

**OPINION NO. 86-022****Syllabus:**

For purposes of calculating the compensation to be paid to a township trustee under R.C. 505.24 or to a township clerk under R.C. 507.09, proceeds derived from a special levy for a general health district adopted under R.C. 3709.29 are not included as part of the budget or total expenditures of the township.

**To: Peter R. Selbel, Defiance County Prosecuting Attorney, Defiance, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1986**

You have requested an opinion on the question whether proceeds derived from a health levy should be included in a township budget for the purpose of calculating the compensation to be paid to the township trustees and the township clerk.

R.C. 505.24 sets forth the manner in which township trustees are to be compensated. It states, in part:

Each township trustee is entitled to compensation as follows:

...  
(B) An amount for each day of service in the business of the township, to be paid from the township treasury as follows:

(1) In townships having a budget of fifty thousand dollars or less, sixteen dollars per day for not more than two hundred days;

(2) In townships having a budget of more than fifty thousand but not more than one hundred thousand dollars, twenty dollars per day for not more than two hundred days;

...  
(6) In townships having a budget of more than one million five hundred thousand dollars, thirty-six dollars per day for not more than two hundred days.

...The per diem compensation shall be paid from the township general fund or from such other township funds in such proportions as the kinds of services performed may require....

By unanimous vote a board of township trustees may adopt a method of compensation consisting of an annual salary to be paid in equal monthly payments....The annual salary shall equal the maximum amount that could be received annually by a trustee if he were paid on a per diem basis as specified in this division....

Thus, the amount of compensation which a township trustee may receive depends upon the budget of the township.

R.C. 507.09 sets forth the manner in which township clerks are to be compensated. It states, in part:

(B) In those townships having a budget of less than five thousand dollars, the board shall determine the salary of the clerk, which in no event shall exceed one thousand five hundred dollars per year.

(C) In townships having a budget of five thousand dollars or over, the clerk shall receive three percent of the total expenditures of such township in excess of five thousand dollars in addition to the amount provided under division (B) of this section. No township clerk shall receive compensation in excess of the following amounts in any one calendar year for said services as such clerk:

(1) In townships having a budget of from five thousand to fifty thousand dollars, two thousand eight hundred fifty dollars;

(2) In townships having a budget of more than fifty thousand but not more than one hundred thousand dollars, four thousand three hundred fifty dollars;

...

(6) In townships having a budget of more than one million five hundred thousand dollars, twelve thousand dollars. (Emphasis added.)

The amount of compensation which a township clerk may receive thus depends upon the budget and the total expenditures of the township. See generally 1985 Op. Att'y Gen. No. 85-070.

Your question is whether the "budget" used for determining the amount to be paid under R.C. 505.24 or R.C. 507.09 includes proceeds derived from a special levy for a general health district adopted pursuant to R.C. 3709.29. Local funding for a general health district is ordinarily obtained from taxes levied, within the ten-mill limitation, by the various townships and municipal corporations which form the district. See R.C. 3709.28; 1984 Op. Att'y Gen. No. 84-013. The amount which the district will need from such sources is apportioned by the county auditor among the townships and municipal corporations composing the health district, on the basis of taxable valuations in such subdivisions. When making the semiannual apportionment of funds, the auditor retains one-half of the amount apportioned to each such subdivision and places those amounts, plus other sources of revenue, in the "district health fund." R.C. 3709.28. See 1985 Op. Att'y Gen. No. 85-033; 1946 Op. Att'y Gen. No. 1210, p. 689.

If, however, the board of health determines that the estimated amount necessary to meet its expenses will not be available from the district health fund because the taxes within the ten-mill limitation will be insufficient, the board of health certifies that fact to the board of county commissioners. R.C. 3709.29. The board of county commissioners is empowered by R.C. 3709.29 to act as a special taxing authority for purposes of the adoption of a special levy under R.C. 3709.29. See generally Op. No. 84-013; 1953 Op. Att'y Gen. No. 2569, p. 163.

R.C. 3709.29 states, in part:

If the estimated amount of money necessary to meet the expenses of a general health district program will not be forthcoming to the board of health of such district out of the district health fund because the

taxes within the ten-mill limitation will be insufficient, the board of health shall certify the fact of such insufficiency to the board of county commissioners of the county in which such district is located. Such board of county commissioners is hereby ordained to be a special taxing authority for the purposes of this section only. and, notwithstanding any other law to the contrary, the board of county commissioners of any county in which a general health district is located is the taxing authority for such special levy outside the ten-mill limitation. The board of county commissioners shall thereupon, in the year preceding that in which such health program will be effective, by vote of two thirds of all the members of said body, 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 the necessary requirements of such district within the county, and that it is necessary to levy a tax in excess of such limitation in order to provide the board of health with sufficient funds to carry out such health program....

Such resolution shall specify the amount of increase in rate which it is necessary to levy, which levy shall not exceed one mill, and the number of years during which such increase shall be in effect, which shall not be for a longer period than ten years. (Emphasis added.)

A special levy under R.C. 3709.29 is, thus, a levy outside the ten-mill limitation imposed upon the territory within a general health district. See generally Village of South Russell v. Budget Commission, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984); 1958 Op. Att'y Gen. No. 2294, p. 397.

Your letter of request contains the following information concerning the manner in which proceeds from a special levy under R.C. 3709.29 are handled by a township:

[T]he proceeds and expenditures from the levy are included in the annual budget of the township, the certificate of estimated resources, the annual appropriation's resolution, and the settlement sheets received from the county auditor. In addition, the township clerk is required to enter all county health levy transactions which appear on the settlement sheets from the county auditor and the township cash journal, receipts ledger, and appropriation ledger. In addition, the receipts and disbursements from the county health levy must be included with the annual township financial report that is filed with the auditor of state's office.

I have checked with the Office of the Auditor of State and have been unable to identify any statutory or administrative requirement or authorization for the inclusion of such special levy proceeds in the budget or accounting records of a township.<sup>1</sup> Cf. R.C. 5705.28 (adoption of tax budget); R.C.

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<sup>1</sup> R.C. 5705.29(A)(4) states that a tax budget must include "[a] statement of expenditures for the ensuing fiscal year for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made." It appears, however, that, with respect to

5705.29 (information which must be included in the tax budget); R.C. 5705.30 ("the budget of each subdivision...shall include such other information as is prescribed by the bureau of supervision and inspection of public offices"). It appears, therefore, that, even though one or more townships may, as a matter of practice, include proceeds and expenditures from a health district special levy within their budgets and financial records, the existence of such practice does not, in itself, establish that such proceeds are to be considered part of a township's budget for purposes of R.C. 505.24 or R.C. 507.09.

The term "budget," as used in R.C. 505.24 and R.C. 507.09, and the term "total expenditures," as used in R.C. 507.09, are not given specific statutory definitions. They have, however, been construed as including all amounts over which a township has control, or which are expended by or on behalf of a township to satisfy its obligations. In 1979 Op. Att'y Gen. No. 79-006, at 2-16, my predecessor concluded that "when R.C. 505.24 refers to a 'budget' it refers to the amount of money which the township is authorized to appropriate, under R.C. 5705.36, pursuant to the county budget commission's certificate of estimated resources and amendments thereto."

In 1954 Op. Att'y Gen. No. 3525, p. 59 (syllabus), another of my predecessors concluded that, under R.C. 507.09(C), "the 'total expenditures' of [a] township upon which the compensation of the township clerk is to be calculated, include all monies required by law to be withheld by the county auditor from the amounts due the township from tax collections and to be paid by said auditor to the various public agencies in the discharge of the township's obligations." 1954 Op. No. 3525 concluded, in particular, that amounts which constitute a township's share of the expenses of the board of health of a general health district under R.C. 3709.28 are included within the total expenditures of the township for purposes of R.C. 507.09(C), even though the county auditor is required to retain from each semi-annual apportionment of taxes for the township one-half of the amount apportioned to the township for the expenses of the board of health, and to pay the amounts so retained directly to the district health fund for the use of the general health district. 1954 Op. No. 3525 reasoned, at 62:

[I]t seems obvious that these expenses [including amounts paid to the district health fund under R.C. 3709.28], which are constant in character although variable in amount from year to year, must be taken into consideration when making up the annual budget of the township. They would certainly enter into the determination as to whether the total tax rate of a subdivision falls within the ten mill limitation. It further appears to me that when an obligation imposed

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the budget of a township, this requirement extends only to expenditures made by, or on behalf of, a township pursuant to a special levy authorized by that township. See R.C. 5705.04 (division of taxes levied); R.C. 5705.34 ("[w]hen the budget commission has completed its work with respect to a tax budget it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision or taxing unit..."). See generally 1977 Op. Att'y Gen. No. 77-068 (modified on another point by 1978 Op. Att'y Gen. No. 78-025); 1954 Op. Att'y Gen. No. 3793, p. 230.

by law on a township or other subdivision is to be paid on its behalf by the county auditor, out of funds which belong to it, these are expenditures of the subdivision and under any process of accounting would be considered as monies received and paid by the subdivision, just as completely as though they actually passed through the hands of the clerk or treasurer of the subdivision. (Emphasis added.)

Essentially the same analysis was applied in 1958 Op. Att'y Gen. No. 2470, p. 456 (approving and following 1954 Op. No. 3525), which states, at 460:

The words "having a budget of \$5,000.00 or more," as used in Division (C) of Section 507.09, Revised Code...certainly requires no explanation or interpretation. As a matter of common knowledge and by general definition "budget" is an advance estimate of the expected income and total expenses of a business or, as in this case, of a public subdivision, for a stated period; and when we consider that townships, along with all other subdivisions, are required to prepare an annual budget for the purpose of enabling the taxing authorities to determine the precise rate of taxation which shall be levied for the ensuing year, it becomes evident that this annual budget, in order to be complete, and in order to be informative as to the precise tax levy that must be made, must include an estimate of the entire gross income and the entire expense of the subdivision, whether paid by it or for it. (Emphasis added.)

1958 Op. No. 2470 concluded that the "total expenditures" upon which the compensation of the township clerk is to be calculated under R.C. 507.09(C) include compensation that is paid to the county auditor and county treasurer for collecting the township's taxes and is withheld from the amount of such collections paid to the township. See R.C. 319.54; R.C. 321.26.

As reflected in the opinions referenced above, my predecessors have, for purposes of R.C. 505.24 and R.C. 507.09, applied a broad definition of "budget," including amounts which are withheld or expended on behalf of the township, even if such amounts are never received by the township. See, e.g., R.C. 5705.28 ("[t]he taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision"). See also 1959 Op. Att'y Gen. No. 145, p. 67; 1950 Op. Att'y Gen. No. 1602, p. 161; 1948 Op. Att'y Gen. No. 2805, p. 99. It does not, however, appear that the definition is so broad as to include proceeds of a levy adopted under R.C. 3709.29.

As discussed above, a special levy under R.C. 3709.29 will not come into effect unless the board of health of a general health district certifies to the board of county commissioners that the estimated amount of money necessary to meet the expenses of the general health district will not be forthcoming from the district health fund because the taxes within the ten-mill limitation will be insufficient. Any such special levy will be adopted, pursuant to a resolution of the board of county commissioners, throughout the general health district. R.C. 3709.29. Thus, such a special levy is not adopted on a township basis or pursuant to any action by the township.

Further, it does not fulfill any obligation of the township to support the general health district but is, instead, enacted because of the inability of townships and municipalities within the district to adequately fund the district with taxes within the ten-mill limitation. See generally Village of South Russell v. Budget Commission. The township has no control over such a levy, and it has no direct connection with such a levy. See generally 1932 Op. Att'y Gen. No. 4881, vol. III, p. 1504 at 1506 (where the legislature has placed a duty upon township park commissioners to levy a tax, "it would appear that no responsibility was intended to be placed upon the township trustees either as to the levy or expenditure of the tax in question"). Township residents are taxed under such a levy as residents of the general health district, and not by virtue of their connection with the township. See generally Op. No. 85-033. I conclude that, for these reasons, proceeds of a special levy adopted under R.C. 3709.29 should not be considered to be part of the "budget" of the township for purposes of R.C. 505.24 or R.C. 507.09, or part of the "total expenditures" of the township for purposes of R.C. 507.09.

It is, therefore, my opinion, and you are hereby advised, that, for purposes of calculating the compensation to be paid to a township trustee under R.C. 505.24 or to a township clerk under R.C. 507.09, proceeds derived from a special levy for a general health district adopted under R.C. 3709.29 are not included as part of the budget or total expenditures of the township.