

June 20, 2014

The Honorable Colleen S. Williams  
Meigs County Prosecuting Attorney  
117 West Second Street  
Pomeroy, Ohio 45769

SYLLABUS:

2014-024

1. In order to provide tuberculosis services to the county, a board of county commissioners must designate a tuberculosis control unit or enter into an agreement with other boards of county commissioners to jointly designate a district tuberculosis control unit.
2. When a board of county commissioners designates a tuberculosis clinic established pursuant to R.C. 339.76 as the county's tuberculosis control unit, the tuberculosis clinic shall be under the control of the board of county commissioners. When a tuberculosis clinic is established for a single county, the board of county commissioners shall designate, in accordance with R.C. 339.76, either a board of three trustees or a city or general district board of health located within the county to supervise the tuberculosis clinic.
3. Pursuant to R.C. 5705.20, a board of county commissioners may levy a tax in excess of the ten-mill limitation for the purpose of supplementing general fund appropriations to support tuberculosis treatment provided under R.C. 339.73 or tuberculosis clinics established under R.C. 339.76.
4. In order for a county budget commission to certify a tax levy to a taxing authority for authorization of the levy, the county budget commission must ascertain that the tax levy was properly authorized under the applicable statutory authority and that the rate of taxation is clearly required by the budget of the taxing authority.
5. Revenue from a special levy must be used for purposes that are consistent with the purpose for which the levy was established as identified in the authorizing statute, the board of county commissioners' authorizing resolution, and the ballot language. The expenses that may be paid with revenue resulting from the Meigs County Tuberculosis Clinic levy are those necessary for the support

of the Meigs County Tuberculosis Clinic in its provision of care, treatment, maintenance, and hospitalization to residents of Meigs County who are suffering from tuberculosis.

6. A board of county commissioners that has made a special levy under R.C. 5705.20 to support tuberculosis treatment under R.C. 339.73 or a tuberculosis clinic established pursuant to R.C. 339.76 must first make a general fund appropriation to support those purposes before determining whether a levy in excess of the ten-mill limitation is necessary.



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June 20, 2014

OPINION NO. 2014-024

The Honorable Colleen S. Williams  
Meigs County Prosecuting Attorney  
117 West Second Street  
Pomeroy, Ohio 45769

Dear Prosecutor Williams:

You have requested an opinion about a board of county commissioners' appointment of an entity to govern and manage a county tuberculosis clinic and authorization of a tax levy to provide funds for the clinic's operation. Your request for an opinion is made on behalf of the Meigs County General Health District.

You have explained that Meigs County has a tuberculosis clinic that operates under the authority of the Meigs County Tuberculosis Association and Board of Trustees ("the Association"). The Association was created in January 1980 following the ratification of the Association's constitution. Article III of the Constitution of the Meigs County Tuberculosis Clinic and Board of Trustees states that the membership in the Association consists of the "voting populace of Meigs County .... represented by the Meigs County commissioners[.]" The Association is governed by a board of trustees that is composed of at least thirteen trustees representing twelve townships and five villages located in Meigs County. Initially, the members of the board of trustees were elected by the board of county commissioners. In subsequent years, the existing board of trustees nominated and elected successive trustees, subject to confirmation of and appointment by the Meigs County Board of Commissioners.

You have further explained that the Meigs County tuberculosis clinic is supported by revenue received as a result of a .5 mill tax levy. In 2010, the Meigs County Board of Commissioners passed a resolution to renew the levy for five years, commencing in tax year 2011. A majority of the electors of Meigs County voting on the proposal approved renewal of the levy on November 2, 2010.

You have asked the following questions regarding the management of a county tuberculosis clinic and the tax levy:<sup>1</sup>

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<sup>1</sup> For ease of organization, we have rephrased and reordered your questions.

1. Does the board of county commissioners have authority to appoint a board like the Meigs County Tuberculosis Association and Board of Trustees instead of following the requirements of R.C. 339.76?
2. May the Meigs County Tuberculosis Association and Board of Trustees act as the governing board of a tuberculosis clinic and provide clinic services without being designated to do so by the board of county commissioners?
3. Was the Meigs County Tuberculosis Clinic levy properly submitted to the electors under R.C. 5705.19, R.C. 5705.191, R.C. 5705.194, R.C. 5705.21, and R.C. 5705.26?
4. If the levy was not properly submitted under R.C. 5705.20, may the county continue to collect revenue under the levy?
5. Are the expenses that may be paid with revenue from the Meigs County Tuberculosis Clinic levy limited to expenses related to active tuberculosis cases?
6. If the Meigs County Tuberculosis Clinic levy is valid, is the Meigs County Board of Commissioners required to appropriate a portion of the Meigs County general revenue fund to support the Meigs County Tuberculosis Clinic as mentioned in R.C. 5705.20?

### **Establishment and Management of a Tuberculosis Clinic (Questions 1 and 2)**

Your first question asks whether a board of county commissioners is authorized to appoint a board like the Meigs County Tuberculosis Association and Board of Trustees instead of following the requirements of R.C. 339.76. When considering the powers of a board of county commissioners, we are guided by the principle that a board of county commissioners is a creature of statute and has only those powers as are expressly conferred by statute or necessarily implied therefrom. 2009 Op. Att’y Gen. No. 2009-007, at 2-52 (citing *State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2)); 2009 Op. Att’y Gen. No. 2009-001, at 2-4 (same as previous parenthetical); 1982 Op. Att’y Gen. No. 82-036, at 2-106. Accordingly, to determine the authority that a board of county commissioners has with respect to the appointment of a board to supervise a tuberculosis clinic, we first look to R.C. Chapter 339.

In each county, the board of county commissioners is required to designate a tuberculosis control unit to serve the county. R.C. 339.72(A). A board of county commissioners may designate a single tuberculosis control unit to serve that particular county or the board may join with the boards of county commissioners from other counties and jointly designate a district tuberculosis control unit. *Id.* Any of the following entities may be designated as a county or district tuberculosis control unit:

- (1) A communicable disease control program operated by a board of health of a city or general health district pursuant to [R.C. 3709.22];<sup>2</sup>
- (2) A tuberculosis clinic established by a board of county commissioners pursuant to [R.C. 339.76];
- (3) A hospital that provides tuberculosis clinic services under a contract with a board of county commissioners pursuant to [R.C. 339.75].

*Id.* (footnote added). The entity designated to serve as the tuberculosis control unit for the county “shall accept that designation and fulfill its duties as the tuberculosis control unit specified under [R.C. 339.71-.89].” R.C. 339.72(B).

“Each county or district tuberculosis control unit shall ensure that tuberculosis treatment is made available to all individuals with tuberculosis who reside in the area served by the unit.” R.C. 339.73. A tuberculosis control unit may provide the necessary treatment or make a referral to another entity. *Id.* Tuberculosis treatment authorized by R.C. 339.73 is

limited to cases of active tuberculosis and infected contacts and includes provision of antituberculosis medication, conduct of an investigation under [R.C. 339.80], provision of appropriate follow-up services for confirmed and suspected cases of active tuberculosis, and provision of services by a physician through a course of therapy that meets the standards for tuberculosis treatment established by the United States centers for disease control and prevention or the American thoracic society.

*Id.*

One or more tuberculosis clinics may be established and maintained by a board of county commissioners in a county. R.C. 339.76. The board of county commissioners “may employ physicians, public health nurses, and other persons for the operation of [tuberculosis] clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis.” *Id.* By tax levy or otherwise, a board of county commissioners may provide the necessary funds to establish, maintain, and operate a tuberculosis clinic. *Id.* A tuberculosis clinic established by a single board of county commissioners pursuant to R.C. 339.76 “shall be under the control of the board of county commissioners, and shall be supervised by a board of three trustees ... or by a city or general district board of health within the county, as the board of county commissioners designates.” *Id.* If two or more boards of county commissioners establish a joint tuberculosis clinic pursuant to R.C. 339.76, the joint clinic

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<sup>2</sup> R.C. 3709.22 provides, in pertinent part, that “[e]ach board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases.”

shall be under the control of the joint boards of county commissioners of the member counties and shall be supervised by a board of trustees, such board to consist of an equal number of trustees from each of the member counties ... or by a city or general health district board of health within the county where the clinic is located, as the member boards of county commissioners shall designate.

*Id.*

R.C. 339.76 is “[t]he enabling statute” for the establishment of tuberculosis clinics by a board of county commissioners. *Stewart v. Ben Franklin Clinic*, 54 Ohio App. 2d 210, 212, 376 N.E.2d 1354 (Franklin County 1977) (citing R.C. 339.39, the predecessor of R.C. 339.76). In the case of a tuberculosis clinic for a single county, R.C. 339.76 authorizes a board of county commissioners to designate either a board of three trustees or a city or general district board of health to supervise the clinic. In the case of a joint tuberculosis clinic, established to serve two or more counties, a board of county commissioners is authorized to designate either a board of trustees consisting of an equal number of trustees from each of the member counties or a city or general health district board of health from the county where the clinic is located to supervise the joint clinic. R.C. 339.76. No other provision in R.C. Chapter 339 authorizes a board of county commissioners to designate a board of trustees to supervise a tuberculosis clinic established pursuant to R.C. 339.76. Thus, in response to your first question, a board of county commissioners that establishes a tuberculosis clinic must designate a board of trustees or a city or general health district board of health to supervise the clinic in accordance with the requirements of R.C. 339.76. In so concluding, we express no opinion whether the Meigs County Tuberculosis Association and Board of Trustees complies with the requirements of R.C. 339.76. Such a determination involves questions of fact and is beyond the scope of an Attorney General opinion. 2011 Op. Att’y Gen. No. 2011-009, at 2-73 (“[i]t is beyond the scope of the opinion process to resolve ‘questions of fact regarding the lawfulness of actions taken in the past’”); see 1994 Op. Att’y Gen. No. 94-018, at 2-85 n.1 (“[i]t is beyond the scope of an opinion of the Attorney General to determine whether the Humane Society of the Ohio Valley (HSOV) has been properly established, and is currently operating, as a county humane society under R.C. Chapter 1717”).

Your second question asks whether the Meigs County Tuberculosis Association and Board of Trustees may act as the governing board of a tuberculosis clinic and provide clinic services without being designated to do so by the Meigs County Board of Commissioners. As set forth above, R.C. 339.72 identifies three entities that may be designated as a county or district tuberculosis control unit. “Under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded.” *State v. Droste*, 83 Ohio St. 3d 36, 39, 1998-Ohio-182, 697 N.E.2d 620 (1998). Accordingly, in order to provide tuberculosis treatment to the residents of a county, a board of county commissioners must designate one of the entities in R.C. 339.72 as the tuberculosis control unit.

In addition, a tuberculosis clinic or a joint tuberculosis clinic must be governed and operated in accordance with R.C. 339.76. R.C. 339.76 requires a board of county commissioners to designate a board of trustees or a city or general health district board of health to supervise the clinic. Therefore, an entity may not supervise the operation of a tuberculosis clinic unless the entity has been designated

to do so by a board of county commissioners or by the member boards of county commissioners, in the case of a joint tuberculosis clinic.<sup>3</sup>

**Meigs County Tuberculosis Clinic Levy (Questions 3, 4, 5, and 6)**

We now turn to your third question: was the Meigs County Tuberculosis Clinic levy properly submitted to the electors under R.C. 5705.19, R.C. 5705.191, R.C. 5705.194, R.C. 5705.21, and R.C. 5705.26?<sup>4</sup> To answer your question, it is helpful to have a general understanding of the authority of a board of county commissioners to levy taxes on the property within a county.

Article XII, § 2 of the Ohio Constitution provides, in pertinent part, that

[n]o property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

*See also* R.C. 5705.02 (“[t]he aggregate amount of taxes that may be levied on any taxable property in [a county] shall not in any one year exceed ten mills on each dollar of tax valuation of [the county], except for taxes specifically authorized to be levied in excess thereof”). This limitation is known as the “ten-mill limitation.” R.C. 5705.02. The board of county commissioners “may levy taxes annually, subject to the limitations of [R.C. 5705.01-.47], on the real and personal property within the [county]” to pay the county’s current operating expenses, to acquire or construct permanent improvements, or to pay other debts of the county. R.C. 5705.03(A). A board of county commissioners may levy a tax in excess of the ten-mill limitation “by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate.” R.C. 5705.07.

A tax levied by a board of county commissioners, within or in excess of the ten-mill limitation, may be either a general levy for current expenses or a special levy for a particular purpose. *See* R.C. 5705.04. “The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any

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<sup>3</sup> We do not express an opinion whether the Meigs County Tuberculosis Association and Board of Trustees has been properly designated by the Meigs County Board of Commissioners in accordance with R.C. 339.72 and R.C. 339.76. *See* 2011 Op. Att’y Gen. No. 2011-009, at 2-73 (“[i]t is beyond the scope of the opinion process to resolve ‘questions of fact regarding the lawfulness of actions taken in the past’”).

<sup>4</sup> It appears that R.C. 5705.19, R.C. 5705.191, R.C. 5705.194, R.C. 5705.21, and R.C. 5705.26 are referenced at the top of the form that was used by the Meigs County Board of Commissioners for the resolution declaring that a renewal of the tuberculosis levy in excess of the ten-mill limitation was necessary.

kind may be made.” R.C. 5705.05. On the other hand, “[a] special levy’s purpose may be limited to a particular use by the authorizing statute and further limited by the language of the levy resolution or ballot.” 2013 Op. Att’y Gen. No. 2013-005, at 2-51. “Revenue collected as a result of a special levy must be credited to a special fund and used only for the purpose for which the levy was imposed.” *Id.*; R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made”); R.C. 5705.10(I) (“[m]oney paid into any fund shall be used only for the purposes for which such fund is established”).

At any time during a year, a board of county commissioners may, by a vote of two-thirds of the commissioners, pass a resolution declaring that “the amount of taxes that 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 that limitation” for any of the purposes specified in R.C. 5705.19(A)-(YY). R.C. 5705.19; *see* 5705.191. In addition, a board of county commissioners may declare by resolution that it is necessary to levy a tax in excess of the ten-mill limitation “to supplement the general fund for the purpose of making appropriations for” one of the purposes identified in R.C. 5705.191. R.C. 5705.191. “[H]uman or social services” and “health” are two of the purposes identified in R.C. 5705.191. Finally, with respect to a tuberculosis clinic, R.C. 5705.20 authorizes a board of county commissioners to make a special levy in excess of the ten-mill limitation for the support of a tuberculosis clinic. R.C. 5705.20 provides:

[t]he board of county commissioners of any county, in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of the tuberculosis treatment specified under [R.C. 339.73] or for the support of tuberculosis clinics established pursuant to [R.C. 339.76], 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 that support, 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.

A resolution passed under R.C. 5705.20 must conform to the requirements of R.C. 5705.19 and be submitted in accordance with R.C. 5705.25. R.C. 5705.20. “If a tax was levied under [R.C. 5705.20] for the support of tuberculosis clinics before October 10, 2000, the levy may be renewed for that purpose on or after October 10, 2000, in accordance with [R.C. 5705.25].” R.C. 5705.20.

The authority to levy a tax under R.C. 5705.191 is supplemental to the authority to levy a tax under R.C. 5705.20. R.C. 5705.191. A tax levied under R.C. 5705.191 is for the purpose of supplementing the general fund of the county in order to make appropriations for various purposes, while a tax levied under R.C. 5705.20 is a special levy for the purpose of supplementing the appropriations for tuberculosis treatment under R.C. 339.73 or a tuberculosis clinic established under R.C. 339.76. *See* 2001 Op. Att’y Gen. No. 2001-013, at 2-78 (a tax levied under R.C. 5705.191 for “health” purposes is “to provide adequate funding for the county and ... is intended to ‘supplement the general fund’ of the county. The revenue derived from such a levy is not credited to, or for the use of,



the general health district”); 1968 Op. Att’y Gen. No. 68-051, at 2-51 to 2-52 (comparison of a tax levied under R.C. 5705.191 and a tax levied under R.C. 5705.20).

The resolution that was passed by the Meigs County Board of Commissioners on January 27, 2010 declaring that renewal of a levy in excess of the ten-mill limitation is necessary states that the levy is for the benefit of the Meigs County Tuberculosis Clinic and provides the following concerning the purpose of the levy:

for the purpose of providing care, maintenance, treatment and establish an acceptable home treatment plan for the residents of Meigs County who are suffering from active TB. The County Commissioners and the Meigs County Tuberculosis Clinic provide support in finding hospitalization for patients with active TB for which a home treatment plan cannot be devised.

The ballot presented to the voters at the November 2010 election identifies the purpose for renewal of the existing levy as “Providing Care, Maintenance, Treatment and Hospitalization of residents of Meigs County who are suffering from Tuberculosis, at Hospitals with which the Commissioners of Meigs County have contracted, and Support of Tuberculosis Clinics[.]”

Based on the information provided to us, we conclude that the Meigs County Board of Commissioners is authorized by R.C. 5705.20 to levy a tax such as the Meigs County Tuberculosis Clinic levy. The language of the resolution and that of the ballot support the conclusion that the levy is a special levy for the purpose of providing tuberculosis treatment pursuant to R.C. 339.73 and to support a tuberculosis clinic established under R.C. 339.76. With such specific purposes identified in the resolution and on the ballot, it is evident that the levy was not intended to be a general levy for the current expenses of the county under R.C. 5705.19(A) or a levy for the purpose of supplementing the general fund of the county for the purpose of making appropriations for health under R.C. 5705.191. That the resolution was adopted by the use of a form that references R.C. 5705.19, R.C. 5705.191, R.C. 5705.194, R.C. 5705.21, and R.C. 5705.26, rather than R.C. 5705.20, is not determinative of the statutory authority for the levy. 1988 Op. Att’y Gen. No. 88-101, at 2-498 n.1 (“[t]he absence of a reference to R.C. 5705.20, together with the presence of a reference to R.C. 5705.19, is not itself determinative of the section under which the levy was adopted, since R.C. 5705.20 states expressly that a resolution under its provisions ‘shall conform to’ R.C. 5705.19”). Furthermore, R.C. 5705.20 states that a tax levied under that section must conform to the requirements of R.C. 5705.19. A reference to R.C. 5705.19 at the top of the Meigs County Board of Commissioners’ resolution may simply reflect an intent to comply with R.C. 5705.19 and R.C. 5705.20.

Even though we are able to identify statutory authorization for the Meigs County Tuberculosis Clinic levy, we are unable to state definitively that the levy was “properly” submitted to the voters or that the levy complied with all applicable election laws or provisions of R.C. Chapter 5705. Renewal of the Meigs County Tuberculosis Clinic levy was approved by a majority of the voters in November 2010. Presumably, the tax levy was approved by the county budget commission, levied by the board of county commissioners, assessed by the county auditor, and collected by the county treasurer. The determination that the levy was “properly” submitted to the electors is beyond the scope of an

Attorney General opinion. See 2012 Op. Att’y Gen. No. 2012-007, at 2-51 to 2-52 (“[w]e cannot determine definitively whether the actions by the Central Local School District, the Defiance City School District, and the Defiance County Board of Elections comply in all respects with applicable election laws”); 2011 Op. Att’y Gen. No. 2011-009, at 2-73 (“[i]t is beyond the scope of the opinion process to resolve ‘questions of fact regarding the lawfulness of actions taken in the past or the rights or liabilities of particular individuals or governmental entities’” (quoting 2005 Op. Att’y Gen. No. 2005-043, at 2-472)); 2005 Op. Att’y Gen. No. 2005-043, at 2-472 to 2-473 (“[t]here is a presumption of validity of action taken by a public official in the course of the performance of the official’s duties.... In general, action taken by public officials is presumed to have legal effect, even though some errors may occur”). Therefore, in response to your third question, we conclude that pursuant to R.C. 5705.20, a board of county commissioners may levy a tax in excess of the ten-mill limitation for the purpose of supplementing general fund appropriations for the purpose of supporting tuberculosis treatment provided under R.C. 339.73 or for the support of tuberculosis clinics established under R.C. 339.76.

We now turn to your fourth question: if the Meigs County Tuberculosis Clinic levy was not properly submitted under R.C. 5705.20, may the county continue to collect revenue under the levy? The process of collecting revenue from a tax levied by a board of county commissioners begins with the county budget commission. R.C. 5705.27 creates the county budget commission in each county. “The county budget commission is responsible for reviewing [tax budgets],<sup>5</sup> adjusting them as required by law, and certifying appropriate taxes for collection.” 2005 Op. Att’y Gen. No. 2005-002, at 2-18 (footnote added). The county budget commission is also required to determine whether a levy in excess of the ten-mill limitation has been “properly authorized.” R.C. 5705.31(A). If the levy has been properly authorized, then the county budget commission is required to approve the levy without modification. R.C. 5705.31. In other words, levies in excess of the ten-mill limitation are “mandatory, and the county budget commission is without discretion to reduce them except as provided by statute, provided they have been properly authorized.” 2005 Op. Att’y Gen. No. 2005-002, at 2-18; R.C. 5705.31. A “county budget commission is responsible for assuring that a tax is not levied unless it is properly authorized in accordance with statutory requirements.” 2005 Op. Att’y Gen. No. 2005-002, at 2-19. R.C. 5705.341 provides, in pertinent part, that

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<sup>5</sup> Each taxing authority of a subdivision or taxing unit is required to adopt a tax budget, unless an exception under R.C. 5705.28(B)(1) or (2) or R.C. 5705.281 applies. R.C. 5705.28(A). R.C. 5705.29 identifies the information that must be presented in a tax budget. Examples of the information includes, but is not limited to, a statement of “necessary current operating expenses[,]” “expenditures ... necessary for permanent improvements,” “expenditures ... necessary for any purpose for which a special levy is authorized,” “[a]n estimate of receipts from other sources than the general property tax[,]” “[t]he amount each fund requires from the general property tax,” “[t]he amount required for debt charges[,]” and “[a]n estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate[.]” R.C. 5705.29(A)-(D).

[n]othing in [R.C. 5705.341] or any section of the Revised Code shall permit or require the levying of any rate of taxation, whether within the ten-mill limitation or whether the levy has been approved by the electors ..., unless such rate of taxation ... is clearly required by a budget of the taxing district or political subdivision properly and lawfully adopted under [R.C. Chapter 5705], or by other information that must be provided under [R.C. 5705.281] if a tax budget was waived.

In *Vill. of S. Russell v. Budget Comm'n of Geauga Cnty.*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876 (1984), the Ohio Supreme Court addressed the meaning of “properly authorized” in R.C. 5705.31 and “clearly required by a budget” in R.C. 5705.341 as follows:

[c]urrently, the phrase “properly authorized,” as employed in R.C. 5705.31, requires the budget commission to determine that such tax is one which the taxing authority had the power to impose, either by its own action or by vote of the people, and that the enactment of the measure imposing the tax was in compliance with statutory requirements. Additionally, the term encompasses the requirement that the budget commission determine whether any rate of taxation is clearly required by the budget of the taxing district or the political subdivision. We hold this latter consideration to include the determination of whether the funds to be derived from a levy approved for a specific purpose are indeed budgeted for that purpose.

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Under [R.C. 5705.341], the phrase “clearly required by a budget” does not require, nor grant, the authority to a budget commission to make a judgment call on the desirability of programs of the [political subdivision or taxing unit], or in this sense to determine the “need” of the [political subdivision or taxing unit] for the sums as set forth in the budget as submitted. The review of the budget commission of tax levies is one basically of whether there has been excessive taxation, *i.e.*, will the tax generate more funds than shown to be needed within the budget of the [political subdivision or taxing unit], and whether the funds are budgeted for the appropriate purpose as voted by the electorate.

*Accord* 2005 Op. Att’y Gen. No. 2005-002, at 2-19; *see also Vill. of Waite Hill v. Budget Comm’n of Lake Cnty.*, 46 Ohio St. 2d 543, 545, 350 N.E.2d 411 (1976) (R.C. 5705.341 “imposes a specific duty on the budget commission to deny outside millage unless such revenue is manifestly required. And ... a county budget commission is prohibited from certifying a tax levy which would produce revenue in excess of the revenue set out in the budget submitted by the municipality pursuant to R.C. 5705.30”). *But see State ex rel. Fairfield Cnty. Bd. of Mental Retardation and Developmental Disabilities v. Fairfield Cnty. Budget Comm’n*, 10 Ohio St. 3d 123, 125, 461 N.E.2d 1297 (1984) (“voter approval of a levy properly placed upon the ballot pursuant to R.C. Chapter 5705 constitutes an approved budget as a matter of law, thus satisfying the provision of R.C. 5705.341 which requires budget approval before levying any rate of taxation”). A taxing authority must act in good faith in determining whether funds will be used within the purpose contemplated by the levy. 1979 Op. Att’y Gen. No. 79-016, at 2-52 (“a taxing authority has, however, a duty to act in good faith and to use its

best judgment with due regard to the circumstances and interest of the district at the time of its action”).

Once the county budget commission has completed its duties under R.C. 5705.31, it is required to certify its action to the taxing authority. R.C. 5705.34; 1994 Op. Att’y Gen. No. 94-057, at 2-280. The taxing authority then authorizes the tax levies, by ordinance or resolution, and certifies the necessary levies to the county auditor. R.C. 5705.34; 1994 Op. Att’y Gen. No. 94-057, at 2-280.

In order for a county budget commission to certify a tax levy to a taxing authority for authorization of the levy, the county budget commission must have ascertained that the tax levy was properly authorized under the applicable statutory authority and that the rate of taxation is clearly required by the budget of the taxing authority. Accordingly, if the requirements of a statute authorizing the levying of a tax are not followed, a county budget commission cannot conclude that the levy is properly authorized and cannot certify the levy to the taxing authority.

This opinion does not determine whether the Meigs County Tuberculosis Clinic levy was lawfully authorized by the Meigs County Board of Commissioners. It is beyond the scope of an Attorney General opinion to determine whether the actions of the Meigs County officials have complied with all of the applicable election laws and provisions of R.C. Chapter 5705. *See* 2012 Op. Att’y Gen. No. 2012-007, at 2-51 to 2-52; *see also* 2006 Op. Att’y Gen. No. 2006-028, at 2-249 to 2-250 (“the Attorney General is unable, by means of a formal opinion, to make a definitive determination regarding the construction of a particular county resolution [or] to determine the rights or obligations of voters or taxpayers under a particular ballot issue or levy”). It is similarly beyond the scope of an Attorney General opinion to determine whether the proceeds of a tax levy will be used for the purposes contemplated by the tax levy. 2006 Op. Att’y Gen. No. 2006-006, at 2-61 n.6 (“[i]t is beyond the scope of this opinion to determine whether the proceeds of the city tax levy in question will be used for a purpose within the contemplation of the tax levy. Any such determination in this regard requires findings of fact that exceed the capacity of the opinions function and are appropriately left to the city’s legislative authority or to the judiciary”).

“There is a presumption of validity of action taken by a public official in the course of the performance of the official’s duties.” 2005 Op. Att’y Gen. No. 2005-043, at 2-472. Furthermore, the Attorney General will not exercise, in an opinion, the discretion that has been afforded to another public official or entity. 2009 Op. Att’y Gen. No. 2009-048, at 2-357 (“the Attorney General is not authorized to use the opinion-rendering function to exercise on behalf of a public official discretion that has been reposed in that official”); 2006 Op. Att’y Gen. No. 2006-019, at 2-166 (“[t]he discretion to make those determinations in accordance with applicable standards and procedures has, by statute and rule, been given to designated officials. The Attorney General is not empowered, by means of an opinion, to circumvent these procedures or to attempt to prescribe to those officials the manner in which they should exercise their discretion”); 2001 Op. Att’y Gen. No. 2001-032, at 2-193 (“[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials, nor do we find it appropriate to advise one public body on matters concerning the powers and duties of another public body”). Renewal of the Meigs County Tuberculosis Clinic levy was approved by a majority of voters in November 2010, nearly four years ago. The Meigs County

Budget Commission would have completed its determination of whether the levy was properly authorized by R.C. 5705.20 and R.C. 5705.25 at approximately the same time. In this circumstance, the determination of whether the levy was lawfully made falls within the discretion of the county budget commission, the board of tax appeals, and the court. Any question as to the validity of the levy must be resolved by those entities rather than by an opinion of the Attorney General.

We now turn to your fifth question, whether the expenses that may be paid with revenue from the Meigs County Tuberculosis Clinic levy are limited to expenses related to active tuberculosis cases. As discussed above, the Meigs County Tuberculosis Clinic levy is a special levy that is authorized by R.C. 5705.20. Revenue resulting from a special levy must be placed in a special fund and used only for the purposes for which the levy was made. R.C. 5705.10(C), (D); 2012 Op. Att’y Gen. No. 2012-014, at 2-118 to 2-119; 1997 Op. Att’y Gen. No. 97-030, at 2-176 to 2-177; 1988 Op. Att’y Gen. No. 88-101, at 2-500; 1986 Op. Att’y Gen. No. 86-103, at 2-570.<sup>6</sup> However, even if a particular purpose is identified in the language of the authorizing resolution and ballot language, the revenue from a special levy may be used for other unanticipated expenses that are consistent with the purpose identified in the authorizing resolution and ballot language, so long as the taxing authority believes, in the reasonable exercise of its discretion, that the expenditure is in the public interest. 2012 Op. Att’y Gen. No. 2012-014, at 2-120.

The purpose of a levy must be set forth in the language of the authorizing resolution. *See, e.g.*, R.C. 5705.19; R.C. 5705.191; R.C. 5705.20; *accord* 1986 Op. Att’y Gen. No. 86-103, at 2-571. The purpose of the levy, as stated in the resolution, must also appear in the language of the ballot that is presented to the voters. R.C. 5705.25(B); 1986 Op. Att’y Gen. No. 86-103, at 2-571. While the language of the authorizing resolution and ballot language may further limit the purpose of a levy, they may not expand the purpose beyond the purpose authorized by statute. 2013 Op. Att’y Gen. No. 2013-005, at 2-51 to 2-52; 2012 Op. Att’y Gen. No. 2012-014, at 2-119; 1986 Op. Att’y Gen. No. 86-103, at 2-569. Thus, to determine whether revenue from the Meigs County Tuberculosis Clinic levy is limited to paying expenses related to active tuberculosis cases, we must consider the purpose for which the levy was made as permitted by R.C. 5705.20 and as described in the language of the authorizing resolution and the ballot language.

The statute authorizing the levy for the support of tuberculosis treatment and tuberculosis clinics, R.C. 5705.20, provides:

[t]he board of county commissioners of any county, in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of the tuberculosis treatment specified under [R.C. 339.73] or for the support of tuberculosis clinics established pursuant to [R.C. 339.76],

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<sup>6</sup> R.C. 5705.14-.16 set forth certain circumstances in which tax proceeds in one fund may be transferred to another. *See* 1997 Op. Att’y Gen. No. 97-030, at 2-178; 1988 Op. Att’y Gen. No. 88-101, at 2-501 n.4.

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 that support, 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.

R.C. 339.73 addresses the treatment that a county or district tuberculosis control unit must provide and states:

[t]he tuberculosis treatment provided under this section is limited to cases of active tuberculosis and infected contacts and includes provision of antituberculosis medication, conduct of an investigation under [R.C. 339.80], provision of appropriate follow-up services for confirmed and suspected cases of active tuberculosis, and provision of services by a physician through a course of therapy that meets the standards for tuberculosis treatment established by the United States centers for disease control and prevention or the American thoracic society.

Thus, R.C. 5705.20 authorizes levying a tax for two purposes: (1) the support of treatment required by R.C. 339.73; and (2) the support of tuberculosis clinics established pursuant to R.C. 339.76. R.C. 339.73 restricts the treatment that a tuberculosis control unit must provide to the treatment of active tuberculosis cases. Accordingly, R.C. 5705.20 authorizes a special levy in excess of the ten-mill limitation to supplement general fund appropriations for the support of providing treatment for active tuberculosis cases by a tuberculosis control unit and for the support of tuberculosis clinics.

The authorizing resolution for the Meigs County Tuberculosis Clinic levy states that the levy is for the benefit of the Meigs County Tuberculosis Clinic and describes the purpose of the levy as follows:

for the purpose of providing care, maintenance, treatment and establish an acceptable home treatment plan for the residents of Meigs County who are suffering from active TB. The County Commissioners and the Meigs County Tuberculosis Clinic provide support in finding hospitalization for patients with active TB for which a home treatment plan cannot be devised.

The ballot language states that the levy is for the benefit of Meigs County “for the purpose of Providing Care, Maintenance, Treatment and Hospitalization of residents of Meigs County who are suffering from Tuberculosis, at Hospitals with which the Commissioners of Meigs County have contracted, and Support of Tuberculosis Clinics[.]”

“The language of the resolution and the language of the ballot need not be identical but must be consistent.” 2007 Op. Att’y Gen. No. 2007-002, at 2-14 n.2; *accord* 2012 Op. Att’y Gen. No. 2012-014, at 2-121; 2006 Op. Att’y Gen. No. 2006-028, at 2-260 n.11 (“[a]s a general rule, the resolution and the ballot language must be consistent in expressing the purpose for which a particular tax is levied”). In the case of the Meigs County Tuberculosis Clinic levy, although the authorizing

resolution and the ballot language are not identical, their descriptions of the purpose of the levy are consistent. Both identify the purpose of the levy as providing support for a tuberculosis clinic in providing care, treatment, maintenance and hospitalization for residents of Meigs County suffering from tuberculosis. Therefore, based on R.C. 339.73, R.C. 5705.20, the language of the authorizing resolution, and the ballot language, we conclude that the expenses that may be paid with revenue resulting from the Meigs County Tuberculosis Clinic levy are those necessary for the support of the Meigs County Tuberculosis Clinic in its provision of care, treatment, maintenance, and hospitalization to residents of Meigs County who are suffering from tuberculosis. These expenses may include the provision of supplies and equipment for the tuberculosis clinic. 1973 Op. Att’y Gen. No. 73-014, at 2-40 (“where a county tax levy has been passed to provide care for tuberculosis patients either in a hospital or in a clinic, the money may be used to obtain supplies and equipment for the clinic”).

We now turn to your sixth question, which asks: if the Meigs County Tuberculosis Clinic levy is valid, is the Meigs County Board of Commissioners required to appropriate a portion of the Meigs County general revenue fund to support the Meigs County Tuberculosis Clinic as mentioned in R.C. 5705.20? We answer this question affirmatively. As we concluded above, the statutory authority for the Meigs County Tuberculosis Clinic levy is R.C. 5705.20, which provides:

[t]he board of county commissioners of any county, in any year, *after* providing the normal and customary percentage of the total general fund appropriations for the support of the tuberculosis treatment specified under [R.C. 339.73] or for the support of tuberculosis clinics established pursuant to [R.C. 339.76], 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 that support, 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.) According to the plain language of the statute, if after providing the customary percentage of general fund appropriations, a board of county commissioners concludes that additional tax revenue is necessary to supplement the general fund appropriations, the board may levy a tax in excess of the ten-mill limitation. The revenue resulting from such a tax is then used to supplement the general fund appropriations. The use of the term “after” indicates that a board of county commissioners must first make a general fund appropriation to support tuberculosis treatment or to support a tuberculosis clinic before determining whether additional funds are necessary. *See Merriam-Webster’s Collegiate Dictionary* 23 (11th ed. 2005) (defining “after” as “following in time or place”). The use of the term “to supplement” in R.C. 5705.20 further emphasizes that the revenue resulting from the R.C. 5705.20 levy shall be used for tuberculosis treatment or by a tuberculosis clinic in addition to the general fund appropriations from the county. *See Merriam-Webster’s Collegiate Dictionary* 1255 (11th ed. 2005) (defining “supplement” as “something that completes or makes an addition”). The funds resulting from the special levy made pursuant to R.C. 5705.20 are

meant as an addition to a general fund appropriation to support tuberculosis treatment or a tuberculosis clinic. Therefore, a board of county commissioners that has made a special levy under R.C. 5705.20 to support tuberculosis treatment under R.C. 339.73 or a tuberculosis clinic established pursuant to R.C. 339.76 must first make a general fund appropriation to support those purposes before determining whether a levy in excess of the ten-mill limitation is necessary.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. In order to provide tuberculosis services to the county, a board of county commissioners must designate a tuberculosis control unit or enter into an agreement with other boards of county commissioners to jointly designate a district tuberculosis control unit.
2. When a board of county commissioners designates a tuberculosis clinic established pursuant to R.C. 339.76 as the county's tuberculosis control unit, the tuberculosis clinic shall be under the control of the board of county commissioners. When a tuberculosis clinic is established for a single county, the board of county commissioners shall designate, in accordance with R.C. 339.76, either a board of three trustees or a city or general district board of health located within the county to supervise the tuberculosis clinic.
3. Pursuant to R.C. 5705.20, a board of county commissioners may levy a tax in excess of the ten-mill limitation for the purpose of supplementing general fund appropriations to support tuberculosis treatment provided under R.C. 339.73 or tuberculosis clinics established under R.C. 339.76.
4. In order for a county budget commission to certify a tax levy to a taxing authority for authorization of the levy, the county budget commission must ascertain that the tax levy was properly authorized under the applicable statutory authority and that the rate of taxation is clearly required by the budget of the taxing authority.
5. Revenue from a special levy must be used for purposes that are consistent with the purpose for which the levy was established as identified in the authorizing statute, the board of county commissioners' authorizing resolution, and the ballot language. The expenses that may be paid with revenue resulting from the Meigs County Tuberculosis Clinic levy are those necessary for the support of the Meigs County Tuberculosis Clinic in its provision of care, treatment, maintenance, and hospitalization to residents of Meigs County who are suffering from tuberculosis.
6. A board of county commissioners that has made a special levy under R.C. 5705.20 to support tuberculosis treatment under R.C. 339.73 or a tuberculosis



clinic established pursuant to R.C. 339.76 must first make a general fund appropriation to support those purposes before determining whether a levy in excess of the ten-mill limitation is necessary.

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