

OPINION NO. 77-052**Syllabus:**

A municipal corporation is not precluded from levying a municipal motor vehicle license tax pursuant to R.C. 4504.06 if the county in which it is located has previously levied such a tax but has failed to certify the resolution levying such a tax with the registrar of motor vehicles.

To: John R. Heflin, Carroll County Pros. Atty., Carrollton, Ohio
By: William J. Brown, Attorney General, October 3, 1977

I have before me your request for an opinion which raises the following question:

May a municipal corporation in 1976 levy a motor vehicle license tax pursuant to Section 4504.06 ORC when the county in which part of the municipal corporation is located has passed a motor vehicle license tax pursuant to Section 4504.02 ORC prior to June 30, 1968, and where the county has not yet certified its motor vehicle license tax to the Bureau of Motor Vehicles?

Under the provisions of R.C. 4504.02, a county may levy a five dollar motor vehicle license tax. Before such a tax can be collected by the county, however, the conditions imposed by R.C. 4504.08 must be met. That section provides, in pertinent part, as follows:

A resolution, ordinance, or other measure levying a county vehicle license tax or municipal motor

vehicle license tax shall not be applicable to motor vehicle registrations. . . unless a copy of such resolution or ordinance is certified to the registrar of motor vehicles. . .

From information which you have supplied, it is my understanding that prior to June 30, 1968, Carroll County adopted a resolution authorizing a county license tax, but that the resolution has never been certified to the registrar of motor vehicles pursuant to R.C. 4504.08, and therefore has never been collected. Subsequently, a municipal corporation, partially in Carroll County, enacted an ordinance allowing a municipal license tax and has certified it to the registrar. The municipal tax has been collected. The problem presented, therefore, is whether the county is now foreclosed from collecting its tax by R.C. 4504.02.

R.C. 4504.02 provides, in pertinent part, as follows:

On and after June 30, 1968 the county commissioners of a county may levy a county motor vehicle license tax only if no municipal corporation located wholly or partly within the county has previously enacted an ordinance, resolution, or other measure levying a municipal motor vehicle license tax pursuant to Section 4504.06 of the Revised Code which is then in effect or which has not become effective solely because the thirty-day period following its enactment has not expired or because of the filing of a referendum petition as to such ordinance, resolution, or other measure.

The section thus precludes the levy of a motor vehicle license tax by the county where there is a municipality in the county that has previously done so. R.C. 4504.06 imposes similar restrictions upon municipal corporations. It provides, in part:

. . .

No municipal corporation shall enact any ordinance, resolution, or other measure levying a tax pursuant to this section on any motor vehicle registration which would be subject to a resolution previously adopted levying a county motor vehicle license tax where such resolution has not become effective solely because of the filing of a referendum petition pursuant to sections 305.31 to 305.41 of the Revised Code or because the thirty-day period following adoption of the resolution has not expired.

The effect of R.C. 4504.02 and 4504.06, then, is to allow either a municipal corporation or a county to preempt the other from levying a motor vehicle license tax by acting first.

Although R.C. 4504.06 denies a municipal corporation the authority to adopt a tax when any motor vehicle registration ". . . would be subject to a resolution previously adopted levying a county motor vehicle license tax. . . ," the denial precludes action only in the limited circumstances described in the section. By couching R.C. 4504.06 in terms of motor vehicle registrations "subject to a resolution previously adopted levying a county motor vehicle license tax," the General Assembly has envisioned the possibility of a situation of the type you have described. The county cannot preempt municipal action merely by adopting a resolution without putting that resolution into effect. Until the resolution authorizing the county tax is certified to the registrar of motor vehicles under R.C. 4504.08, motor vehicle registrations are not "subject" to the county tax. Therefore, a municipal corporation may impose its own motor vehicle license tax by certifying it to the registrar of motor vehicles before the county does. In so doing, a municipal corporation precludes the county from collecting the tax by being first to subject motor vehicles to the registration tax.

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

A municipal corporation is not precluded from levying a municipal motor vehicle license tax pursuant to R.C. 4504.06 if the county in which it is located has previously levied such a tax but has failed to certify the resolution levying such a tax with the registrar of motor vehicles.