

2511

A LEVY FOR MAINTENANCE AND OPERATION OF SCHOOLS, TRAINING CENTERS OR WORKSHOPS FOR MENTALLY RETARDED PERSONS DOES NOT COME WITHIN LIMITATION OF SIXTY-FIVE ONE HUNDREDTHS OF A MILL FOR SUPPORT OF CHILD WELFARE SERVICES PROVIDED FOR IN 5705.24, R. C.--§§5705.19, (DIVISION L) 5705.24, R.C.

SYLLABUS:

A levy for the maintenance and operation of schols, training centers, or workshops for mentally retarded persons provided for in division (L) of Section 5705.19, Revised Code, does not come within the limitation of sixty-five one hundredths of a mill for the support of child welfare services provided for in Section 5705.24, Revised Code.

Columbus, Ohio, September 13, 1961

Hon. Earl W. Allison, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“At the present time Franklin County, Ohio has levied upon the tax duplicate after an affirmative vote of the people a five-tenths (.5) of one mill levy outside the ten (10) mill limitation for the purpose of child welfare. In addition, a second five-tenths (.5) of one mill levy exists for the combined purpose of relief and child welfare of which fifteen-hundredths (.15) of one mill is being appropriated for child welfare purposes.

“The recent session of the Ohio General Assembly has imposed additional burdens upon the child welfare board by the passage of Sub. H. B. 778 and at the same time has given the child welfare board the opportunity to meet these additional obligations by the amendment of Section 5705.19 Paragraph L of the Revised Code.

“The Board of County Commissioners of Franklin County now propose to place upon the ballot a four-tenths (.4) of one mill levy under Section 5705.19 (L) of the Revised Code. The question has been raised as to whether this proposed levy would come within the limitation of sixty-five hundredths (.65) of one mill for child welfare purposes imposed by Section 5705.24 of the Revised Code.

“Because this question is one which may well affect other counties throughout the state and is therefore of state-wide interest, I respectfully request your opinion as to whether the Franklin County Commissioners may place the proposed levy on the ballot without violating Section 5705.24 of the Revised Code since the above mentioned amendments are silent in this regard. Because of the nearness of the election, time is of the essence in receiving your opinion with regard hereto.”

Section 5705.19, Revised Code, provides *inter alia* as follows :

“The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, 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 subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

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“(L) For the maintenance and operation of schools, training centers, or workshops for mentally retarded persons.”
(Emphasis added)

Section 5705.24, Revised Code, provides in part as follows:

“The board of county commissioners of any county, at any time prior to the fifteenth day of September in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of child welfare services and the care and placement of children, as set forth in sections 335.01 to 335.35, inclusive, of the Revised Code, by vote of two thirds of all the 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 an adequate amount for the support of such child welfare services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.” (Emphasis added)

You will note that Section 5705.19, *supra*, refers to any taxing authority whereas Section 5705.24, *supra*, refers only to a board of county commissioners. Furthermore, Section 5705.19, *supra*, refers to a situation where the amount of taxes will be “insufficient to provide for the necessary requirements of the subdivision,” whereas Section 5705.24, *supra*, refers to a situation where the amount of taxes will be “insufficient to provide an adequate amount for the support of such child welfare services.” You should also note that the only purpose for a tax levy may be levied under Section 5705.24, *supra*, is for the support of child welfare services, whereas a tax may be levied under Section 5705.19, *supra*, for any one of twelve different purposes. It is significant that none of the twelve different purposes mentioned in Section 5705.19, *supra*, is specifically for the support of child welfare services. I cannot see, therefore, how Section 5705.24, *supra*, can be a limitation upon a levy proposed under Section 5705.19, *supra*.

One of my predecessors had a similar question under consideration in Opinion No. 5585, Opinions of the Attorney General for 1955, page 339. In that opinion, the question was whether the sixty-five one hundredths of a mill limitation for support of county hospitals provided for in Section 5705.22, Revised Code, would be a limitation on a levy for current expenses to be used for hospital purposes under Section 5705.19, *supra*. The then Attorney General held that Section 5705.22, *supra*, was an “alternative

method of raising funds for the support of a general hospital," and that the sixty-five one-hundredths of a mill limitation provided for in such section did not limit a levy under Section 5705.19, *supra*.

It is my opinion and you are accordingly advised, therefore, that a levy for the maintenance and operation of schools, training centers, or workshops for mentally retarded persons provided for in division (L) of Section 5705.19, Revised Code, does not come within the limitation of sixty-five one hundredths of a mill for the support of child welfare services provided for in Section 5705.24, Revised Code.

Respectfully,

MARK McELROY

Attorney General