

OPINION 65-187

Syllabus:

When a tax is proposed to be levied under Section 5705.19 (A), Revised Code, the term "current expenses" must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
 By: William B. Saxbe, Attorney General, October 20, 1965

Your request for my opinion states in pertinent part as follows:

"* * * Assuming that there is nowhere in the Revised Code any specific authority for a county to levy a tax outside the ten-mill limitation for the purpose of paying the cost of garbage collection but that garbage collection is a legitimate service for which the county may expend money, can the county submit a tax levy under the authority granted by Section 5705.19 (A), Revised Code and specify on the ballot that the funds raised by the levy will be spent for garbage collection?"

"Can the ballot contain a purpose clause such as this: '* * * for the current operating expenses of the said county, to wit: the expenses of garbage collection in the rural areas of said county'? Or could the purpose clause simply say that the tax levy was to raise money for garbage collection and not even mention current expenses -- assuming always that the tax is being levied under Section 5705.19 (A), Revised Code.

"* * * * * * * *"

"In short, I would appreciate your opinion as to whether, in these circumstances, (1) the words 'current expenses' must appear on the ballot at all, and (2) can additional words suggesting a limitation within the category of current expenses be added to the ballot."

Section 5705.19, Revised Code, to which you make reference in your request, provides in part that:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which 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 such limitation for any of the following purposes:

"(A) For current expenses of the subdivision;"

In Informal Opinion No. 229, Opinions of the Attorney General for 1960, my predecessor was asked whether or not the form of a proposed resolution was in accord with the provisions of Section 5705.19, supra. The facts presented in the request for that opinion showed that the board of county commissioners pro-

posed to submit to the electors at the general election in 1960 a tax levy for the purpose of current expenses of the subdivision, to wit: "THE TRAINING AND EDUCATION OF MENTALLY RETARDED CHILDREN." In such opinion the Attorney General concluded:

"* * * it is my opinion and you are advised that the words 'the training and education of mentally retarded children' may not be added to the words 'current expenses of the subdivision' in a resolution of necessity under the provisions of Section 5705.19, Revised Code, as such would not be within the statement of purpose as required by such section."

In reaching his conclusion in Opinion No. 229, supra, the Attorney General relied upon Informal Opinion No. 512, Opinions of the Attorney General for 1956. In that instance a board of education proposed a tax in excess of the ten-mill limitation "for the purpose of increasing salaries * * * at a rate not to exceed 1.54 mills for five (5) years." It was held in said opinion that the requirements of form set out in Section 5705.19, supra, must be met, and it was further stated that:

"In the resolution at hand, the board of education purports to make additional levies for current expenses, but in so doing as to the 'Additional Tax Levy For Salary Increases,' the board has failed to follow the form prescribed in Section 5705.19, Revised Code, which requires only the general statement of purpose, viz., 'current expenses.' I am therefore of the opinion that this resolution for the additional 1.54-mill levy is not in conformity with the statutory requirements for the submission of such a proposal and must accordingly fail. It is my opinion, however, that the resolution for the renewal of the 7.20-mill levy is in substantial compliance with law.

"In resolving the question in this manner, it is well to recognize that the proceeds of the proposed 1.54-mill levy would go merely to augment the funds available for school district purposes from the general fund. Section 5705.10, Revised Code. There is no authority for setting aside the funds made available by such a levy for the specific use of paying an increase in salaries of employees. The aggregate amount in the general fund may be used for any purpose for which these funds are lawfully appropriated; and, as already noted, special school levies authorized outside the ten-mill limitation must be deemed available to meet any 'current expenses' of the school district. To designate this additional levy for a special use would therefore possibly be misleading to the electors and clearly not within the statement of purpose required by Section 5705.19, Revised Code."

It is my opinion that the opinions quoted in the preceding paragraph correctly construe the provisions of Section 5705.19,

supra, and that the proposals set forth in your request are thereby precluded.

Therefore, it is my opinion and you are hereby advised that when a tax is proposed to be levied under Section 5705.19 (A), Revised Code, the term "current expenses" must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot.