

OPINION NO. 71-039

Syllabus:

A township, in acting to join an existing joint township hospital district, may be required, as a condition for joining, to levy a tax to pay such township's share of the bonded indebtedness of the district, which tax must be approved by sixty-five per cent of the township electors voting on such issue in a primary or general election.

To: H. Michael Moser, Auglaize County Pros. Atty., Wapakoneta, Ohio
By: William J. Brown, Attorney General, July 26, 1971

I am in receipt of your request for an opinion in which you state that a joint township hospital district has been established and that a bond issue for a new hospital has been approved in such district. You also state that a township contiguous to the district is considering becoming a member thereof. Your questions read, in part, as follows:

"1. I should appreciate your opinion as to the legality of Washington Township becoming a part of the hospital district.

"2. In view of the fact that the bond issue was passed, if you should rule that Washington Township can become a part of the hospital district, can one of the terms (referred to in O.R.C. Sec. 513.18) be that it assume a part of the bonded indebtedness?"

Joint township hospital districts are authorized and regulated pursuant to Sections 513.07 through 513.18, Revised Code. Operating costs for the hospital may be provided through a tax levy approved by the electorate of the district (Section 513.13, Revised Code) and bonds may be issued for the construction of the hospital (Section 513.12, Revised Code) in compliance with the requirements of Chapter 133, Revised Code, the Uniform Bond Law. The two listed Sections, in pertinent part, are as follows:

Section 513.12

"Upon the establishment of a joint township hospital district and after the organization of such joint township district hospital board, under section 513.07 of the Revised Code, the hospital board of the district shall determine the amount of bonds to be issued and such other matters as pertain thereto, and shall, when approved by the vote of the electorate of the district voting as a subdivision, issue and sell such bonds to the extent and in the amount so determined, for the purchase of

a site and for the constructing and equipping of a hospital building thereon. Such bonds shall be issued and sold as provided by sections 133.01 to 133.65, inclusive, of the Revised Code.

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Section 513.13

"The board of elections of the county in which a joint township hospital district, or the most populous portion of such district, lies shall, by resolution approved by a two-thirds vote of the joint township district hospital board, place upon the ballot for submission to the electorate of such district, at the next primary or general election, occurring not less than thirty nor more than ninety days after the request is received from such joint township district hospital board, the question of levying a tax, not to exceed one mill outside the ten-mill limitation, for a period not to exceed five years, to provide funds for the payment of necessary expenses incurred in the operation of the hospital. Such resolution shall be certified to the board of elections not later than four p.m. of the ninetieth day before the day of the election. If sixty-five per cent of the electors in such district voting on the proposition, vote in favor thereof, the county auditor of each county in which such district lies shall annually place a levy on the tax duplicate against the property in such district, in the amount required by the joint board of trustees of the district, but not to exceed one mill."

The governing statutes authorize a township not included in the original joint township hospital district to join such district at a later date. This is provided by Section 513.18, supra, as follows:

"In the event any township, contiguous to a joint township hospital district, desires to become a part of such district in existence under sections 513.07 to 513.18, inclusive, of the Revised Code, its board of township trustees, by a two-thirds favorable vote of the members of such board, after the existing joint township hospital board has, by a majority favorable vote of the members thereof, approved the terms under which such township proposes to join the district, shall become a part of the joint township district hospital board under such terms and with all the rights, privileges, and responsibilities enjoyed by and extended to the existing members of the hospital board under such sections, including representation on the board of hospital governors by the appointment of an elector of such township as a member thereof. If the terms under which such township proposes to join the hospital district involve a tax levy for the purpose of sharing the existing obligations of the district or the necessary operating expenses of such hospital, such township shall not

become a part of the district until its electors have approved such levy as provided in this section.

"Upon request of the board of township trustees of the township proposing to join such district, by resolution approved by a two-thirds vote of its members, the board of elections of the county in which the township lies shall place upon the ballot for submission to the electorate of such township at the next primary or general election occurring not less than thirty nor more than ninety days after such request is received from the board of township trustees the question of levying a tax, not to exceed one mill outside the ten-mill limitation, for a period of not to exceed five years, to provide funds for the payment of the township's share of the necessary expenses incurred in the operation of such hospital, or the question of levying a tax to pay the township's share of the existing obligations of the district, or both questions may be submitted at the same primary or general election. If sixty-five per cent of the electors voting on the propositions vote in favor thereof, the county auditor shall place such levies on the tax duplicate against the property in the township, which township shall thereby become a part of said joint township hospital district."

I understand your questions to relate primarily to the power to require a tax levy in the joining township in order for it to share the cost of a bond issue approved earlier in the joint district.

It will be noted that, in acting on terms for joining the district, decision by the board of trustees of the township is alone sufficient for that township to join such existing joint hospital district, except where tax levies may be necessary. Approval by the electors of the township is only necessary if a tax levy is required either (1) for sharing existing obligations, or (2) for sharing the necessary operating expenses. There would seem to be no reason to question that either or both such levies may be made conditions for joining by the joint district hospital board. The last sentence of the first paragraph expressly contemplates either or both levies. This is further borne out by the second paragraph of Section 513.18, supra, which carefully distinguishes the issues to be presented to the electorate of the joining township, where tax levies are involved, requiring that separate questions, where applicable, be included on the ballot covering (1) a levy to share the necessary expenses of operation, and (2) a levy to pay the township's share "of the existing obligations of the district".

While the phrase, "existing obligations" might be construed in some circumstances to refer to some transaction other than bonded indebtedness, it would appear, in the context of the related Sections, to refer here to bonded indebtedness. That is true because only two types of levy are authorized for a joint hospital district, i.e.: (1) for operating expenses, and (2) for

bonds. Sections 513.12 and 513.13, supra. The language of Section 513.18, supra, must, therefore, refer to the same types of levies as those authorized for the district itself.

I must, therefore, conclude that a township could be required, as a condition of joining a joint township hospital district, to submit to the electors the question of assuming its share of bonded indebtedness.

Implicit in your question is the apparent incongruity of the requirement in Section 513.18, supra, of a sixty-five per cent affirmative vote on the operating levy and the bond levy (where both are involved) before such township may become a part of the joint district, whereas the electors of the original district could approve a bond issue by a mere majority vote, under Chapter 133, supra. (A sixty-five per cent majority is required in the original district for approval of an operating levy, Section 513.13, supra.) That incongruity appears to have arisen historically. At the time of the passage of Section 513.18, supra, i. e., 119 Ohio Laws, 354, 357 (1941), the requirements of the Uniform Bond Act, now Chapter 133, supra, also required a sixty-five per cent majority for adoption of bonds. Section 2293-23, General Code (118 Ohio Laws, 20, 21 (1939).) Subsequently, amendments of the Uniform Bond Law have reduced that to a bare majority. Section 133.13, Revised Code. Section 513.18, supra, however, has not been amended since its original adoption. There is no basis merely because of such historic differences to imply any necessary ambiguity in the sections governing joint township hospital districts. For that reason, the sixty-five per cent majority must be complied with, respecting approval for assuming part of the bonded indebtedness, in order for a township to accede to membership in such joint district.

In specific answer to your questions, it is my opinion and you are so advised that a township, in acting to join an existing joint township hospital district, may be required, as a condition for joining, to levy a tax to pay such township's share of the bonded indebtedness of the district, which tax must be approved by sixty-five per cent of the township electors voting on such issue in a primary or general election.