

OPINION NO. 66-153

Syllabus:

When an exempted school district proposes a five-mill tax levy outside the ten-mill limitation, pursuant to Section 5705.192, Revised Code, for current operating purposes, which is not necessary to meet the minimum requirements of Chapter 3317, Revised Code, such levy may be for an indefinite period of time, so long as the total millage outside the ten-mill limitation levied for an indefinite period of time does not exceed ten mills.

If any part of said proposed levy for an indefinite period of time causes the total millage levied for an indefinite period of time outside the ten-mill limitation to exceed ten mills, then Section 5705.192, Revised Code, limits the excess of the ten mills specified to a duration of no longer than ten years.

A proposed levy outside the ten-mill limitation for current operating expenses of an exempted school district, which is not necessary to meet the minimum requirements of Chapter 3317, Revised Code, and which is proposed under Section 5705.19, Revised Code, may be made for any number of years not exceeding five.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: William B. Saxbe, Attorney General, September 9, 1966

You have requested my opinion on the following question:

Can an Exempted School District place upon the ballot at the general election in November of 1966 a levy of five (5) mills for current operating expenses for said exempted school district? Your request further states:

"* * * This levy would be outside the ten (10) mill limitation and not necessarily needed to meet the minimum requirements under Chapter 3317 of the Revised Code.

"Therefore, in construing Section 5705.192, would it be true that a subdivision such as a school district could place upon the ballot a levy such as hereinbefore set forth for any number of years or an indefinite period as provided in said statute? The further question has been raised, could a levy as hereinbefore set forth be placed upon the ballot under Section 5705.19 of the Revised Code for a period of seven (7) years when it is not necessary or needed to meet the minimum requirements under Chapter 3317?"

Section 5705.192, Revised Code, to which you refer in your letter of request, after providing that a board of education may resolve the necessity to levy a tax in excess of the ten-mill limitation, reads in part as follows:

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"Such resolution shall also specify the amount of increase in rate which it is necessary to levy, the portion of the increase in rate, if any, proposed to be levied in order to qualify for the distribution of school funds pursuant to the provisions of Chapter 3317. of the Revised Code, and the portion of the increased rate, if any, in excess of the amount necessary to qualify for the distribution of funds pursuant to the provisions of Chapter 3317. of the Revised Code, and whether or not there shall be a levy upon the duplicate of the current year.

"The board of education, in such resolution may specify that the total increased rate proposed to be levied, shall be for an indefinite period of time, notwithstanding the fact that the total millage for current expenses being currently levied by the district is at least the minimum millage rate required by section 3317.02 of the Revised Code, provided that the total millage outstanding, in effect for an indefinite period of time, if such levy is adopted, shall not exceed ten mills. Such portion which shall be for an indefinite period shall be in effect until such time as the rate may be decreased by an amount equal to or less than the amount of such voted increase, by a majority vote of the electors of the school district approving such decrease pursuant to the provisions of section 5705.261 of the Revised Code, or pursuant to the provisions of section 5713.11 of the Revised Code; or such portion may be so decreased for a period of not to exceed one year, and from year to year, by a majority vote on the part of the board of education. Such portion not otherwise specified or which would be in excess of the ten mills specified and approved for an indefinite period, shall be in effect for a period no longer than ten years."

(Emphasis added)

Since the Granville Exempted School District proposes a five (5) mill levy outside the ten-mill limitation for current operating expenses, it is my opinion that the proposed levy could be for an indefinite period of time so long as the total millage outside the ten-mill limitation levied for an indefinite period of time does not exceed ten mills. If any part of this proposed five (5) mill levy for an indefinite period of time causes the total outside the limitation to exceed ten mills, then Section 5705.192, supra, limits the excess of the ten mills specified to a duration of no longer than ten years. If the proposed levy under Section 5705.192, supra, is for a definite number of years instead of for an indefinite period of time, then, pursuant to Section 5705.19, Revised Code, said definite number of years shall not exceed ten.

You also ask whether the hereinbefore described levy could be made under the provisions of Section 5705.19, Revised Code, for a period of seven (7) years. In this respect, Section 5705.19, supra, provides in pertinent part:

"Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase 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, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness and except when the additional

rate is for the purpose of providing current operating revenues for a school district, as required in Chapter 3317. of the Revised Code, the increased rate may be for any number of years not exceeding ten."

Since you state that the proposed levy is not necessary to meet the minimum requirements of Chapter 3317, Revised Code, the life of the proposed five (5) mill levy may not exceed five years as is provided by Section 5705.19, Revised Code. It must be noted that if the levy were authorized under Section 5705.192, Revised Code, instead of Section 5705.19, supra, it could be made for ten years rather than five years.