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MUNICIPALITY, CHARTER—LIMITATION ON TOTAL TAX RATE—§5705.18 RC—MUNICIPAL COUNCIL GIVEN POWER TO LEVY ADDITIONAL TAX OUTSIDE CHARTER LIMIT WITHOUT VOTE OF ELECTORATE—SUCH A TAX NOT LEVIED UNDER §5705.19 RC—§5713.11 RC NOT APPLICABLE TO TAX LEVIES NOT VOTED BY ELECTORATE.

SYLLABUS:

1. When a charter municipality, which in its charter or amendments thereto has limited its total tax rate as prescribed by Section 5705.18, Revised Code, amends its charter so as to provide its municipal council the power to levy an additional tax outside the charter limitation for the benefit of a municipal university, a tax levied under such amendment is not a tax levied under Section 5705.19, Revised Code, and is not limited by the time limitation or other provisions of that section.

2. Section 5713.11, Revised Code, providing for diminution of the rate of additional tax levies when the property of a taxing subdivision has been revalued and reassessed, is applicable only when such levies have been voted by the people and is not applicable when the charter of a charter municipality authorizes the municipal council to levy such tax without submission to a vote of the people.

Columbus, Ohio, July 24, 1957

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The University of Akron, Ohio, is presently in need of additional funds for current operating expenses. To supply this need the Council of the City of Akron did on July 9, 1957, enact an ordinance providing that the charter of the City of Akron be amended granting Council the authority to levy a tax of one (1) mill annually for the support of the University of Akron at the request of the Board of Directors of the University.

“The funds which would be provided by the proposed one (1) mill levy are urgently needed by the University for current maintenance expenses and salaries for the administration and teaching staff. Needless to say, along with all other universities in Ohio, Akron University has rapidly increased in size, and the funds presently available for operating expenses are not sufficient to provide the salaries necessary to obtain and hold competent professors and instructors.

“Mr. C. L. Bower, Auditor of Summit County, was consulted with regard to the proposed one (1) mill levy to be obtained by charter amendment, and Mr. Bower has expressed concern with regard to the effectiveness of the proposed charter amendment. Mr. Bower has suggested that since the City has the authority to levy a tax in excess of the one (1) mill provided in Revised Code Section 3349.13, which has previously been voted, only by virtue of sub-paragraph E of Revised Code Section 5705.19 as amended by Am. H. B. 142, that the proposed levy will be restricted to the five (5) year maximum period provided in Revised Code Section 5709.19, regardless of the provisions of Revised Code Section 5705.18, which exempts charter cities from the provisions of Revised Code Section 5705.02 and Revised Code Section 5705.32.

“I, therefore, respectfully request your opinion in answer to the following questions:

‘1. In the event that the electors of the City of Akron approve at the November 1957, election a charter amendment granting the Council of the City of Akron the authority to levy a tax of one (1) mill on the taxable property in the City of Akron to be used for the support of the University of Akron,

does the authority granted by that charter amendment continue until subsequent amendment of the charter, or is that authority limited by virtue of the provisions of Revised Code Section 5705.19 to a maximum period of five (5) years?

'2. In the event that the charter amendment referred to is effective until terminated by subsequent amendment of the charter, do the provisions of Revised Code Section 5713.11 apply so as to allow a reduction in the rate of the levy after a reassessment of property values?"

Section 5705.18, Revised Code, reads in pertinent part as follows:

"Sections 5705.02 and 5705.32 of the Revised Code do not apply to the tax levies of any municipal corporation which, by its charter or amendment thereto, provides for a limitation of the total tax rate which may be levied without a vote of the people for all the purposes of the municipal corporation, or for the current operating expenses thereof. Said charter or charter amendment may also provide for the levying of taxes by said legislative authority in excess of said charter limitation upon approval by the majority of the electors of said municipal corporation voting thereon at a November election."

By Sections 86a *et seq.* of its charter the City of Akron has limited its total tax rate within the meaning of Section 5705.18, *supra*; and, therefore, the provisions of Sections 5705.02 and 5705.32, Revised Code, do not apply to its taxation.

By the proposed Section 86a-2 the city would have the authority to levy a tax of one mill on the taxable property of the City of Akron for the benefit of the University of Akron. The proposed section contains no time limitation and would be effective until repealed.

Section 5705.19, Revised Code, as it now reads and as it will read when the provisions of Amended House Bill 142, One Hundred and Second General Assembly become effective on September 17, 1957, provides for tax levies in excess of the ten-mill limitation provided in Section 5705.02, Revised Code. But, as noted above, Section 5705.18, Revised Code, exempts charter municipalities with charter tax limitations from the provisions of Section 5705.02, Revised Code.

In my opinion, the proposed Section 86a-2 of the Akron city charter will, if approved by the electors, remain effective until subsequent amendment of the charter.

With regard to your second question, Section 5713.11, Revised Code, provides :

“If the people of any taxing subdivision have voted additional levies for specific purposes in the year of reassessment or any year prior thereto, and said additional levies are effective in the year of reassessment or thereafter and are to be calculated on a total valuation of property higher than that of the year before reassessment, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment over the total valuation of the year preceding the reassessment.”

If the charter of the City of Akron is amended as proposed, it will provide for tax levies by the city council for the benefit of the university without a vote of the electors on such levies. Section 5713.11, Revised Code, provides for a diminution upon reassessment when levies have been voted. It is not applicable in cases of levies authorized by the charter of a charter municipality to be levied by the municipal council without submission to a vote of the electorate.

Accordingly, in specific reply to your two questions, it is my opinion, and you are advised that :

1. When a charter municipality, which in its charter or amendments thereto has limited its total tax rate as prescribed by Section 5705.18, Revised Code, amends its charter so as to provide its municipal council the power to levy an additional tax outside the charter limitation for the benefit of a municipal university, a tax levied under such amendment is not a tax levied under Section 5705.19, Revised Code, and is not limited by the time limitation or other provisions of that section.

2. Section 5713.11, Revised Code, providing for diminution of the rate of additional tax levies when the property of a taxing subdivision has been revalued and reassessed, is applicable only when such levies have been voted by the people and is not applicable when the charter of a charter municipality authorizes the municipal council to levy such tax without submission to a vote of the people.

Respectfully,
WILLIAM SAXBE
Attorney General