

OPINION NO. 86-048

Syllabus:

1. R.C. 5705.29(A)(1) limits the amount the board of county commissioners, as the taxing authority of the county, may include as contingent expense in the county's tax budget to three percent of the total amount of appropriations for current expenses of the county. Where the board of county commissioners elects to include a contingent expense in the county tax budget, R.C. 5705.29(A)(1) does not require the board to designate such expense by department or division.
2. A single-county community mental health board is, for purposes of R.C. 5705.28(C), a board entitled to participate in the revenue or appropriations of the county in which it is located, and is, for purposes of R.C. 5705.29(A)(1), a division or department of the county.
3. The three percent limitation upon contingent expense authorized by R.C. 5705.29(A)(1) for inclusion within a county's tax budget does not limit a single-county community mental health board to including only three percent of its total contemplated expenditures as a contingent expense in its statement of estimated revenues and expenditures submitted under R.C. 5705.28(C).

To: Jim Slagle, Marion County Prosecuting Attorney, Marion, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1986

I have before me your opinion request in which you ask whether a single-county community mental health service district is bound by the limitation set forth in R.C. 5705.29(A)(1) concerning the amount which may be included in a taxing authority's tax budget for contingent expenses.

In order to answer your question, it is first necessary to examine the portion of the tax budget scheme set forth in R.C. 5705.28 and R.C. 5705.29. Pursuant to R.C. 5705.28(A), "the taxing authority of each subdivision or other taxing unit," with certain exceptions, is required to adopt a tax budget for the next succeeding fiscal year.¹ As set forth in R.C.

¹ R.C. 5705.01(C) defines a "taxing authority" as including, "in the case of any county, the board of county commissioners...in the case of a joint-county community mental health service district, the district's mental health board...." See also R.C. 5705.01(A) (defining a "subdivision" for purposes of R.C. Chapter 5705, as, "any county, municipal corporation, township...a joint-county mental health service district...or school district, except the county school district"); R.C. 5705.01(H) (defining a "taxing unit" as, "any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts").

5705.29, the tax budget must contain certain items, including the following:

(A)(1) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made. Except in the case of a school district, this estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expenses.

R.C. 5705.29(A)(1) requires the taxing authority to include in the tax budget a statement of current operating expenses "for each department and division of the subdivision, classified as to personal services and other expenses." As discussed below, a single-county community mental health service district is a department or division of the county for purposes of R.C. 5705.29. Since the tax budget lists current operating expenses by department or division, it may appear that the contingent expense authorized by R.C. 5705.29(A)(1) is also to be designated by department or division and must be limited to three percent of the current expenses of each department or division for which the taxing authority has authorized such contingent expense. However, since the contingent expense may be used for any purpose of the subdivision, see R.C. 5705.40, and is limited to three percent of "the total amount of appropriations" for current expenses, I conclude that where a taxing authority elects to include a contingent expense in its tax budget, R.C. 5705.29(A)(1) does not require the taxing authority to designate such expense by department or division. Rather, R.C. 5705.29(A)(1) limits the taxing authority to including up to three percent of its total appropriations for current expenses as a contingent expense of the subdivision or taxing unit. See generally R.C. 5705.40 (providing that the annual appropriation measure prepared by a taxing authority, see R.C. 5705.38, "may contain an

It appears that your question arises, in part, from the fact that a board of a joint-county community mental health service district is included within the definition of a "taxing authority," and, as such, is required to prepare its own tax budget in accordance with R.C. Chapter 5705 and, specifically, R.C. 5705.29. A single-county board, however, has not been included within the definition of a taxing authority, and is, therefore, not required to prepare a tax budget in accordance with R.C. 5705.28 and R.C. 5705.29. See 1979 Op. Att'y Gen. No. 79-016; 1975 Op. Att'y Gen. No. 75-089 at 2-356 (concluding that a joint-county mental health board is a taxing authority, and stating: "it appears that it was the intent of the legislature to specifically include these joint-county service districts and the corresponding boards within R.C. Chapter 5705, while excluding community mental health and retardation service districts that are not joint-county"). See also 1979-1980 Ohio Laws, Part I, 499 (Am. Sub. S.B. 160, eff. Oct. 31, 1980) (changing the name of community mental health and retardation service districts provided for in R.C. Chapter 340 to community mental health service districts).

appropriation for contingencies not to exceed the amount authorized by [R.C. 5705.29]." and that, "[b]y a two-thirds vote of all members of the taxing authority...expenditures may be authorized in pursuance of such contingency appropriation...for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure"); City Commission v. Bethel Township, 69 Ohio St. 2d 500, 502, 432 N.E.2d 830, 832, n. 4 (1982) ("R.C. 5705.29(A)(1) specifically provides that a tax budget 'may include a contingent expense not designated for any particular purpose.' However, this section also limits the contingency fund, in this case, to three percent of the total amount of appropriations for current expenses'").

Although the board of a single-county community mental health service district is not a taxing authority, see note 1, supra, and thus need not prepare a "tax budget" as required by R.C. 5705.28 and R.C. 5705.29, it does have certain responsibilities with respect to the preparation of the county's tax budget. R.C. 5705.28 states in part:

(C) To assist in the preparation of the budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority...an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices.² The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. (Emphasis and footnote added.)

A county is a "subdivision," for purposes of R.C. Chapter 5705. R.C. 5705.01(A). Further, the board of a single-county community mental health service district is a board "entitled to participate in any appropriation or revenue of" the county, for purposes of R.C. 5705.28.³ This conclusion becomes apparent upon examination of R.C. Chapter 340, which governs the establishment, operation, and funding of community mental health service districts. See generally 1981 Op. Att'y Gen. No. 81-100.

² Since the enactment of Sub. H.B. 201, 116th Gen. A. (1985) (eff., in part, July 1, 1985), there is no longer a Bureau of Inspection and Supervision of Public Offices. See generally R.C. 117.09 ("[b]y virtue of his office, the auditor of state shall be the chief inspector and supervisor of public offices").

³ I note that even though a single-county community mental health board is the governing body of a community mental health service "district," it is not a "district authority entitled to participate in any appropriation or revenue of" the county. For purposes of R.C. Chapter 5705, a "district authority" is defined as, "any board of directors, trustees, commissioners, or other officers

Pursuant to R.C. 340.01, a community mental health service district may be established within either a single county or combination of counties. Districts including more than one county are known as joint-county districts. R.C. 340.01. Each district is governed by a community mental health board as provided for in R.C. 340.02. See generally 1975 Op. Att'y Gen. No. 75-084 at 2-332 ("as to the functional powers and duties, there is no distinction between a single and a joint county board..." (emphasis in original)).

Concerning a county's general levy for current expense, R.C. 5705.05 states in pertinent part: "Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include:...(E) In the case of counties, the amounts necessary...for the support of mental health services...." Specifically concerning a county's levying of taxes for a community mental health service district, R.C. 5705.221 states:

At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county 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 the necessary requirements of the county's community mental health service district established pursuant to Chapter 340. of the Revised Code, or the county's contribution to a joint-county district of which the county is a part and that it is necessary to levy a tax in excess of such limitation for the operation of mental health programs and the acquisition, construction, renovation, financing, maintenance, and operation of mental health facilities.

....
If the majority of the electors voting on a levy to supplement general fund appropriations for the support of the comprehensive mental health program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution.

controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as...a joint-county community mental health district's mental health board...." R.C. 5705.01(I). See generally 1982 Op. Att'y Gen. No. 82-056 at 2-163 ("a board constitutes a district authority only if it receives the proceeds of taxes levied by, or other appropriations from, two or more subdivisions"). Although a joint-county community mental health board is specifically included as a district authority, a single-county board is not. See R.C. 340.07 (a joint-county district may receive moneys from the board of county commissioners of each county participating in the district). It appears, therefore, that the legislature does not intend that a single-county community mental health board qualify as a district authority. Support for this conclusion is found by an examination of the manner in which a single-county district receives its funding. see pp. 5-7, infra.

See generally R.C. 340.07 (authorizing the appropriation of money by a county to a community mental health board);⁴ 1979 Op. Att'y Gen. No. 79-016 (discussing the levying of taxes for a county mental health and retardation service district). In addition to amounts received from the county, a community mental health board may receive money from the state. R.C. 340.08; R.C. 340.09. There is also the possibility of such board's receipt of money from other sources. See, e.g., R.C. 340.03 (authorizing the board to "receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established, and [to] hold and apply it according to the terms of the gift, grant, or bequest"). R.C. Chapter 340 does not, however, provide for the funding of a single-county community mental health service district by any subdivision, as that term is defined in R.C. 5705.01(A), other than the county. See 1969 Op. Att'y Gen. No. 69-045 at 2-93 ("[p]rimary responsibility for appropriating money for the salaries of...employees [of a single-county board established pursuant to R.C. Chapter 340] is vested with the county commissioners pursuant to [R.C. 340.07], although the state reimburses the community board for appropriation in certain specialized areas"). I conclude, therefore, that although the board of a joint-county community mental health service district is itself a taxing authority, the board of a single-county community mental health service district is, for purposes of R.C. 5705.29, a department or division of the county. Further, it is clear that, although a board of county commissioners may have discretion in determining how to fund the activities of a community mental health service district, the board of county commissioners is the entity responsible for determining the tax needs of the district, see Op. No. 79-016, and the board of county commissioners is responsible for assuring that its community mental health service district is adequately funded. See R.C. 5705.221. I conclude, therefore, that the board of a single-county community mental health service district is, for purposes of R.C. 5705.28, a board entitled to participate in county revenue or appropriations. See Op. No. 79-016 at 2-51 ("the board of county commissioners is, under the terms of R.C.

⁴ 1981 Op. Att'y Gen. No. 81-044 concludes at 2-175 that, "R.C. 340.07 neither mandates that an appropriation to the community mental health board be made, nor requires that the total amount requested by the mental health board be appropriated." While it may be true generally that a county has no duty to appropriate county funds in the amount requested to a community mental health service district, it is clear that, where the county has levied a tax for such district under R.C. 5705.221, the district is "entitled to participate" in such revenue. See generally R.C. 5705.10 ("[a]ll revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose....Money paid into any fund shall be used only for the purposes for which such fund is established"). Further, the fact that R.C. 5705.05(E) requires the county to include in its general levy amounts necessary for the support of mental health services entitles the mental health service district to participate in such revenue, as the needs of the district may require, in the sense that the district is clearly eligible to receive an appropriation from such revenue.

5705.01 and R.C. 5705.221, the taxing authority for a county mental health and retardation service district"); note 4, supra. Since a single-county community mental health board is entitled to participate in county revenue or appropriations, it must comply with the provisions of R.C. 5705.28(C) and submit a statement of contemplated revenue and expenditures to the county for inclusion in the county's tax budget. See Op. No. 79-016.

Part of your concern appears to be whether the single-county community mental health board may include within the statement submitted to the county pursuant to R.C. 5705.28(C) its own contingent expense in excess of three percent of the district's total contemplated expenditures for the next fiscal year. Pursuant to R.C. 5705.28(C), the statement which must be submitted to a subdivision in order to assist in the preparation of the taxing authority's tax budget shall be "in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices." See note 2, supra. You have not stated that the county has prescribed any form for such statement. I can find no reason that the limitation imposed upon the board of county commissioners by R.C. 5705.29(A)(1) concerning the contingent expense which may be included in the county's tax budget must also apply to each department, board, commission, or district authority submitting to the board of county commissioners the statement required by R.C. 5705.28(C).

I note, however, that the purpose of such statements is to assist the taxing authority in preparing its tax budget. R.C. 5705.28(C). The court in State ex rel. City of Dayton v. Patterson, 93 Ohio St. 25, 34-35, 112 N.E. 142, 145 (1915), discussed the reason for requiring a taxing authority to submit to the county budget commission a detailed statement of revenues and expenditures, as follows:

[T]he budget commissioners, when they examine the budgets, have before them a full and detailed statement of the financial condition of each taxing authority in the taxing district and the data upon which the needs and requirements of the taxing officers and boards are based....One of the purposes in having the estimates of the amount of money needed submitted in itemized form and in requiring a submission of the facts and information provided for in Section 5649-3a, is to provide a basis of calculation in the event it becomes necessary to adjust and reduce the amounts.

Just as the county submits its budget to the county budget commission for approval and possible adjustment, see Op. No. 79-016, the various departments, boards, commissions and district authorities entitled to participate in any county appropriation or revenue submit a statement of their estimated revenues and expenditures to the county commissioners to assist the county in allocating its resources. See generally R.C. 5705.38 (county's annual appropriation measure and supplemental appropriation measures are "based on the revised tax budget and the official certificate of estimated resources or amendments thereof"). Thus, each board and department should act in good faith in estimating its contemplated revenue and expenditures for the ensuing fiscal year in order for the taxing authority to assess the overall needs of the entities included within the taxing authority's tax budget. See 1947 Op. Att'y Gen. No.

1915, p. 260 (syllabus, paragraph one) ("[t]he taxing authority of each subdivision in preparing its budget for the ensuing fiscal year under [G.C. 5625-21 (now at R.C. 5705.29)], for submission to the county budget commission, should act in good faith in furnishing in detail the information called for by that section, including estimates of receipts, expenditures and unencumbered balances"). A single-county community mental health board is not, however, limited by R.C. 5705.29(A)(1) to including in the statement required by R.C. 5705.28(C) a contingent expense of only three percent.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. R.C. 5705.29(A)(1) limits the amount the board of county commissioners, as the taxing authority of the county, may include as contingent expense in the county's tax budget to three percent of the total amount of appropriations for current expenses of the county. Where the board of county commissioners elects to include a contingent expense in the county tax budget, R.C. 5705.29(A)(1) does not require the board to designate such expense by department or division.
2. A single-county community mental health board is, for purposes of R.C. 5705.28(C), a board entitled to participate in the revenue or appropriations of the county in which it is located, and is, for purposes of R.C. 5705.29(A)(1), a division or department of the county.
3. The three percent limitation upon contingent expense authorized by R.C. 5705.29(A)(1) for inclusion within a county's tax budget does not limit a single-county community mental health board to including only three percent of its total contemplated expenditures as a contingent expense in its statement of estimated revenues and expenditures submitted under R.C. 5705.28(C).