

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1523 was overruled in part by
1980 Op. Att'y Gen. No. 80-064.

OPINION NO. 1523**Syllabus:**

1. A board of education of a joint vocational school district may proceed as authorized by Sections 3311.21, 5705.19, 5705.192 and 5705.21, Revised Code, to declare by resolution the necessity to levy a tax in excess of the ten-mill limitation and that there shall be a levy upon the duplicate of the current year; and the fact that such board of education did not come into legal existence until the fifteenth day of June does not prevent such levy upon the current duplicate.

2. The revenue received from a special levy in excess of the ten-mill limitation for current operating expenses

may not lawfully be used to enlarge or improve existing buildings.

3. There is no legal authority for a participating school district to allocate and pay over any part of its tax or school foundation funds to a joint vocational school district.

4. A board of education of a joint vocational school district which includes school districts from five counties is not a county board and the members of the board are not county officers within the meaning of Section 309.09, Revised Code, and such board is not entitled to the services of the prosecuting attorney of any county; such board, pursuant to Section 309.10, Revised Code, may employ legal counsel and pay therefor from the school fund of the joint vocational school district.

To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio
By: William B. Saxbe, Attorney General, November 6, 1964

Your request for my opinion reads:

"The Wood County Superintendent of Schools has asked this office to seek your opinion on the following questions which involve the Penta-County Vocational School District:

"1. Can a joint vocational school board propose a levy effective January 1, 1964, for collection in 1965, even though the district did not become a legal entity until June 15, 1964?

"2. Can a joint vocational school board use money from an operating levy to enlarge or improve existing buildings?

"3. Can a local school district which is a part of a joint vocational school district assign monies from its operating fund to be used by the joint vocational school district?

"The Penta-County Vocational School District is comprised of seventeen local and city districts located in five counties. This, of course, raises the question as to who should advise them in legal matters. Since time is of the essence in this matter, this office gave the Superintendent its opinion, a copy of which is enclosed; however, I would sincerely appreciate your advice as to whom they should consult for legal advice in the future."

Joint vocational school districts are authorized by and may be created under Section 3311.16, et seq., Revised Code; such districts may include two or more school districts in one county or in two or more adjoining counties.

Section 3311.21, Revised Code, specifically authorizes a board of education of a joint vocational school district to adopt a resolution declaring that a tax levy is necessary; that section reads:

"The board of education of the joint vocational school district by a vote of two-thirds of its full membership may at any time adopt a resolution declaring the necessity to levy a tax in excess of the ten-mill limitation, for a specified period of years not exceeding ten, to provide funds for the purpose of purchasing a site or enlargement thereof and for the erection and equipment of buildings, or for the purpose of enlarging, improving, or rebuilding thereof, or for the purpose of providing for the current expenses of the joint vocational school district. Such resolution shall specify the amount of the proposed additional rate. On the adoption of such resolution the joint vocational school district board of education shall certify such resolution to the board of elections of the county containing the most populous portion of the joint vocational school district, which board shall receive resolutions for filing and send them to the boards of elections of all other counties in which territory of such joint vocational school district is located and shall furnish all ballots for the election, as provided in section 3505.071 /3505.07.1/ of the Revised Code and shall prepare the election notice, and the board of elections of each county in which the territory of such district is located shall make the other necessary arrangements for the submission of the question to the electors of the joint vocational school district at the next primary or general election occurring not less than thirty days after such resolution was received from the joint vocational school district board of education, or at a special election to be held at a time designated by such joint vocational school district board of education, which date shall not be earlier than twenty-five days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter.

"The board of elections of the county or counties in which territory of the joint vocational school district is located shall cause to be published in a newspaper of general circulation in such district an advertisement of the proposed tax levy question together with a statement of the amount of the proposed additional levy once each week for three weeks, immediately preceding the election at which the question is to appear on the ballot.

"If a majority of the electors voting on the question of levying such tax in an election

held on the first Tuesday after the first Monday in November vote in favor thereof, the levy shall be approved; the voting requirements at primary and special elections for approval of the question of levying such tax shall be the same as required by the provisions of section 5705.21 of the Revised Code. On approval of such levy, the joint vocational school district board of education shall annually make the levy within such district at the additional rate, or at any lesser rate, and the county auditor of each affected county shall annually place such levy on the tax duplicate of the school districts in his county participating in the joint vocational school district. The taxes realized from said levy shall be collected at the same time and in the same manner as other taxes on such duplicate and said taxes, when collected, shall be paid to the clerk of the joint vocational school district and deposited by him to the appropriate fund. Notes may be issued in anticipation of the proceeds of such levy as provided in section 5705.21 of the Revised Code."

By this section, the General Assembly has set out in detail the procedure to be followed by a board of education of a joint vocational school district in providing for a tax levy in excess of the ten-mill limitation. There is neither a specific grant nor denial of authority in this section for such board to declare by resolution the necessity that there shall be a levy upon the tax duplicate for the current year.

Section 3311.19, Revised Code, however, grants additional authority to such boards of education; that section reads in part:

"* * *A joint vocational school district board of education shall have the same powers, duties, and authority for the management and operation of such joint vocational school district as is granted by law to a board of education of a city school district, and shall be subject to all the provisions of law that apply to a city school district."

This language, in my opinion, makes it necessary to examine Sections 5705.19, 5705.192 and 5705.21, Revised Code. Boards of education of city school districts acting under these sections of the law are authorized to declare that a proposed tax levy shall include a levy upon the tax duplicate for the current year, and it is my conclusion that boards of education of joint vocational school districts generally may include a levy on the current duplicate.

I am unable to find that the mere fact that the board of education did not become a legal entity until the fifteenth of June can in any way affect this right. All actions by such board would be taken after it has come into legal existence, and any approval by the electors would also necessarily be given after the joint vocational school district has been

created and the duly appointed board has taken the action authorized by law.

You have inquired whether the board of education of a joint vocational school district may use funds from an operating levy to enlarge or improve existing buildings. In my opinion, the language of Section 3311.21, Revised Code, makes it necessary that this question be answered in the negative. That section provides for a resolution declaring the necessity to levy a tax for the following purposes:

"* * *to provide funds for the purpose of purchasing a site or enlargement thereof and for the erection and equipment of buildings, or for the purpose of enlarging, improving, or rebuilding thereof, or for the purpose of providing for the current expenses of the joint vocational school district.* * *"

The last paragraph of that section reads in part:

"* * *The taxes realized from said levy shall be collected at the same time and in the same manner as other taxes on such duplicate and said taxes, when collected, shall be paid to the clerk of the joint vocational school district and deposited by him to the appropriate fund.* * *"

Section 5705.09, Revised Code, directs that each subdivision shall establish certain funds, including a general fund and a special fund for each special levy. The special levy proposed by this board of education is for current operating expenses and by reason of Section 5705.10, Revised Code, will be paid into the general fund. The pertinent paragraph of that section reads:

"All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund."

Section 5705.01, Revised Code, shows clearly that the enlargement and improvement of existing buildings may not be looked upon as a current expense; that section reads in part:

"As used in Sections 5705.01 to 5705.47, inclusive, of the Revised Code:

"* * * * *"

"(E) 'Permanent improvement' or 'improvement' means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.

"(F) 'Current operating expenses' and 'current expenses' mean the lawful expenditures of a subdivision, except those for permanent improvements, * * *"

It should, perhaps, be mentioned that we are not concerned here with a general levy for current expenses within the meaning of Section 5705.05, Revised Code, but with a special levy specifically designated as one for current operating expenses.

You have inquired whether one of the participating school districts may assign funds from its operating fund to the joint vocational school district. You have not stated the source of the funds to which you have reference, but I am of the opinion that the answer must clearly be in the negative. I find no authority in Section 3311.16, *et seq.*, Revised Code, for a participating board of education to use part of the funds received from taxation or from the school foundation program for the purposes of the joint vocational school districts. There can be no such implied power in a board of education. I believe that Opinion No. 662, Opinions of the Attorney General for 1963, issued November 21, 1963, is pertinent; the second paragraph of the syllabus reads:

"2. Section 3311.16 to 3311.217, inclusive, Revised Code, reflect a legislative intention that joint vocational school districts be a joint effort by, and for the mutual advantage and benefit of, the separate school districts participating therein. With the exception of the use of school buildings specified in Section 3311.212, Revised Code, for which a rental payment is permissive, said sections do not authorize sales or leases of real or personal property as between joint vocational school districts and the participating districts and such authority may not be necessarily implied."

Also, it should be noted that prior to the 1961 Amendment, 129 Ohio Laws, 1544, Section 3311.18, Revised Code, directed that funds for the maintenance and support of joint vocational school districts should be provided by appropriations from the general funds of the constituent districts. Now, however, boards of education of joint vocational school districts have been granted authority to levy a tax to provide for current expenses of the districts.

You have next inquired as to the duty of serving as legal counsel for the board of education of a joint vocational school district. Such a board as you have described, which includes school districts from five different counties, certainly is not a county board within the meaning of Section 309.09, Revised Code, and the members are not county officers. I am unable to conclude that the prosecuting attorney of any one of the five counties would have the duty, or the authority, to serve as legal counsel for such district. I invite your attention to Opinion No. 95, Opinions of the Attorney General for 1963, issued March 13, 1963, the syllabus of which reads:

"A bi-county airport agency created by

agreement of two counties is not a 'county board' within the meaning of Section 309.09, Revised Code, and is not entitled to legal advice from the prosecuting attorney of either county under this section."

See also Opinion No. 2736, Opinions of the Attorney General for 1958, page 567.

As has been mentioned, such boards of education are subject to all the provisions of law that apply to a city school district; therefore, pursuant to Section 309.10, Revised Code, the board is authorized to employ counsel and make payment therefor from the school funds.

It is, therefore, my opinion and you are advised:

1. A board of education of a joint vocational school district may proceed as authorized by Sections 3311.21, 5705.19, 5705.192 and 5705.21, Revised Code, to declare by resolution the necessity to levy a tax in excess of the ten-mill limitation and that there shall be a levy upon the duplicate of the current year; and the fact that such board of education did not come into legal existence until the fifteenth day of June does not prevent such levy upon the current duplicate.

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3. There is no legal authority for a participating school district to allocate and pay over any part of its tax or school foundation funds to a joint vocational school district.

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