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TAX LEVY DEFEATED IN A SPECIAL ELECTION DURING ONE YEAR MAY BE RE-SUBMITTED THE FOLLOWING YEAR—A LEVY PASSED IN 1963 MAY NOT BE ASSESSED AND COLLECTED AS 1962 TAXES—§§5705.21, R.C., (OPINION 1536, OAG, 1960, APPROVED AND FOLLOWED), 5705.192, 5705.25, R.C.

SYLLABUS:

1. Where a tax levy is submitted to the voters pursuant to Section 5705.21, Revised Code, the election thereon is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education. Opinion No. 1536, Opinions of the Attorney General for 1960, page 485, approved and followed.

2. Under Section 5705.21, Revised Code, a board of education may, in 1962, pass a resolution to submit a levy at a special election to be held in January, 1963, under that section, even though such a question was unsuccessfully submitted to the voters of the school district in 1962, as the prohibition applies only to the holding of more than one *election* in one calendar year.

3. A levy under Section 5705.21, Revised Code, passed in January, 1963, may not be assessed and collected as 1962 taxes, but is included in the tax budget certified to the county budget commission in 1963, to be collected with other 1963 taxes.

Columbus, Ohio, December 7, 1962

Hon. James A. Rhodes, Auditor
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A request has been received from the Clerk-Treasurer of the Reading Local School Board concerning the issuance of a levy

for operating the school districts of that city. At the May primary election 1962 the question as to the submission of a levy was defeated at the polls. Later at the November election the question of submitting a similar levy for operating purposes was defeated.

“Section 5705.21 provides for special levies for school purposes and in the submission of the question of such additional tax levies the Revised Code says:

“‘Such tax levy shall be submitted to the electors of the school district on the first Tuesday after the first Monday in May *or* special election on another day to be specified in the resolution. Not more than one such special election shall be held in any one calendar year.’

“Further along in this section it also provides:

“‘If a majority of the electors voted on the question so submitted in an election held in *even numbered years* on the first Tuesday after the first Monday in May and 55% of those voting on the question at a special election held on any other day vote in favor of such levy, the board of education of the school district may *forthwith* make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. *After* the approval of such levy vote and *prior* to the time when the first tax collection from such levy can be made, the board of education of the school district may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy throughout its life.’

“The question has been raised as to whether the election held in May, which was a primary election day in an even numbered year, is a special election, especially in view of the fact that only a majority vote is required when such elections are held on the even numbered years.

“I realize, of course, that you have ruled in 1960 O.A.G. No. 1536 that pursuant to the provisions of Section 3501.01, Sub-Section D that ‘special election’ means any election other than elections required to be regularly held on the day of the general or primary election, provided that a special election may also be held on the day of a general or primary election. Your reason for holding this election to be special is that it is not required to be held regularly on the day of the general or primary election, notwithstanding that there is a difference as to the percentage of favorable vote required to pass the levy.

“This school district proposes to re-submit the levy January 7, 1963. The question is raised as to whether or not the board may lawfully pass the resolution in the calendar year 1962 to submit such levy, even though this would be the *third* time that such a resolution has been passed, although there would only be two elections on the matter.

“The school officials have also asked whether or not this levy if favorably voted upon in January 1963 could be assessed and collected on the 1962 taxes. This patently would contravene the provisions of Section 5705.21 that such tax levy is to be included in the next annual tax budget that is certified to the county budget commission and certainly that could not happen prior to the 15th day of July, in view of the provisions of Section 5705.28 of the Revised Code.

“I can see no reason, however, why the school district could not issue anticipatory notes for 50% of the total estimated proceeds of the levy throughout its life.”

In my Opinion No. 1536, Opinions of the Attorney General for 1960, page 485, I held in the syllabus as follows:

“Submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to Section 5705.21, Revised Code, is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.”

At page 488 of Opinion No. 1536, *supra*, I stated:

“There are two important elements in this definition which should be noted. A special election is one which is not *required* to be held regularly on the day of a general or primary election. A special election *may* be held, however, on the same day as any general or primary election. As this definition applies to all statutes relating to elections, including, therefore, Section 5705.21, Revised Code, it may be used as the key to solve the problem you present. As Section 5705.21 expressly provides that the school levy question may be submitted on the day of the primary election, i.e., the first Tuesday after the first Monday in May, or at any other day specified by the board, it follows that no specific day has been set aside as one on which this question is *required* to be submitted to the voters. It, therefore, falls within the definition of a special election supplied by Section 3501.01, Revised Code, since it is not required to be held on the day of a general or primary election. No problem is presented by this interpretation as Section 3501.01, Revised Code, specifically provides that a special election may be held on the date of a primary

election. It may be seen, therefore, that the prohibition contained in Section 5705.21, Revised Code, against the holding of more than one special election in any one calendar year applies, regardless of whether such special election is held on the first Tuesday after the first Monday in May, or on any other date.

“Added support is given to this interpretation by the provision of Section 5705.21, Revised Code, underlined above, which provides that the question is to be decided by a majority of the voters if submitted on a primary election in an even-numbered year but requires a sixty per cent plurality if submitted ‘at a special election held on any other day.’ This means that if the question were submitted on a primary election in an odd-numbered year, this is expressly considered to be a ‘special election.’

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Since the issuance of Opinion No. 1536, *supra*, Section 5705.21, Revised Code, was amended (1961; 129, Ohio Laws, 1297); however, the only change made was to decrease the vote needed at a special election occurring on a day other than the first Tuesday after the first Monday in May in an even numbered year, from sixty per cent to fifty-five per cent.

It might be noted that the amendment to the section was made about a year after Opinion No. 1536 was issued, and I believe it may be assumed that the legislature was cognizant of the interpretation of the law as found in that opinion. It is thus significant that the legislature did not make any language changes which could be interpreted to intend that the conclusion of the 1960 opinion should be altered.

Accordingly, I do not feel that the 1961 amendment has any effect on the reasoning of Opinion No. 1536, and I am still of the opinion that where a tax levy is submitted to the voters pursuant to Section 5705.21, *supra*, the election thereon is a special election only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

In the fact situation which you present, an election under Section 5705.21, *supra*, was held on the first Tuesday after the first Monday of May, 1962, and presumably, an election under the same section was held at the general election in November, 1962. While such a procedure would be contrary to the conclusion reached in Opinion No. 1536, *supra*, the

November election might have been brought pursuant to Section 5705.192, Revised Code, which reads, in part, as follows:

“The board of education of a city, exempted village, or local school district at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all members of said board, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the school district and that it is necessary to levy a tax in excess of such limitation for the purpose of providing for current expenses of the school district.

“* * * * * * * * *”

Under Section 5705.25, Revised Code, a resolution adopted under Section 5705.192, *supra*, is certified to the board of elections by the fifteenth day of September and is placed on the ballot at the succeeding November election.

Thus, I do not deny the possibility that the holding of the two elections in 1962 was not in conflict with the conclusion of Opinion No. 1536, but in any event, a final determination of that question is not necessary for the purposes of this opinion.

In the instant question, the intention is to hold an election pursuant to Section 5705.21, *supra*, on January 7, 1963. Since that will be the first such election in 1963, it will be entirely in accord with the provision of the section that only one such election shall be held in any one calendar year; and even though at least one such election was held in 1962, that would not bar the adoption of a resolution in 1962 to hold an election in 1963—the prohibition applies only to the holding of more than one *election* in one calendar year.

Your last question deals with the assessment and collection of the levy if a favorable vote is obtained at the January election. In this regard, Section 5705.21, *supra*, reads in part:

“* * * If * * * fifty-five per cent of those voting on the question at a special election held on any other day vote in favor of such levy, the board of education of the school district may forthwith make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.

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“* * * * * * * * *”

In my Opinion No. 2657, issued on November 29, 1961, I considered a question dealing with a tax levy under Section 5705.21, *supra*. That instance dealt with a tax levy adopted at the November, 1961, election, the question being whether the levy could be extended on the then current tax duplicate for collection. In that opinion, I noted that a resolution under Section 5705.21, *supra*, "shall conform to Section 5705.19, of the Revised Code," and that a copy of such resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner "provided by section 5705.25, of the Revised Code, and said section shall govern the arrangements for the submission of such question * * *." I then noted the provision of Section 5705.19, Revised Code, reading :

"Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect, *which may or may not include a levy upon the duplicate of the current year.* * * *"

(Emphasis added)

And the provision of Section 5705.25, Revised Code, reading :

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"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)

I then said:

"Under the provisions of Section 5705.25, *supra*, to which Section 5705.21, *supra*, refers, if the resolution specifies that the tax levy is to be placed upon the tax duplicate for the current year, then it must be extended on the current tax duplicate for collection. See Opinion No. 1009, Opinions of the Attorney General for 1949, page 650; modified in Opinion No. 2145, Opinions of the Attorney General for 1961, issued on April 24, 1961.

"Since you have informed me in response to my inquiry for additional information that the resolution of the board of educa-

tion in the instant case specified that the levy is to be placed upon the tax duplicate for the current year, I conclude that the levy, if it receives a favorable vote, should be extended on the current (1961) tax duplicate for collection, and, after the first year (i.e. in 1962), the levy should be included in the annual tax budget that is certified to the county budget commission, which in this case would be the next annual tax budget.

“It is my opinion, therefore, and you are accordingly advised that 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.”

Under Section 5705.21, *supra*, where a tax levy is passed it is included in the next annual tax budget that is certified to the county budget commission. Under Section 5705.28, Revised Code, the board of education must, before July 15 in each year, adopt a tax budget for the next ensuing year. This budget must be submitted to the county auditor by July 20 (Section 5705.30, Revised Code), and the auditor then submits the budget to the county budget commission (Section 5705.31, Revised Code).

Under Section 5705.25, *supra*, where the additional tax is to be placed upon the tax list for the current year, the levy is certified to the county auditor “who shall extend it on the tax list for collection.” I interpret this to mean that the levy is thus put on the tax list which is required by Section 319.28, Revised Code, to be compiled by the county auditor on or before the first Monday of August, annually. One of the copies of such list constitutes the treasurer’s general duplicate of real and public utility property for the current year, and under Section 323.13, Revised Code, the treasurer mails a tax bill to each name on the duplicate. Under Section 323.12, Revised Code, the taxes due are then to be paid on or before the twentieth day of December, or one-half of such taxes before such date, and the remaining half on or before the twentieth day of June next ensuing (Except that further extension of time may be granted. Section 323.17, Revised Code).

Accordingly, it appears that a levy under Section 5705.21, *supra*, passed in January 1963, may not be assessed and collected as 1962 taxes

but is included in the tax budget certified to the county budget commission in 1963, to be collected with other 1963 taxes.

In conclusion, it is my opinion and you are advised:

1. Where a tax levy is submitted to the voters pursuant to Section 5705.21, Revised Code, the election thereon is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education. Opinion No. 1536, Opinions of the Attorney General for 1960, page 485, approved and followed.

2. Under Section 5705.21, Revised Code, a board of education may, in 1962, pass a resolution to submit a levy at a special election to be held in January, 1963, under that section, even though such a question was unsuccessfully submitted to the voters of the school district in 1962, as the prohibition applies only to the holding of more than one *election* in one calendar year.

3. A levy under Section 5705.21, Revised Code, passed in January, 1963, may not be assessed and collected as 1962 taxes, but is included in the tax budget certified to the county budget commission in 1963, to be collected with other 1963 taxes.

Respectfully,
MARK MCELROY
Attorney General