

OPINION NO. 92-058**Syllabus:**

The ballot language of a levy proposed pursuant to R.C. 5705.21(A) for the purpose of operating a cultural center may identify by name the particular cultural center for which the proceeds of the tax will be used.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion as to whether the ballot language of a levy proposed pursuant to R.C. 5705.21(A) may identify the purpose of the levy as the operation of a specific, existing cultural center. R.C. 5705.21(A), as recently amended by Sub. H.B. 471, 119th Gen. A. (1992) (eff. July 21, 1992), provides that

the board of education of any city, local, exempted village, or joint vocational 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 school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code or *for the purpose of operating a cultural center*, and that the question of such additional tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution.

R.C. 5705.21(B) requires, *inter alia*, that "the resolution shall be confined to a single purpose and shall specify...the purpose thereof." Thus, the board of education must declare the purpose of the tax levy in the resolution.

Statutory Requirements for Ballot Language

R.C. 5705.25, which pursuant to R.C. 5705.21(B) governs the submission of a resolution under R.C. 5705.21(A) to the electors, provides, in relevant part, that

[t]he form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

"An additional tax for the benefit of (name of subdivision...)....*for the purpose of (purpose stated in the resolution)*....at a rate not exceeding...mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents)....For

each one hundred dollars of valuation, for....(life of indebtedness or number of years the levy is to run)...." (Emphasis added.)

Thus, the purpose of the proposed tax as set forth in the resolution must be stated in the ballot language. See 1970 Op. Att'y Gen. No. 70-020 (syllabus, paragraph one) ("[e]ach proposal printed upon the ballot, as prescribed by Section 5705.25, Revised Code, must conform to and be expressed in the wording specifically prescribed by [R.C. 5705.25]").

It is clear that the statement of the purpose of a proposed tax levy as set forth in the resolution and the ballot language must conform and be limited to the purposes authorized by statute. See generally 1986 Op. Att'y Gen. No. 86-103. 1965 Op. Att'y Gen. No. 65-187 discussed a tax levy for garbage collection proposed to be placed on the ballot by the taxing authority of a subdivision pursuant to the provisions of R.C. 5705.19, authorizing a tax for "current expenses of the subdivision." The opinion concluded that ballot language providing that the proceeds of a levy for "current expenses" could be used only for garbage collection was improper because the statute permitting the tax did not authorize the subdivision to limit the use of the tax proceeds to a particular type of expense within the larger category of current expenses. See generally 1990 Op. Att'y Gen. No. 90-069 at 2-288 n.1.

Although the proceeds of a general levy for current expenses must be available for all current expenses of a subdivision, a special levy¹ may be restricted by ballot language to particular uses. See, e.g., Op. No. 90-069 at 2-292 ("the county commissioners are not prohibited from using language in the resolution and on the ballot that provides more specifically than the statutory language the uses for which moneys generated by a levy under R.C. 5705.24 may be expended"). Therefore, both the resolution and the ballot language for a tax proposed under the authority of R.C. 5705.21(A) may set forth as the purpose of the tax the operation of a particular cultural center, identified by name. In fact, ballot language that identifies the particular cultural center to receive tax proceeds informs the electors of the exact purpose of the tax.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that the ballot language of a levy proposed pursuant to R.C. 5705.21(A) for the purpose of operating a cultural center may identify by name the particular cultural center for which the proceeds of the tax will be used.

¹ "Special levy" is not expressly defined by statute for purposes of R.C. Chapter 5705. However, "special levy" is the term applied to a levy for a specific purpose, as opposed to a general levy for current expenses. See, e.g., 1979 Op. Att'y Gen. No. 79-024 at 2-85 ("[s]ince the levy was not declared to be a levy for current expenses, it is a special levy"); 1963 Op. Att'y Gen. No. 154, p. 240 (syllabus, paragraph two) ("[a] levy under Section 5705.191, Revised Code, 'for the purpose of supplementing the General Fund for current expenses...for the purpose of making an appropriation for Child Welfare Services' is a special levy"); see also 1962 Op. Att'y Gen. No. 2997, p. 337. Since a levy pursuant to R.C. 5705.21(A) is for a particular purpose, as opposed to a levy for current expenses in general, it is a special levy.