-five days before the election upon which it will be voted 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 purposes:
> ....
> (J) For the purpose of providing and maintaining motor vehicles, communications, and other *equipment used directly in the operation of a police department*, or the payment of salaries of permanent police personnel, including the payment of the policemen employer's contribution required under [R.C. 742.33], or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or to provide ambulance or emergency medical services operated by a police department.... (Emphasis added.)

The term "subdivision," as used in R.C. Chapter 5705, includes a county. R.C. 5705.01(A). A county may, therefore, propose a tax levy under R.C. 5705.19(J).

Purposes for Which Tax May Be Levied Under R.C. 5705.19(J)

Whether the uses described in your letter fall within the purposes stated in R.C. 5705.19(J) depends upon whether equipment for the sheriff's office constitutes "equipment used directly in the operation of a police department." As mentioned in your opinion request, 1978 Op. Att'y Gen. No. 78-037 addressed the issue of whether a sheriff's department is a "police department" for purposes of R.C. 5705.19, as follows:

> The terms "police," "police department" and "permanent police personnel" are nowhere defined in R.C. Chapter 5705. Accordingly, it is necessary to construe such terms according to the rules of grammar and common usage. *See* R.C. 1.42. "Police" is defined in *Black's Law Dictionary* (4th Ed.) as:
>
> The function of that branch of the administrative machinery of government which is charged with the preservation of public order and tranquility, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes.
>
> R.C. 311.07 imposes upon a sheriff [the duty] to preserve the public peace. Accordingly, the sheriff and his deputies perform police functions. As such, a sheriff's department is a "police department" for the purpose of R.C. 5705.19(J). Therefore I conclude that a county is authorized, pursuant to R.C. 5705.19(J), to place a tax levy on the ballot for funds to be used by a sheriff for salaries of permanent sheriff's personnel performing police functions and for communications and other equipment used directly by the sheriff in the performance of his duties.

Id. at 2-89. Since the issuance of Op. No. 78-037, R.C. 5705.19, although amended numerous times, has not changed the term "police"in division (J). Further, it does not appear that any court has adopted a contrary interpretation of that portion of R.C. 5705.19(J). There is no basis, therefore, for altering the conclusion reached in Op. No. 78-037 that a sheriff's office constitutes a "police department," for purposes of R.C. 5705.19(J). Thus, if the equipment you describe is used "directly in the operation of" the sheriff's office, the county may use the proceeds of a tax levied under R.C. 5705.19(J) for such equipment.

Narrowing of Purposes Stated Within a Single Division of R.C. 5705.19

Your question also concerns whether the purpose of a tax levy under R.C. 5705.19(J) may be limited to a purpose *narrower* than that stated in division (J) of R.C. 5705.19. In the situation you describe, the county contemplates using the proceeds only for equipment expenses of the sheriff's office, but not for any of the other uses described in R.C. 5705.19(J).

A similar issue was addressed in 1990 Op. Att'y Gen. No. 90-069 at 2-292, stating:

> Special levies may...be restricted by resolution and ballot language to particular uses. *See, e.g.,* 1963 Op. Att'y Gen. No. 154, p. 240 (the language "child welfare services" used in the resolution and ballot for a levy define the purpose of the special levy). *See generally* R.C. 5705.09-.10 (all revenue derived from a general levy for current expense authorized by vote in excess of the ten-mill limitation is to be paid into a special fund for the purpose for which the levy was made).... The commissioners may, accordingly, indicate in their resolution and on the ballot that levy moneys are needed for particular uses within the purpose set forth by statute....

The levy you propose under R.C. 5705.19(J) is a special levy. *See generally* 1992 Op. Att'y Gen. No. 92-058, 2-239 n. 1. Thus, the county may limit the uses of the proceeds of a tax levy under R.C. 5705.19(J) to uses that are included within, but more limited than, the purposes set forth in R.C. 5705.19(J). *See id.*

As cautioned in Op. No. 90-069, at 2-292, however: "It should be noted that no levy moneys may be expended for purposes that are not within the ballot language. Thus, if the ballot language is more narrow than the statutory language, that narrow language restricts the permissible expenditures of levy moneys." Therefore, by limiting the purpose of the levy in the resolution and the ballot language, the permitted uses of the proceeds of the levy are also so limited.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, a county may propose a tax levy under R.C. 5705.19(J) for the limited purpose of funding equipment used directly in the operation of the sheriff's office.

Respectfully,

LEE FISHER
Attorney General

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SYLLABUS: 93-042

A county may propose a tax levy under R.C. 5705.19(J) for the limited purpose of funding equipment used directly in the operation of the sheriff's office.