

**OPINION NO. 67-020****Syllabus:**

Since New Boston City School District has a current tax levy for school operation for the year 1966 of at least ten mills, such district qualifies for foundation program payments as of July 1, 1966.

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**To: Martin Essex, Superintendent of Public Instruction, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, February 10, 1967**

Your request for my opinion reads as follows:

"At the November, 1966 general election the electorate of the New Boston City School District approved a 2 mill tax levy for current expenses. The levy is to be extended upon the duplicate for the current year. This levy brought the total tax levies for school operations for this school district to 10 mills for the first time in a number of years.

"Section 3317.01, Revised Code, provides that foundation funds shall be paid only to those districts in which there is a current tax for school operations of at least 10 mills. The same section provides that moneys distributed pursuant to Chapter 3317 of the Revised Code shall be calculated and paid on a fiscal year basis beginning with the first day of July and extending through the 30th day of June. The Scioto County Budget Commission, through its secretary, the County Auditor, has requested of this department 'At what period or month in calendar 1967 will this district receive any foundation funds for which they qualify?'. The County Auditor further advises that this information is necessary for use by the Scioto County Budget Commission in determining the need of the district for 1967 operating funds.

"I would appreciate receiving your opinion on the question of when would the school district first meet the qualification provided in Section 3317.01 (A), Revised Code."

Additional facts show that the total tax levy, for all purposes in New Boston City School District for the year 1966 exceeds ten mills.

The records of the Secretary of State indicate that the additional tax levy appeared on the ballot as follows:

"An additional tax for the benefit of the NEW BOSTON CITY SCHOOL DISTRICT, Scioto County, Ohio, for the purpose of PAYING THE CURRENT EXPENSES OF SAID SCHOOL DISTRICT at a rate not exceeding TWO (2) MILLS for each One Dollar of Valuation, which amounts to TWENTY (20) CENTS for each One Hundred Dollars of Valuation, for a period of TEN (10) YEARS, To-Wit: the Tax Duplicate years of 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974 and 1975."

The authority for an additional tax to be placed on the tax list of the current year is found in part in Section 5705.25, Revised Code, which provides, in part:

\* \* \* \* \*

"A levy voted in excess of the ten-mill limitation under this section shall be certified to the board of tax appeals. In the first year of such levy, it shall be extended on the tax lists after the February settlement next succeeding such election. If such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission." (Emphasis added)

When called upon to interpret Section 5705.25, *supra*, one of my predecessors stated in Opinion No. 2657, Opinions of the Attorney General for 1961, page 676, as follows:

"If a board of education of a school district pursuant to Section 5705.21, Revised Code, resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors of such school district, and the resolution of the board in accordance with Section 5705.19, Revised Code, specifies that such additional tax levy is to be placed upon the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection pursuant to Section 5705.25, Revised Code, and after the

first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission."

This question was also considered in Opinion No. 2145, Opinions of the Attorney General for 1961, page 199, which reads as follows:

"1. Where a tax levy is approved by the voters of a taxing district at the November general election pursuant to Section 5705.25, Revised Code, and the taxing authority resolves to place the additional tax on the tax list for the current year pursuant to that section, the county auditor is required to extend such tax on the tax list and duplicate for the current year, provided, however, that in such a case the board of county commissioners and the department of taxation, pursuant to Section 323.17, Revised Code, may extend the time of payment of taxes beyond the December collection date. (Opinion No. 1009, Opinions of the Attorney General for 1949, page 650, modified)."

Therefore, it is my opinion that the additional tax levy approved by the voters of New Boston City School District in the November 1966 election is a tax lien as of January 1, 1966 and shall be collected with the 1966 taxes.

One of the requirements to be met by a school district before it may participate in the foundation program is found in Section 3317.01, Revised Code, which provides:

"\* \* \* \* \*

"\* \* \* The payments authorized by Chapter 3317, of the Revised Code shall be made only to those school districts in which:

"(A) The district has a current tax levy for school operations of at least ten mills, except that this requirement shall be waived by the superintendent of public instruction for one year if the district has had its total millage reduced below ten mills by action of the county budget commission or county auditor."

New Boston City School District met the millage requirements of the foundation program by the approval of the additional school levy.

School foundation payments on a fiscal year basis are established by Section 3317.01, supra, which provides in part:

"Commencing with the effective date of

this section, moneys distributed pursuant to Chapter 3317. of the Revised Code shall be calculated and paid on a fiscal year basis, beginning with the first day of July and extending through the thirtieth day of June. The moneys appropriated for each fiscal year shall be distributed monthly unless otherwise provided for."  
(Effective 8-16-65)

Therefore, it is my opinion and you are hereby advised that since New Boston City School District has a current tax levy for school operation for the year 1966 of at least ten mills, such district qualifies for foundation program payments as of July 1, 1966.