

July 10, 2014

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

SYLLABUS:

2014-028

A board of township trustees may not expend revenues generated from taxes levied pursuant to R.C. 5705.19(I) or R.C. 5705.19(J) for legal expenses incurred by the board to address collective bargaining issues involving township police officers, road workers, firefighters, and emergency medical technicians.



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OPINION NO. 2014-028

The Honorable James R. Flaiz
Geauga County Prosecuting Attorney
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

Dear Prosecutor Flaiz:

You have requested an opinion whether a board of township trustees may expend revenues generated by taxes levied pursuant to R.C. 5705.19(I) or (J) for legal expenses incurred by the board to address collective bargaining issues involving township police officers, road workers, firefighters, and emergency medical technicians. Legal expenses may include the costs of legal counsel and supporting staff, as well as expenses such as fees charged by a fact finder or conciliator, stenographer fees, transcript fees, or exhibit costs.

R.C. 5705.19 authorizes a township to levy taxes in excess of the ten-mill limitation for various purposes.¹ 2013 Op. Att’y Gen. No. 2013-036, at 2-369; 2012 Op. Att’y Gen. No. 2012-014, at 2-117 to 2-118. Your request asks specifically about R.C. 5705.19(I), which authorizes a board of township trustees to levy a tax for fire protection services, and R.C. 5705.19(J), which authorizes a board of township trustees to levy a tax for police protection services. These statutes provide authority to levy a tax:

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such

¹ The ten-mill limitation provides that no property may be taxed in excess of one percent (10 mills) of its true value in money for all state and local purposes, except with voter approval or as provided in a municipal charter. Ohio Const. art. XII, § 2; R.C. 5705.02. *See also* R.C. 5705.07; R.C. 5705.18. “Levies within the ten-mill limitation are commonly referred to as ‘inside millage.’ Levies in excess of ten mills are commonly referred to as ‘outside millage’ and must be specifically authorized.” 2009 Op. Att’y Gen. No. 2009-054, at 2-404 n.1.

personnel under [R.C. 145.48] or [R.C. 742.34], or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under [R.C. 145.48] or [R.C. 742.33], or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services operated by a police department.

R.C. 5705.19.

Taxes levied pursuant to R.C. 5705.19(I) and (J) are special levies.² See 2013 Op. Att’y Gen. No. 2013-036, at 2-370; 1998 Op. Att’y Gen. No. 98-023, at 2-126. Revenue derived from a special levy must be deposited into a special fund for the purpose for which the levy is made. R.C. 5705.10(C); see also R.C. 5705.09(D); 2013 Op. Att’y Gen. No. 2013-036, at 2-370; 1998 Op. Att’y Gen. No. 98-023, at 2-127.

A township also is required to use the revenue from a special levy only for the purpose authorized by the relevant statutory provision.³ See R.C. 5705.10(I); 2013 Op. Att’y Gen. No. 2013-036, at 2-370; 1998 Op. Att’y Gen. No. 98-023, at 2-127; see also Ohio Const. art. XII, § 5 (“[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”). It is well established that taxing statutes must be strictly construed and their application may not be extended beyond the clear meaning of the statutory language used. *Clark Rest. Co. v. Evatt*, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus,

² While the term “special levy” is not defined for purposes of R.C. Chapter 5705, opinions have stated that “a special levy is ‘a levy for a specific purpose, as opposed to a general levy for current expenses.’” 2010 Op. Att’y Gen. No. 2010-028, at 2-205 (quoting 1992 Op. Att’y Gen. No. 92-058, at 2-239 n.1).

³ The resolution and ballot language placing a special levy, including a levy authorized by R.C. 5705.19(I) or (J), before the voters may be narrower than the statutory language authorizing the levy. See 2013 Op. Att’y Gen. No. 2013-036, at 2-370 n.3; 2012 Op. Att’y Gen. No. 2012-014, at 2-119 (“special levies may be further limited to a specific purpose by resolution or ballot language”); see also R.C. 5705.25. “When this occurs, the narrower language appearing in the resolution and on the ballot ‘restricts the permissible expenditures of levy moneys.’” 2013 Op. Att’y Gen. No. 2013-036, at 2-370 n.3 (quoting 1990 Op. Att’y Gen. No. 90-069, at 2-292).

paragraph 3). Therefore, tax revenue derived from a levy under R.C. 5705.19(I) or (J) may be expended only for the purposes explicitly authorized by the pertinent statutory language.

R.C. 5705.19(I) authorizes, in part, a tax levy for the purpose of providing and maintaining various types of fire equipment or buildings, the purchase of ambulance equipment, or the provision of ambulance, paramedic, or emergency medical services operated by a fire department or firefighting company. Similarly, R.C. 5705.19(J) authorizes, in part, a tax levy for the purpose of providing and maintaining equipment or buildings used directly in the operation of a police department or for the payment of costs incurred by townships as a result of contracts made with other political subdivisions to obtain police protection or ambulance or medical services operated by a police department. These provisions authorize the use of proceeds of a tax levy for specific types of equipment used for fire protection and police protection services, as well as costs incurred as a result of contracts with other political subdivisions for the provision of specified police protection services. These provisions do not authorize a board of township trustees to expend tax revenues for legal expenses incurred by the board to address collective bargaining issues.

R.C. 5705.19(I) and (J) also authorize a tax levy for certain personnel expenses for fire protection and police protection services, respectively. R.C. 5705.19(J) authorizes “the *payment of salaries* of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under [R.C. 145.48] or [R.C. 742.33].” (Emphasis added.) This provision explicitly limits payments to salaries of certain personnel, including employer contributions required by the Public Employees Retirement System or the Ohio Police and Fire Pension Fund. Therefore, it does not authorize a board of township trustees to expend tax revenues for legal expenses incurred by the board to address collective bargaining issues.

R.C. 5705.19(I) similarly authorizes “the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under [R.C. 145.48] or [R.C. 742.34].” Although the statute does not state explicitly that payments of a firefighting company or the payment of specified personnel are for salaries, as stated in R.C. 5705.19(J), we believe the intent of this language is to authorize paying the salary or compensation of the specified personnel or to authorize paying a firefighting company for the provision of fire protection services. Payment of legal expenses incurred by a board of township trustees to address collective bargaining issues is not the payment of a firefighting company nor is it a payment to the personnel specified by the statute.

You also ask about the payment of legal expenses incurred by a board of township trustees in addressing collective bargaining issues for road workers. R.C. 5705.19(I) and (J) authorize a tax levy for the provision of fire protection and police protection services, respectively. Road workers are not mentioned in either R.C. 5705.19(I) or (J). *See generally* 2013 Op. Att’y Gen. No. 2013-036, at 2-371 to 2-372 (concluding that township is not permitted to use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle used to remove snow and ice from township roads and discussing a township’s duty to maintain roads). Therefore, neither provision authorizes the use of

proceeds of a tax levied pursuant to either provision for legal expenses incurred by a board of trustees in addressing collective bargaining issues involving road workers.

On the bases of the foregoing, it is my opinion, and you are hereby advised that a board of township trustees may not expend revenues generated from taxes levied pursuant to R.C. 5705.19(I) or R.C. 5705.19(J) for legal expenses incurred by the board to address collective bargaining issues involving township police officers, road workers, firefighters, and emergency medical technicians.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General