

July 2, 2019

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

SYLLABUS:

2019-022

From and after the withdrawal of a member subdivision from a joint ambulance district established under R.C. 505.71, the district shall continue to levy and to collect within the area of that subdivision taxes previously imposed by the district under R.C. 5705.19(B) for the payment of debt charges on bonds, notes, and certificates of indebtedness incurred by the district during the membership of the withdrawing subdivision. In addition, the continuing taxing authority involves fixed charges incident to continuing contracts or leases which are included in the appropriation for the next year as is provided under R.C. 5705.41(D)(1), and such taxes as are necessary to pay off all such obligations. R.C. 505.71, however, imposes no further or additional continuing obligation upon the withdrawing subdivision to contribute any share or portion of the future operating expenses of the district, including charges for salaries and compensation, supplies, and utilities, or charges under continuing contracts or leases, with the exception of the portion of such continuing obligations which constitute "fixed charges" under R.C. 5705.44.



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OPINION NO. 2019-022

The Honorable Stephen J. Pronai
Madison County Prosecuting Attorney
59 North Main Street
London, Ohio 43140

Dear Prosecutor Pronai:

You have requested our opinion about the responsibility a city which has withdrawn from a joint ambulance district formed under R.C. 505.71 may have, after such withdrawal, to pay a portion of the obligations of the district incurred prior to the city's withdrawal. We presume that the Madison County Emergency Medical District is a joint ambulance district created under R.C. 505.71, as indicated in 2018 Op. Att'y Gen. No. 2018-026, at 2-233 n.2. You advise us that, in 2018, the City of London, then a member of the district, adopted a resolution effecting its withdrawal from the district. As is provided in R.C. 505.71, the city's resolution of withdrawal, therefore, could not become effective earlier than January 1, 2019.

R.C. 505.71 authorizes townships and municipal corporations to "create a joint ambulance district comprising the municipal corporations and all or any portions of the townships as are mutually agreed upon." R.C. 505.71. The section indicates further that "[t]o provide the services and equipment it considers necessary for the district, the board may levy taxes, subject to Chapter 5705 of the Revised Code, and issue bonds and other evidences of indebtedness, subject to Chapter 133 of the Revised Code, after submitting the question of such issuance to the electors of the district in the manner provided by Chapter 133." The district is empowered to "purchase, lease, lease with an option to purchase, construct, maintain, and use all materials, equipment, vehicles, buildings, and land necessary to perform its duties." R.C. 505.71.

A municipal corporation or township that has become a member of an R.C. 505.71 district, "may withdraw from ... [the] district by the adoption of a resolution ordering withdrawal," which is to become effective no earlier than "the first day of January of the year

following the adoption of the resolution of withdrawal.” R.C. 505.71. Upon the withdrawal of any member from the district, “the county auditor shall ascertain, apportion, and order a division of all funds on hand, moneys and taxes in the process of collection, except taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation or township and the remaining territory of the district.” *Id.* As of the effective date of its withdrawal, the withdrawing township or municipality “ceases to be a part of the district.” *Id.* As of the effective date of the withdrawal, the district’s power “to levy a tax upon taxable property in the withdrawing township or municipal corporation terminates, except that the district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the district as it was comprised at the time the indebtedness was incurred.” *Id.*¹

As indicated, R.C. 505.71 specifically refers to the authority of a board of an ambulance district to levy taxes pursuant to R.C. Chapter 5705, and to “issue bonds and other evidences of indebtedness, subject to Chapter 133.” R.C. 505.71.² R.C. 5705.03(A) mandates that “[t]he taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit.” Further, R.C. 5705.19 empowers a “taxing authority of any subdivision ... to levy a tax ... [f]or the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision.” R.C. 5705.19(B). An R.C. 505.71 ambulance district is a “subdivision,” and the board of such a district is a “taxing authority” for the purposes of R.C. Chapter 5705. R.C. 5705.01(A); R.C. 5701.01(C). An ambulance district is also a “subdivision” under R.C. Chapter 133. R.C. 133.01(MM)(11). R.C. 133.01(KK) defines “securities” as used

¹ The Revised Code provision you cite in your request letter, R.C. 505.375, concerns a joint fire and ambulance district. It appears, however, that the MCEMD does not provide firefighting services within Madison County, but rather provides only emergency medical and emergency medical transport services. See MADISON COUNTY EMERGENCY MEDICAL DISTRICT, *Apparatus*, available at <https://www.madisoncountyemd.org/apparatus> (last visited June 19, 2019). Nevertheless, the operative provisions of R.C. 505.71 and R.C. 505.375 are the same with respect to the issues addressed in this opinion, except that the withdrawal of a subdivision from a joint ambulance district takes effect on January 1 following the resolution of withdrawal, whereas the timing of withdrawal for a withdrawing subdivision from a joint fire and ambulance district is not specified. See R.C. 505.71; R.C. 505.375(D). Therefore, the primary conclusions reached in this opinion generally apply to the settling of indebtedness and obligations of a withdrawing subdivision of both a joint ambulance district (R.C. 505.71) and a joint fire and ambulance district (R.C. 505.375).

² The imposition of Chapter 133 obligations is subject to the submission to and approval of the electors of the district. See R.C. 5705.19(B); R.C. 5705.03(B).

in R.C. Chapter 133 as “bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including, unless the context does not admit, anticipatory securities.” R.C. 133.01(KK).

Indebtedness

Although there is no specific definition of indebtedness set out in R.C. 505.71, it is our opinion that the use of the word in the phrase “the district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the district as it was comprised at the time the indebtedness was incurred” should be read *in pari materia* with the earlier reference in the statute to the issuance of “bonds and other indebtedness.” R.C. 505.71. *See, e.g., Bobb v. Marchant*, 14 Ohio St. 3d 1, 3, 469 N.E. 2d 847 (1984); *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E. 2d 191 (1956) (syllabus, paragraph 2); *Nat’l Distillers Corp. v. Evatt*, 143 Ohio St. 99, 102, 54 N.E. 2d 146 (1944). This construction suggests that the language of R.C. 505.71 mandating the continuation of the levying and collection by an ambulance district of taxes on property within the district at the time a debt was incurred is applicable to any indebtedness of the district which involves the issuance of bonds or other instruments of indebtedness.

Further support for this conclusion is found in the common and ordinary meaning of the words “indebtedness” and “incurred.” *See* R.C. 1.42 (providing that “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). “Indebtedness” is defined as “[t]he quality, state, or condition of owing money...; a debt.” *Black’s Law Dictionary* 885 (10th ed. 2014); *see also Webster’s New World College Dictionary* 738 (5th ed. 2014) (defining “indebtedness” as “[t]he amount owed; all one’s debts”). A common definition of “debt” is “[l]iability on a claim, a specific sum of money due by agreement or otherwise.” *Black’s Law Dictionary* 488 (10th ed. 2014). In the context of a debt, “incur” is defined as “to come into or acquire.” *Webster’s New World College Dictionary* 738 (5th ed. 2014). The terms “debt” and “indebtedness” are distinguishable from “expense” and “cost.” An “expense” is “[a]n expenditure of money, time, labor, or resources to accomplish a result.” *Black’s Law Dictionary* 698 (10th ed. 2014). A “cost” is “[t]he amount paid or charged for something.” *Id.* at 422. As explained by a prior Attorney General, “the term indebtedness ... is not meant to include all liabilities, but only such liabilities as come within the term debts.” 1928 Op. Att’y Gen. No. 2241, vol. II, p. 1489, at 1491.

Charges under Continuing Contracts or Leases

In addition, in relation to contractual or lease obligations undertaken by a joint ambulance district the obligations of which run beyond the fiscal year in which they are undertaken, or “continuing” obligations,³ the district’s fiscal officer is required to certify that the monetary

³ A “continuing contract” is a divisible contract that provides for periodic performances over a course of time. *See* 2005 Op. Att’y Gen. No. 2005-007, at 2-72 n.5; 1987 Op. Att’y Gen. No. 87-069. A continuing contract is “executory” in nature, rather than an “executed” contract.

amount of the obligation imposed upon the district has been appropriated for that purpose and that the required sum is in the treasury of the district or in the process of collection to the appropriate fund. See R.C. 5705.41(D)(1); R.C. 5705.01(A) (defining “subdivision” so as to include a joint ambulance district). With respect to a continuing contract or lease that will be performed or run, in whole or in part, beyond the current fiscal year, the fiscal officer is obliged to certify only the amount of the obligation that is due in the fiscal year during which the contractual or lease liability is created. R.C. 5705.41(D)(1); R.C. 5705.44. That portion of the amount due under the contract or lease which is payable in the next fiscal year is included as a fixed charge in the district’s annual appropriation for the next year. R.C. 5705.44. As such, the portion of the amount due under any continuing contract or lease entered into by a joint ambulance district during the final year of a member subdivision’s engagement as part of the district which is included as a fixed charge in the annual appropriation for the next fiscal year constitutes “indebtedness” for the purposes of R.C. 505.71.

Based on the foregoing, it is our opinion that the language of R.C. 505.71 which indicates that, subsequent to the withdrawal of one of its members, a joint ambulance district “shall continue to levy and collect taxes for the payment of indebtedness within the territory of the district as it was composed at the time the indebtedness was incurred” is applicable to taxes imposed by the district under R.C. 5705.19(B). This includes taxes imposed for the payment of debt charges on bonds, notes, and certificates of indebtedness, and such taxes as are necessary to pay off bonds or other evidences of indebtedness issued by the district prior to the effective date of withdrawal, and any fixed charges incident to continuing contracts and leases which are included in the appropriation for the next fiscal year after the withdrawal of a member subdivision pursuant to R.C. 5705.44.

Future Operating Expenses

We believe that the definition of “securities” contained in R.C. 133.01(KK) as “bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including ... anticipatory securities” is indicative of the obligations which are included in the definition of “indebtedness” under R.C. 505.71. We find nothing in R.C. 505.71, however, which suggests that the section is intended to create or to impose upon a withdrawing member a continuing obligation to contribute to future operating expenses of the district, including charges for salaries and compensation, supplies, and utilities, or charges under continuing contracts or leases except

An “executed contract is one in which the object of the contract has been fully performed and everything that was to be done is done.” An executory contract, on the other hand, is one in which a party or parties are bound to do some particular thing or things which have not yet been completed. See *Cassella v. Tiberio*, 150 Ohio St. 27, 30, 80 N.E.2d 426 (1948). In the context of your questions, a continuing contract is an agreement entered into in a given year which imposes upon the subdivision the obligation to make payments in each of one or more subsequent fiscal years.

as set forth above. Certainly, had the General Assembly intended to create such an obligation it could have done so with clarity.

Conclusion

It is our opinion, therefore, and you are advised that, from and after the withdrawal of a member subdivision from a joint ambulance district established under R.C. 505.71, the district shall continue to levy and to collect within the area of that subdivision taxes previously imposed by the district under R.C. 5705.19(B) for the payment of debt charges on bonds, notes, and certificates of indebtedness incurred by the district during the membership of the withdrawing subdivision. In addition, the continuing taxing authority involves fixed charges incident to continuing contracts or leases which are included in the appropriation for the next year as is provided under R.C. 5705.41(D)(1), and such taxes as are necessary to pay off all such obligations. R.C. 505.71, however, imposes no further or additional continuing obligation upon the withdrawing subdivision to contribute any share or portion of the future operating expenses of the district, including charges for salaries and compensation, supplies, and utilities, or charges under continuing contracts or leases, with the exception of the portion of such continuing obligations which constitute "fixed charges" under R.C. 5705.44.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST
Ohio Attorney General