

OPINION NO. 761

Syllabus:

1. The provision in Section 133.30, Revised Code, limiting the maturity of notes to a period of six months does not apply to notes issued under Section 5705.21, Revised Code.

2. Anticipatory notes issued under Section 5705.21, Revised Code, are to mature serially in substantially equal amounts during each year of the life of the levy, rather than at the end of the levy.

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To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, January 3, 1964

Your request for my opinion reads in substantial part as follows:

"The Lowellville School District has suffered a drastic loss in tax revenue because of the closing and sale of the Sharon Steel Plant in its district. To meet this loss of revenue, the Board of that School District went to the voters and had a five (5) year 9.3 mill levy enacted which will go on the tax duplicate on January 1, 1964.

"In anticipation of collections, the Board contemplates the issuance of anticipatory notes pursuant to Revised Code 5705.21. This section provides in part:-

"* * * After the approval of such levy vote and prior to the time when the first tax collection from such levy can be made, the board of education of the school district may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy throughout its life.'

And -

"Such notes shall be sold as provided in sections 133.01 to 133.65, inclusive, of the Revised Code. * * *'

"I have examined Revised Code, Section 5705.21 and the related sections in Chapter 133 of the Uniform Bond Law and cannot re-

concile Revised Code 5705.21 with Revised Code 133.30 for reason that the latter provides said notes shall not be issued for more than six (6) months.

"I request your opinion whether or not this school district may borrow and issue notes in an amount not exceeding 50% of the total proceeds of the levy for the five (5) years as provided for by Revised Code 5705.21."

Section 5705.21, Revised Code, provides for a special levy where the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide for an adequate amount for the necessary requirements of a school district. This section also provides for the issuance of notes in anticipation of the proceeds of such a levy and as pertinent reads as follows:

"* * * After the approval of such levy vote and prior to the time when the first tax collection from such levy can be made, the board of education of the school district may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy throughout its life.

"Such notes shall be sold as provided in sections 133.01 to 133.65, inclusive, of the Revised Code. If such anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year of the life of the levy; and if such notes are issued, the amount necessary to pay the interest and principal as they mature shall be deemed appropriated for such purposes from such levy, and appropriations from such levy by the board of education of the school district shall be limited each year to the balance available in excess of such amount."

(Emphasis added)

As brought out in the above language, Section 5705.21, Revised Code, specifically provides the terms of issuance and redemption of notes issued under this section. The board of education of the school district is authorized to anticipate a fraction of the proceeds of such levy rather than the annual collections of the levy.

Section 133.30, Revised Code, provides for the issuance of notes in anticipation of current revenues and is an entirely separate issuing authority statute which has no bearing on Section 5705.21, Revised Code. The last paragraph of Section 5705.21, Revised Code, is mandatory and provides that the anticipatory notes issued under that section shall mature serially and in substantially equal amounts during each year

of the life of the levy. Section 133.30, Revised Code, not only does not apply here but the language of the two statutes varies considerably. There is a six month limitation on notes in Section 133.30, Revised Code, but no six month limitation in Section 5705.21, Revised Code; in fact, it would be impossible to apply the former section to the latter without ignoring the language of the latter.

Section 5705.21, Revised Code, does provide that notes issued under that section shall be sold as provided in Sections 133.01 to 133.65, inclusive, Revised Code, but there is no specific direction to Section 133.30, Revised Code. And the reference by its terms is limited to the provisions of Sections 133.01 to 133.65, inclusive, Revised Code, which pertain to the sale of notes. If the legislature had intended to make the entire provisions of Sections 133.01 to 133.65, inclusive, Revised Code, applicable to notes issued under Section 5705.21, Revised Code, it must be presumed that this latter section would provide that notes issued thereunder shall be sold and issued as provided in Sections 133.01 to 133.65, inclusive, Revised Code.

You also ask whether the school district may issue notes that mature in five years, which is the maximum length of the levy. As brought out above, Section 5705.21 specifically provides that:

"* * * If such anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year of the life of the levy * * *."

Therefore, it is my opinion and you are advised that:

1. The provision in Section 133.30, Revised Code, limiting the maturity of notes to a period of six months does not apply to notes issued under Section 5705.21, Revised Code.

2. Anticipatory notes issued under Section 5705.21, Revised Code, are to mature serially in substantially equal amounts during each year of the life of the levy, rather than at the end of the levy.