

OPINION NO. 92-027

Syllabus:

1. Proceeds of a tax levied pursuant to R.C. 5705.19(L) for the benefit of a county board of mental retardation and developmental disabilities for the purpose of maintenance and operation of schools, training center, workshops, clinics, and residential facilities for mentally retarded persons may be expended by the county board of mental retardation and developmental disabilities for any of the stated purposes.
2. There is no authority for the automatic transfer to a school district of the proceeds of a levy for the benefit of a county board of mental retardation and developmental disabilities when the school district assumes responsibility for the education of individuals who were previously educated by the county board.
3. A county board of mental retardation and developmental disabilities may pay proceeds from a voted tax levy to a school district in exchange for facilities, programs, goods, or services to the extent that the county board has authority to carry out the purposes for which the tax was levied by acquiring those facilities, programs, goods, or services from the school district.

To: Rebecca J. Ferguson, Preble County Prosecuting Attorney, Eaton, Ohio
By: Lee Fisher, Attorney General, June 26, 1992

You have requested an opinion on the question whether proceeds of a tax levy for the benefit of a county board of mental retardation and developmental disabilities ("county MR/DD board") are automatically transferred to the public school system when the school system takes over the function of educating certain students who were previously educated by the county MR/DD board. In the instant case, the county MR/DD board closed an education program because of a statutory change expanding the responsibility of public schools for the education of handicapped children. See 1989-1990 Ohio Laws, Part III, 3747 (Am. Sub. H.B. 248, eff. Oct. 30, 1989, with certain provisions eff. July 1, 1991).

Purpose of Tax Levy at Issue

The tax levy at issue was adopted by voters of the county, in accordance with R.C. 5705.19(L), as a renewal levy for the benefit of the Preble County Board of Mental Retardation and Developmental Disabilities for the purpose of maintenance and operation of schools, training center, workshops, clinics, and residential facilities for mentally retarded persons. The levy was authorized by the board of county commissioners, which is the taxing authority of a county. See R.C. 5126.05(I); R.C. 5705.01, .19(L).¹

Use of Tax Levy Proceeds

When voters adopt a tax levy for specified purposes, proceeds of that levy may be used only for the specified purposes. See Ohio Const. art. XII, §5; R.C. 5705.10-.19; *In re Petition for Transfer of Funds by Perry Township*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988); 1986 Op. Att'y Gen. No. 86-103. The levy in question was adopted for the benefit of the county MR/DD board for the uses stated in the resolution adopted by the county commissioners and in the ballot

¹ The levy to which your question relates was adopted in an election in 1987, prior to the enactment of R.C. 5705.222, which establishes current procedures for the adoption of a tax levy under R.C. 5705.19(L). See R.C. 5705.19(L); 1987-1988 Ohio Laws, Part I, 648, 717 (Sub. S.B. 155, eff. June 24, 1988); 1991 Op. Att'y Gen. No. 91-042.

language. See R.C. 5705.19, .25; Op. No. 86-103. Although the board has terminated some of its educational functions, it has statutory authority to provide, and does in fact provide, other programs and services that serve the purposes for which the tax was levied. See R.C. 5126.05. Your representative has, for example, stated that the board operates a sheltered workshop program. See R.C. 5126.05, .12. The board thus performs functions for which it may properly expend levy proceeds. In accordance with constitutional and statutory requirements, the proper use of the levy proceeds is expenditure by the county MR/DD board for any of the purposes stated in the resolution and ballot language.² See *In re Petition for Transfer of Funds by Perry Township*; Op. No. 86-103; 1967 Op. Att'y Gen. No. 67-088.

Transfer of Tax Levy Proceeds

A school district is an entity apart from a county or a county MR/DD board; it is a body politic and corporate with its own mechanisms for obtaining funding. See, e.g., R.C. Chapter 3311; R.C. 3313.17; R.C. Chapters 3315-3318; R.C. 5705.01(A), (C), (D), (I); R.C. 5705.194-.197, .21-.216.³ There is no basis for automatically transferring to a school district moneys derived from a tax levy that was adopted by voters of the county for the benefit of the county MR/DD board. In fact, R.C. 5705.19, under which the levy in question was adopted, expressly states that its provisions do not apply to school districts.

There are statutory procedures for transferring moneys raised by tax levies from one fund to another in certain circumstances, but those procedures are not applicable in this instance. See, e.g., R.C. 5705.14-.17; *In re Petition for Transfer of Funds by Perry Township*.⁴ The legislation that prompted your question contained no provisions affecting levies that had been adopted to finance the activities of county MR/DD boards. Cf. Op. No. 67-088 (taxes levied for a county child welfare board could not be expended by a county MR/DD board).

Proceeds of the levy in question are not automatically transferred to a school board when the school district assumes responsibility for the education of individuals who were previously educated by the county board. Rather, the tax levy proceeds continue to be available to the county MR/DD board for the purposes set forth in the resolution and ballot language. The county MR/DD board may, however, pay amounts of the tax levy proceeds to a school district in exchange for facilities, programs, goods, or services to the extent that the county MR/DD board has authority to carry out the purposes for which the tax was levied by acquiring those

² It should be noted that the ballot language established a maximum millage that could be levied. If, for any year, proceeds derived from levying the maximum rate would exceed the amount needed by the county MR/DD board to fulfill its purposes, the tax could be levied at a lesser rate. See, e.g., *In re Petition for Transfer of Funds by Perry Township*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988).

³ Even though a county school district receives office space from the board of county commissioners, see R.C. 3319.19, the county school district is an independent entity, rather than an agency of the county. See, e.g., R.C. 3313.17; R.C. 5705.01(I); see also R.C. 3301.0712; R.C. 3317.11.

⁴ R.C. 5705.091, effective January 10, 1992, provides for the establishment in each county of a county mental retardation and developmental disabilities general fund to hold proceeds from levies under R.C. 5705.19 and 5705.222 and from other sources for the purposes of R.C. Chapters 3323 and 5126. See Am. Sub. S.B. 156, 119th Gen. A. (1992) (eff. Jan. 10, 1992); note 1, *supra*. The fund contains accounts "for each of the several particular purposes of the levies as specified in the resolutions under which the levies were approved." R.C. 5705.091. The board of county commissioners may also establish a county mental retardation and developmental disabilities capital fund, and moneys may be transferred among funds created for the purposes of the county MR/DD board as provided in R.C. 5705.14(H). R.C. 5705.091, .14.

facilities, programs, goods, or services from the school district. *See, e.g.*, R.C. 5126.05(E), (G).

Conclusion

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Proceeds of a tax levied pursuant to R.C. 5705.19(L) for the benefit of a county board of mental retardation and developmental disabilities for the purpose of maintenance and operation of schools, training center, workshops, clinics, and residential facilities for mentally retarded persons may be expended by the county board of mental retardation and developmental disabilities for any of the stated purposes.
2. There is no authority for the automatic transfer to a school district of the proceeds of a levy for the benefit of a county board of mental retardation and developmental disabilities when the school district assumes responsibility for the education of individuals who were previously educated by the county board.
3. A county board of mental retardation and developmental disabilities may pay proceeds from a voted tax levy to a school district in exchange for facilities, programs, goods, or services to the extent that the county board has authority to carry out the purposes for which the tax was levied by acquiring those facilities, programs, goods, or services from the school district.