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1. UNIVERSITY — MUNICIPAL — SUPPORT — SPECIAL TAX LEVY OUTSIDE TEN MILL LIMITATION—MAY BE SUBMITTED TO VOTE OF ELECTORS OF SPECIAL TAXING DISTRICT—MAY BE SUBMITTED AT A GENERAL, PRIMARY OR SPECIAL ELECTION—SECTIONS 3349.25, 5705.19, 5705.191 RC.
2. IF ISSUE SUBMITTED TO VOTE, APPROVAL MUST BE BY AFFIRMATIVE VOTE OF FIFTY-FIVE PER CENT OR MORE OF ELECTORS VOTING ON QUESTION—LEVY MAY NOT BE FOR LONGER PERIOD THAN TWO YEARS.

SYLLABUS:

1. A special tax levy outside the ten mill limitation for the support of a municipal university, as authorized by the provisions of Section 3349.25, Revised Code, may be submitted to a vote of the electors of the special taxing district created under the provisions of such section. Such issue may be submitted to a vote at a general election as provided in Section 5705.19, Revised Code, or at a "general, primary or special election" as provided in Section 5705.191, Revised Code.

2. If such issue is submitted to a vote under the provisions of Section 5705.191, Revised Code, it may be approved only by the affirmative vote of "fifty-five per cent or more of the electors voting on the question," and the levy thus authorized "may not be for a longer period than two years."

Columbus, Ohio, March 9, 1954

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Chapter 3349 (R.C. 3349.01 et seq.) provides for county participation in the operation of a municipal university. The statutes require funds for this purpose to be raised by submission of a levy for such purpose to the electors.

"Such a proposal is now being contemplated by the Lucas County Commissioners and your opinion is requested as to whether a levy beyond the ten mill limitation could be submitted at a special election under the provisions of R.C. Section 5705.21.

“In the event your answer to the above question is in the affirmative, we would appreciate your further opinion as to the percentage of vote required in order to approve such a levy and for what maximum number of years could such levy be voted.”

Certain of the provisions in Chapter 3349, relative to county support of municipal universities are as follows:

Section 3349.23:

“The board of county commissioners of any county in which a municipal university is situated may enter into an agreement with the board of directors of such municipal university for participation by such county in the development, maintenance, and operation of such municipal university.”

Section 3349.25:

“For the purpose of levying any tax which may be found necessary to meet fiscal obligations under any agreement authorized by Section 3349.23 of the Revised Code, that portion of said county lying outside of the corporate limits of such municipality shall be a taxing district to be known as the county municipal university taxing district.

“The board of county commissioners of such county, which shall be the taxing authority, shall submit to the electors of said taxing district, in the manner provided by sections 5705.01 to 5705.26, inclusive, of the Revised Code, the question of authorizing the county commissioners to levy a tax for such purpose, within the constitutional ten mill limitation.

“In the event such issue is approved by the percentage of vote required in section 5705.26 of the Revised Code the board of county commissioners shall levy such tax upon all lands within such district, and they shall order from time to time the transfer to the board of directors of the municipal university, by warrant of the auditor, such sums of tax moneys collected as are necessary to meet county obligations under such contract.

“The board of county commissioners, as such taxing authority for the purposes of the agreement authorized by section 3349.23 of the Revised Code, may also submit to the electors of such taxing district in the manner provided for by sections 5705.01 to 5705.26, inclusive, of the Revised Code, a proposal to levy a tax outside the ten mill limitation at a specified rate and for a specified period, not to exceed five years.”

It will be observed that the final paragraph of Section 3349.25, *supra*, provides the authority for the submission of the question of a special tax levy to the electors, and that the *manner* of such submission

is governed by the provisions of the Uniform Tax Levy Law, Sections 5705.01 to 5705.26, inclusive, Revised Code. This reference to the Tax Levy Law, in the absence of any detailed provisions in the authorizing section, clearly indicates the legislative intent that in all respects in which Section 3349.25, Revised Code, is silent, the provisions of Section 5705.01, et seq., Revised Code, should govern whether such details relate merely to procedural matters or to substantive matters.

I note your suggestion that Section 5705.21, Revised Code, might authorize the submission of such a proposed levy at a special election and I assume that your inquiry grows out of a desire to submit such question at such an early date as is possible instead of submitting it to a vote at a general election, as provided in Section 5705.19, Revised Code.

It is clear, however, that Section 5705.21, Revised Code, refers to a special levy by a "board of education of any school district," and I find nothing in the provisions of Chapter 3349., Revised Code, which would in any way indicate that the board of county commissioners, as the taxing authority of a "county municipal university taxing district," could be deemed to be a "board of education." I must conclude, therefore, that such section is not applicable in the instant case.

It seems that a special election in such a case is provided for, however, in Section 5705.191, Revised Code, enacted as emergency legislation by the 100th General Assembly, Senate Bill No. 45, effective June 26, 1953. This section provides in part:

"Notwithstanding the provisions of any other law to the contrary, during the period from the effective date of this act until June 30, 1955, the taxing authority of any subdivision, other than the board of education of a school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount 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 purposes in section 5705.19 of the Revised Code, or to supplement general fund appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary or special election to be held at a time therein specified. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, excepting that such levy may not be for a longer period

than two years, and such resolution shall specify the date of holding such election, which shall not be earlier than ninety days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. * * *

“If fifty-five per cent or more of the electors voting on the question at a primary, general, or special election vote in favor thereof, the taxing authority of the subdivision may forthwith make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. * * *”

Among the “purposes in Section 5705.19 of the Revised Code” we find listed the authorization of a special levy “for a municipal university.” It would thus appear that the issue of a special levy for a municipal university outside the ten mill limitation, as authorized by the provisions of Section 3349.25, Revised Code, could properly be submitted to the electors in the manner provided in Section 5705.191, Revised Code, and could be so submitted at “a general, primary or special election” as therein provided.

Section 5705.191, Revised Code, as already noted, provides for the approval of a special levy by a vote of “fifty-five per cent or more of the electors voting on the question.” This provision in the absence of any similar provision in Section 3349.25, Revised Code, and in view of the reference therein to Sections 5705.01 to 5705.26, inclusive, must be deemed applicable in the case of a special election held under the provisions of this temporary emergency legislation despite the general provision in Section 5705.26, Revised Code, for the approval of a levy “for the current expenses of schools or municipal universities” by a “majority of the electors voting.”

In the matter of the maximum period for which such a levy may be voted, we find the express provision in Section 3349.25, Revised Code, for a levy for “a specified period not to exceed five years.” In Section 5705.191, however, the duration of any levy approved thereunder “may not be for a longer period than two years.” The former section is, of course, general in terms while the latter is special emergency legislation, and such special provision would prevail over any conflicting general provisions. *Engineering Co. v. Jones*, 150 Ohio St., 423.

Of course, if it should be deemed advisable to submit the issue to the electors under the general provisions of Section 5705.19, Revised Code, at a *general* election, the maximum levy period of five years, as authorized by Section 3349.25, *supra*, would be applicable.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. A special tax levy outside the ten mill limitation for the support of a municipal university, as authorized by the provisions of Section 3349.25, Revised Code, may be submitted to a vote of the electors of the special taxing district created under the provisions of such election. Such issue may be submitted to a vote at a general election as provided in Section 5705.19, Revised Code, or at a "general, primary or special election" as provided in Section 5705.19I, Revised Code.

2. If such issue is submitted to a vote under the provisions of Section 5705.19I, Revised Code, it may be approved only by the affirmative vote of "fifty-five per cent or more of the electors voting on the question," and the levy thus authorized "may not be for a longer period than two years."

Respectfully,

C. WILLIAM O'NEILL

Attorney General