

OPINION NO. 85-023**Syllabus:**

A resolution adopted pursuant to R.C. 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to an initiative petition as provided for in R.C. 5739.022. (1970 Op. Atty Gen. No. 70-014, limited.)

To: Charles L. Bartholomew, Wyandot County Prosecuting Attorney, Upper Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 22, 1985

I have before me your request for my opinion regarding the levy of a county permissive sales tax. Your request letter states as follows:

In January, 1985, the Wyandot County Board of Commissioners passed an Emergency Resolution, pursuant to Section 5739.021, levying a permissive sales tax.

[Subsequently] pursuant to Section 305.31 to 305.41, a Petition for a Referendum was filed with the Wyandot County Auditor.

A review of the statutes reveals that an additional Section, 5739.022 of the Revised Code of Ohio, also provides for submitting the question of a permissive sales tax to the electors.

Your specific questions are as follows:

1. Is Section 5739.022 the exclusive procedure for submitting to the electors the issue of a permissive sales tax, passed by Emergency Resolution of a Board of Commissioners, or does Section 305.31 constitute a viable and equal alternative procedure?
2. Secondly, in the event that it is the opinion of your office that Section 5739.022 is the exclusive procedure, may the identical executed Petitions originally filed pursuant to Section 305.31 be refiled with the Board of Elections, pursuant to Section 5739.022, without recirculation?

R.C. 5739.021 authorizes any county to levy a sales tax and to increase the rate of an existing tax to one percent and establishes specific procedures for the implementation of such levy. R.C. 5739.021 provides, in pertinent part, as follows:

For the purpose of providing additional general revenues for the county and paying the expenses of administering such levy, any county may levy a tax at the rate of one-half of one per cent, or one per cent upon every retail sale, except sales of motor vehicles, made in the county and may increase the rate of an existing tax to one per cent. The tax shall be levied and the rate increased pursuant to a resolution of the county commissioners and a certified copy of the resolution shall be delivered to the tax commissioner either

personally or by certified mail not later than the sixtieth day prior to the date on which the tax is to become effective. Prior to the adoption of any such resolution, the board of county commissioners shall conduct two public hearings thereon. . . .

A resolution levying or increasing the rate of a sales tax pursuant to this section shall become effective on the first day of the month following the expiration of sixty days from the date of its adoption, subject, to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless such resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, in which case it shall go into effect on the first day of the month following the expiration of ten days from the date of notice by the board of county commissioners to the tax commissioner of its adoption. Such emergency must receive an affirmative vote of all of the members of the board of commissioners, and shall state the reasons for such necessity. . . .¹
(Footnote added.)

R.C. 5739.021 provides that for the purpose of obtaining additional general revenues for the county and paying the expenses of administering such levy, a county may levy a tax at the rate of one-half of one percent, or one percent upon every retail sale, except sales of motor vehicles, made in the county and may increase the rate of an existing tax to one percent. R.C. 5739.021 further provides that the tax shall be levied and the rate increased pursuant to a resolution of the county commissioners and a certified copy of the resolution shall be delivered to the tax commissioner. Under R.C. 5739.021, prior to the adoption of any such resolution, the board of county commissioners shall conduct two public hearings upon proper notice. Concerning the effective date of a resolution adopted under that statute, R.C. 5739.021 provides that a resolution levying or increasing the rate of a sales tax pursuant to R.C. 5739.021 shall become effective on the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in R.C. 305.31 to R.C. 305.41. If, however, such resolution is adopted as an emergency measure, it shall go into effect on the first day of the month following the expiration of ten days from the date of notice by the board of county commissioners to the tax commissioner of the adoption of the resolution.

Your first question asks, in part, whether a permissive sales tax adopted under R.C. 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to R.C. 5739.022 or whether such issue may also be submitted for a vote under R.C. 305.31. R.C. 305.31 provides generally for referenda on statutorily specified resolutions adopted by a board of county commissioners. In contrast, R.C. 5739.022 provides that the question of repeal of a county permissive sales tax which was adopted as an emergency measure may be submitted to the voters pursuant to an initiative petition.

As a preliminary matter, I note that, without specific statutory authorization, neither referendum nor initiative petitions are available to the electors of a county to challenge the actions of the county commissioners. See 1970 Op. Att'y Gen. No. 70-014. See generally State ex rel. Bramlette v. Yordy, 24 Ohio St. 2d 147, 265 N.E.2d 273 (1970); Dubyak v. Kovach, 164 Ohio St. 247, 129 N.E.2d 809 (1955).

In order to answer your question I must first address R.C. 305.31 which states:

¹ R.C. 5739.021 also provides that the board of county commissioners may adopt a resolution directing the board of elections to submit the question of levying a permissive sales tax or increasing the rate of such tax to the electors at the next primary or general election not less than seventy-five days after the resolution is certified to the board of elections.

The procedure for submitting to a referendum any resolution adopted by a board of county commissioners pursuant to section 322.02, 324.02, 4504.02, 5739.021, or 5741.021 or rule adopted pursuant to section 307.79 of the Revised Code shall be as follows. . . . No such resolution shall go into effect until approved by the majority of those voting upon it. (Emphasis added.)

It is a well-settled principle of statutory construction that statutes or sections of statutes which expressly refer to each other should be construed together. Beach v. Beach, 99 Ohio App. 428, 434, 134 N.E.2d 162, 167 (Montgomery County 1955). It is apparent that both R.C. 5739.021 and R.C. 305.31 expressly make reference to each other and thus, under the principles set forth in Beach v. Beach, should be construed together.

As noted above, R.C. 5739.021 provides that any resolution adopted by a board of county commissioners pursuant to R.C. 5739.021 levying or increasing the rate of a sales tax shall become effective on the first day of the month following the expiration of sixty days from the date of its adoption, "subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code, unless such resolution is adopted as an emergency measure." Thus, under R.C. 5739.021, unless a resolution adopted by a board of county commissioners pursuant to R.C. 5739.021 is adopted as an emergency measure, such resolution will be subject to a referendum as provided in R.C. 305.31 through R.C. 305.41. Pursuant to R.C. 305.31, no resolution subject to referendum under that section "shall go into effect until approved by a majority of those voting upon it."

Where a permissive sales tax resolution has been adopted by a board of county commissioners pursuant to R.C. 5739.021 as an emergency measure, however, neither R.C. 5739.021 nor any other provision of which I am aware authorizes the submission of the resolution adopted as an emergency measure to a referendum. See 1973 Op. Att'y Gen. No. 73-031. Instead, a resolution adopted under R.C. 5739.021 as an emergency measure "shall go into effect on the first day of the month following the expiration of ten days from the date of notice by the board of county commissioners to the tax commissioner of its adoption." R.C. 5739.021. In the instant situation, the board of county commissioners, pursuant to R.C. 5739.021, adopted a permissive sales tax resolution as an emergency measure. As an emergency measure, such resolution is not subject to a referendum.

I note, however, that the General Assembly, by enacting R.C. 5739.022, has authorized the question of repeal of the county permissive sales tax to be submitted to the voters pursuant to an initiative petition. R.C. 5739.022 provides in pertinent part as follows:

(A) The question of repeal of either a county permissive tax or an increase in the rate of a county permissive tax that was adopted as an emergency measure pursuant to section 5739.021 of the Revised Code may be initiated by filing with the board of elections of the county not less than seventy-five days before the general election in any year a petition requesting that an election be held on the question.

Thus, pursuant to R.C. 5739.022, the question of repeal of either a county permissive sales tax or an increase in the rate of a county permissive tax that was adopted as an emergency measure pursuant to R.C. 5739.021 may be initiated by filing with the county board of elections not less than seventy-five days before the general election in any year a petition requesting that an election be held on the question. See Op. No. 73-031. Thus, I conclude that R.C. 5739.022 authorizes the question of repeal of the county permissive sales tax adopted as an emergency measure to be submitted to the electorate pursuant to an initiative petition procedure.

In reaching this conclusion, I am cognizant of the syllabus of Op. No. 70-014 wherein my predecessor advised that, the General Assembly "has not authorized an initiative petition procedure for the purpose of effecting a repeal of a county-wide

permissive sales and use tax adopted by a board of county commissioners pursuant to Sections 5739.021 and 5741.021, Revised Code." The syllabus is entirely correct as applied to the situation described in Op. No. 70-014. In that situation, the board of county commissioners had adopted a non-emergency county permissive sales tax pursuant to R.C. 5739.021. The syllabus, however, does not address the situation in which a board of county commissioners has adopted pursuant to R.C. 5739.021 a county permissive sales tax as an emergency measure. R.C. 5739.022 clearly authorizes an initiative procedure for the purpose of effecting a repeal of a county permissive sales tax adopted by resolution of a board of county commissioners pursuant to R.C. 5739.021 where such resolution was adopted as an emergency measure. Thus, the syllabus of Op. No. 70-014 is correct when limited to the facts of that opinion.

I note that in the second question of your request letter, in assuming that a resolution adopted pursuant to R.C. 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to an initiative petition as provided for in R.C. 5739.022, you ask whether the identical executed petitions originally filed pursuant to R.C. 305.31 may be refiled with the board of elections pursuant to R.C. 5739.022, without recirculation. It is my understanding that in light of additional information obtained by your office subsequent to submitting your opinion request, you have elected to withdraw this second question from my consideration.

In conclusion, it is my opinion, and you are so advised, that a resolution adopted pursuant to R.C. 5739.021 as an emergency measure may be submitted to a vote of the electors only pursuant to an initiative petition as provided for in R.C. 5739.022. (1970 Op. Att'y Gen. No. 70-014, limited.)