

OPINION NO. 88-013**Syllabus:**

When a library board of trustees has complied with R.C. 3375.43 and R.C. 5705.23, and submits a resolution requesting the submission of the question of issuing bonds to the taxing authority of the political subdivision to whose jurisdiction the library board is subject, the taxing authority has a duty to submit the question to the electorate.

To: Richard M. Cheski, State Librarian, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1988

I have before me your request for my opinion concerning whether a taxing authority has a duty to submit a request for a bond issue to the electorate when it receives a resolution requesting it to do so from a library board of trustees. I have rephrased your question as follows:

Does a taxing authority that receives a request from a public library board of trustees to submit a request for a bond issue to the

electorate pursuant to R.C. 3375.43 and R.C. 5705.23 have a duty to submit that bond issue to the electorate?

R.C. 3375.43 gives library boards of trustees the power to request the appropriate taxing authority to submit the question of a bond issue to the electorate under certain circumstances. R.C. 3375.43 requires that "[t]he submission to the electors of the question [of a bond issue]...shall conform to Section [11]¹ of Article XII, Ohio Constitution and...[R.C.] 133.01 to 133.65." Article XII, Section 11 of the Ohio Constitution provides:

No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

I also note that R.C. 133.09, which regulates the submission to the electors of the question of issuing bonds, provides in pertinent part:

The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution declaring the necessity of such bond issue, fixing the date the issue shall be submitted to the electors, and fixing the amount, purpose, and approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire said bonds. The taxing authority shall certify such resolution to the county auditor at least one hundred ten days prior to the election at which it is desired to submit such questions. Thereupon and more than one hundred days prior to such election, the auditor shall calculate and certify to the taxing authority the average annual levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, throughout the life of the bonds which will be required to pay the interest on and retire such bonds, assuming that they are all issued in one series and that the amount of the tax list of such subdivision remains throughout the life of said bonds the same as the amount of the tax list for the current year, and

¹ Although the statute currently reads "Section II of Article XII," I have concluded that "II" is a typographical error for "11." I reach this conclusion for two reasons. First, the section numbers of the Ohio Constitution, as well as of the federal and other state constitutions, are traditionally written in Arabic, rather than Roman, numerals. See, e.g., Ohio Constitution, Article XII, Section 11; see also *A Uniform System of Citation* 55 (14th ed. 1986). Second, I have concluded that the number "11" was mistakenly transcribed as "II" when R.C. 3375.43 was amended—for the first and only time since it was originally drafted—at 1979-1980 Ohio Laws, Part II, 3785 (Am. Sub. H.B. 847, eff. Aug. 22, 1980). The original version of R.C. 3375.43 was enacted as G.C. 4005-2 at 1933-1934 Ohio Laws, Part II, 276 (Am. S. B. 62, approved Dec. 5, 1934). This version shows the constitutional provision as "article XII, section 11," although I note that the typeface used by the publisher makes the arabic "11" look like a roman "II." The amended version of R.C. 3375.43, which is printed at page 3785 of Volume II of 1979-1980 Ohio Laws, refers to Section "II," with none of the usual indications of intended additions or alterations, such as capital letters, bold print, or crossed-out language.

In any case, a taxing authority is required to follow the relevant mandates of every section of the Ohio Constitution, and Section 11 of Article XII is relevant to the issuance of bonds by taxing authorities.

if this is not determined, the estimated amount submitted by the auditor to the county budget commission. Thereupon, if the taxing authority desires to proceed with the issue of said bonds, it shall, not later than four p.m. of the seventy-fifth day before the day of such election, certify its resolution, *together with the amount of the average tax levy*, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the auditor, and the maximum number of years required to retire the bonds, to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision. (Emphasis added.)

Both Article XII, Section 11 of the Ohio Constitution and R.C. 133.09 indicate that if a taxing authority submits to its electors the question of issuing bonds, it must also submit the question of a corresponding tax levy to retire the bonds. This requirement is confirmed by R.C. 133.13(B), which mandates the form for a ballot for the question of a bond issue on behalf of a library board:

The form of the ballot to be used at the election provided for in section 133.09 of the Revised Code shall be either of the following:

....

(B) In the case of a ballot used at an election held pursuant to a resolution adopted under section 3375.43 or 3375.431 of the Revised Code:

"Shall bonds be issued for (here insert name of library) for the purpose of (here insert purpose of bond issue) in the sum of (here insert amount of bond issue) and a levy of taxes to be made outside of the ten-mill limitation by (here insert the name of the subdivision that is to issue the bonds and levy the tax) as the issuer of the bonds, estimated by the county auditor to average (here insert number of mills) mills for each one dollar of valuation, which amounts to (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for a maximum period of (here insert longest maturity) years to pay the principal and interest of such bonds."

For the Bond Issue

Against the Bond Issue

(Emphasis added.)

Accordingly, I conclude that Article XII, Section 11, of the Ohio Constitution and R.C. 133.09 and 133.13(B) require a taxing authority that submits the question of a library district bond issue to its voters pursuant to R.C. 3375.43 to submit the question of a corresponding tax levy to the voters at the same time. As I have already noted, R.C. 3375.43 gives a library board of trustees the authority to request a taxing authority to submit the question of issuing bonds to the electorate. I must now determine whether a taxing authority may refuse to honor that request.

R.C. 133.01(C) defines "taxing authority" as that term is used in R.C. Chapter 133, and provides in pertinent part:

"Taxing authority" or "bond-issuing authority" means in the case of any county, the board of county commissioners; in the case of a municipal corporation, the legislative authority of such municipal corporation; [and] in the case of a school district, the board of education....

The General Assembly has also defined "taxing authority" as the term is used in R.C. Chapter 5705. R.C. 5705.01(C) provides in pertinent part:

"Taxing authority" or "bond issuing authority" means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district [and]...in the case of a township, the board of township trustees....

Other than a municipal corporation, any taxing authority to whose jurisdiction a library board is subject is a creature of statute. In addition, any taxing authority that is given the authority to submit the question of a bond issue to the electorate on behalf of a library board derives its authority to submit the question exclusively from R.C. 3375.43. Accordingly, the taxing authority may exercise only the power expressly given to it by that statute or necessarily implied therefrom. *See generally, State ex rel. Shriver v. Board of County Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (Syllabus, paragraph two) ("[A board of county commissioners] possesses only such power and jurisdiction as are conferred expressly by statutory enactment."); *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875) (concerning the authority of township trustees); *Dayton Classroom Teachers Association v. Dayton Board of Education*, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975) (concerning authority of board of education). R.C. 3375.43 gives certain library boards the authority to request that the taxing authority to whose jurisdiction they are subject submit the question of a bond issue to the electorate, and imposes certain requirements on the taxing authority:

Any public library board of trustees...*may request* the taxing authority of the political subdivision to whose jurisdiction the board is subject to submit to the electors of such subdivision the question of issuing bonds for the purpose of purchasing, erecting, constructing, enlarging, extending, or improving a building for library purposes, including a site therefor, and equipping and furnishing the same. Such request shall be made by resolution adopted by the board,[:] the resolution shall declare the necessity of the issuance of such bonds and fix their amount and purpose, and shall further recite whether or not notes shall be issued in anticipation of the issuance of such bonds. A copy of the resolution shall be certified by the board to the taxing authority of the subdivision pursuant to...[R.C.] 5705.23....The submission to the electors of the question...shall conform to Section [11] of Article XII, Ohio Constitution and...[R.C.] 133.01 to 133.65....governing the issuance, sale, characteristics, and levies for, and method and means of payment of, bonds or notes issued by such subdivision pursuant to a vote of the electors. Such bonds or notes shall be sold and issued by the proper officer as is provided by law for the sale and issuance of bonds of the political subdivision to whose jurisdiction the board is subject. The indebtedness created by such bonds or notes constitutes a part of the indebtedness of such subdivision and is subject to the limitations imposed on the creation of indebtedness by such subdivision. The proceeds of the sale of such bonds shall be transferred by the fiscal officer of such subdivision to the board for the benefit of which the bonds were issued and shall be appropriated to and expended only for the purposes for which issued. (Emphasis added.)

Thus, R.C. 3375.43 enumerates the purposes for which a library board may request the issuance of bonds, the information that the board must include in its resolution to the taxing authority, and the procedures that the taxing authority must follow in submitting the question to the electorate and distributing the proceeds of the sale of the bonds. R.C. 3375.43 does not expressly give a taxing authority the power to refuse a library board's request to submit the question of a bond issue to the electors; indeed, it appears to be based on the presumption that the taxing

authority will submit the question to the voters. Accordingly, I can see no reason to necessarily imply that R.C. 3375.43 gives a taxing authority the power to refuse to submit the question of a bond issue to the electors.

This conclusion is reinforced by the language and interpretation of R.C. 5705.23, which provides that a taxing authority must submit the question of a *tax levy* to the voters when requested to do so by an appropriate library board. As I have already noted, the submission to the voters of the question of a library district bond issue requires the submission also of a corresponding tax levy. Moreover, R.C. 3375.43 provides that "[a] copy of the resolution [requesting the bond issue] shall be certified by the [library] board to the taxing authority of the subdivision pursuant to section 5705.23 of the Revised Code." Accordingly, I must consider the language of R.C. 5705.23 that relates to the library board's certification of its resolution to the taxing authority as if it were part of R.C. 3375.43. *See generally State ex rel. Fritz v. Gongwer*, 114 Ohio St. 642, 649, 151 N.E. 752, 754 (1926) (noting that "[t]he effectiveness of legislation by reference has been...generally recognized in Ohio"); *see also Lembo v. State*, 14 Ohio Dec. N.P. 384, 385-86 (Cuyahoga C.P. 1904) (noting that "[w]here a statute is incorporated in another, the effect is the same as if the provisions of the former were reenacted in the latter, for all the purposes of the latter statute") (citation omitted). R.C. 5705.23 permits a library board of trustees to require a taxing authority to submit the question of a tax levy to the electorate, and provides in pertinent part:

The board of library trustees of any county, municipal corporation, school district, or township public library by a vote of two-thirds of all its members may at any time declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the public library, that it is necessary to levy a tax in excess of such limitation for current expenses of the public library or for the construction of any specific permanent improvement or class of improvements which the board of library trustees is authorized to make or acquire and which could be included in a single issue of bonds, and that the question of such additional tax levy *shall be submitted by the taxing authority* of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision.... (Emphasis added.)

Accordingly, a library board's resolution requesting that the taxing authority of the subdivision place the question of a bond issue on the ballot should "declare by resolution" that the question of the issuance of bonds "*shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision.*" (Emphasis added.) R.C. 5705.23 further provides that the taxing authority shall submit the question of a tax levy to the voters when it receives the library board's resolution:

Upon receipt of the resolution, the taxing authority of the political subdivision to whose jurisdiction the board is subject *shall adopt a resolution* providing for the submission of such additional tax levy to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to...[R.C.] 3375.01...on the date specified in the resolution of the board of library trustees. The resolution adopted by the taxing authority shall otherwise conform to the resolution certified to it by the board. (Emphasis added.)

The use of the word "shall" in a statute generally indicates that the duty prescribed is mandatory. *See, e.g., Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (Syllabus, paragraph one) ("In statutory construction...the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its] ordinary usage"). Thus, R.C. 5705.23 requires the taxing authority to put the question of a tax levy before the electors if it receives a requesting resolution from an appropriate library board.

This conclusion is supported by an opinion of my predecessor in answer to a question about the application of certain statutes to boards of trustees of public libraries. In analyzing R.C. 5705.23, he noted:

A board of public library trustees may also receive funds from the proceeds of a special tax levied pursuant to R.C. 5705.23....Pursuant to this statute, a board of public library trustees cannot independently cause a tax levy to be submitted to the electors in its district; it must act through a separate taxing authority. Yet, the taxing authority's function is merely *ministerial*; the board may require the taxing authority to submit the question of the levy to the electors....While the taxing authority of a subdivision must perform the administrative function of submitting the question to the electors, *all discretionary decisions* concerning the need for the tax, the level of the tax, and the timing and duration must be made by the board of public library trustees.... (Emphasis added.)

1982 Op. Att'y Gen. No. 82-056 at 2-164 to 2-165. See also 1985 Op. Att'y Gen. No. 85-017 at 2-68 (noting that R.C. 5705.23 "clearly provides" that upon receipt of an appropriate resolution from a board of trustees of a school library district, the school district's taxing authority "must by resolution provide for the submission of the question of an additional tax levy for library purposes to the electors...") (Citation omitted.) A "ministerial function" has been defined as "[a] function as to which there is no occasion to use judgment or discretion." *Black's Law Dictionary* 899 (5th ed. 1979) (citation omitted). I agree with the analysis of my predecessor that the taxing authority's function is merely ministerial, and conclude that the taxing authority may not exercise any discretion in determining whether or not to submit a tax levy to the electorate. Because R.C. 3375.43 incorporates R.C. 5705.23 by reference, I also conclude that a taxing authority has no authority to exercise discretion in deciding whether or not to submit the question of a bond issue to the electorate when requested to do so by a library board pursuant to R.C. 3375.43 and R.C. 5705.23.

Accordingly, it is my opinion and you are advised that when a library board of trustees has complied with R.C. 3375.43 and R.C. 5705.23, and submits a resolution requesting the submission of the question of issuing bonds to the taxing authority of the political subdivision to whose jurisdiction the library board is subject, the taxing authority has a duty to submit the question to the electorate.