

OPINION NO. 65-132**Syllabus:**

A levy passed for a six year period, since it is not a levy for an indefinite period, need not be considered as being a portion of the amount of tax which may be levied for an indefinite period under Section 5705.192, Revised Code.

To: Thomas W. Kerrigan, Shelby County Pros. Atty., Sidney, Ohio
By: William B. Saxbe, Attorney General, July 26, 1965

I have before me your request for my opinion which reads as follows:

"A Board of Education, as set forth in Ohio Revised Code 5705.19.2 finding the amount of taxes within the ten-mill limitation will be insufficient to provide for the necessary requirements of the School District, proposes a 9.9 mill levy for current expenses for an indefinite period of time.* * *

"My inquiry concerns whether the Board may pass this 9.9 mill levy for an indefinite time if it is for a renewal of a current operating expense levy.

"Further, this same Board in 1962 under 5705.19.2 passed and the voters approved a 1.6 mill levy for current expenses but the Board had specified the duration of this levy was six (6) years.

"Paragraph three of Ohio Revised Code 5705.19.2 states the total millage outstanding, in effect for an indefinite period of time shall not exceed 10 mills.

My question is, does the 1.6 mills passed for a specified 6 year period in 1962 under 5705.19.2 apply against this ten mill limitation even though specified for six years as compared to an indefinite period of time."

Section 5705.192, Revised Code, concerning which you make your request, provides 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.

* * * * *

"The board of education, in such resolution may specify that the total increased rate proposed to be levied, shall be for an indefinite period of time, notwithstanding the fact that the total millage for current expenses being currently levied by the district is at least the minimum millage rate required by section 3317.02 of the Revised Code, provided that the total millage outstanding, in effect for an indefinite period of time, if such levy is adopted, shall not exceed ten mills.* * *"

You have stated that you question whether or not the board may pass this 9.9 mill levy for an indefinite time if it is for a renewal of a current operating expense levy. I assume that this question has arisen because the word "increase" is used to describe the levy authorized therein, and because of the fact that the term "renewal" nowhere appears in Section 5705.192, supra.

While it is true that a distinction must be made between tax "increases" and tax "renewals" for purposes of the form of ballot to be used in elections held on tax levy issues, (See Opinion No. 1664, Opinions of the Attorney General for 1960), it is my opinion that no

distinction between these terms is intended in the provisions of Section 5705.192, supra. In the first paragraph of such section, the General Assembly has provided that a board of education may declare 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. It is further provided therein that the board may declare that a tax levy "in excess of such limitation" is necessary.

The subsequent paragraphs of Section 5705.192, supra, set forth various specifications and limitations which are to govern a levy proposed by the board in accordance with the provisions of paragraph one. When reference is made to a levy proposed pursuant to this section, the terms "increased rate," "proposed increase," and terms of similar import are used. However, it is my opinion that these words of description refer to the ten mill limitation provision contained in the first paragraph, and that when the statute speaks of the "increased rate," or "proposed increase," it is referring simply to the tax proposed to be levied in excess of the ten mill limitation. Therefore, I am of opinion that the use of these terms does not restrict the proposed levy authorized by Section 5705.192, supra, to a levy "increase," as opposed to a levy "renewal," as those terms are used to distinguish the levy of a new tax from a levy extending the duration of one previously enacted.

Section 3317.02, Revised Code, to which reference is made in Section 5705.192, supra, provides in its part which is pertinent thereto as follows:

"* * * * *"

"Each local, exempted village, and city school district shall be paid an amount not less than two thousand one hundred dollars multiplied by the number of approved teacher units credited to such district under section 3317.05 of the Revised Code, except as provided in this section. During the calendar year 1962 and in each calendar year thereafter, such a district shall have a tax levy for current school operations of at least ten mills.* * *

"* * * * *"

Section 5705.192, supra, in the portion quoted herein provides that a board of education may pass by a two-thirds vote, a resolution stating that it is necessary to levy a tax in excess of the ten mill limitation in order to provide for current expenses of the school district. It is further provided that such resolution may specify that the total increased rate proposed may be

for an indefinite period, even though the total millage presently being levied for current expenses is at least the minimum rate required by Section 3317.02, supra.

The minimum rate required by Section 3317.02, supra, in order to qualify for receipt of two thousand one hundred dollars per teacher unit, is ten mills for current school operations. This means that under the provisions of Section 5705.192, supra, the proposed levy may be for an indefinite period, notwithstanding the fact that the millage presently levied for current expenses is at least ten mills. However, this permission is restricted by a proviso stating that the total millage outstanding for an indefinite period of time shall not exceed ten mills, in the event that the proposed levy is adopted.

I am of opinion that when the General Assembly expressly stated that a proposed levy could be specified for an indefinite period, and then provided that this permission does not extend to a situation where the total millage outstanding for an indefinite period would be in excess of ten mills if such levy were adopted, it intended to place a ten mill restriction only upon that portion of the levy for current expenses which is of an indefinite duration.

Therefore, it is my opinion and you are hereby advised that a levy passed for a six year period, since it is not a levy for an indefinite period, need not be considered as being a portion of the amount of tax which may be levied for an indefinite period under Section 5705.192, Revised Code.