

OPINION NO. 88-101**Syllabus:**

When a tax is levied under R.C. 5705.20 for "the care, treatment and maintenance of residents of the County who are suffering from tuberculosis and related diseases (current expenses)," proceeds of the levy may not be expended for purposes that are not included within the stated purpose; accordingly, proceeds of such a levy may not be expended to provide educational grants to professionals and students for research concerning tuberculosis and related diseases, or to provide information concerning tuberculosis and related diseases to schools, nursing homes, child care centers, high-risk groups, and the general public.

To: Gary L. Van Brocklin, Mahoning County Prosecuting Attorney, Youngstown, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1988

I have before me your request for an opinion concerning the proper expenditure of funds derived from a particular tax levy. The levy in question imposed a tax at a rate not exceeding one-tenth of one mill for a period of five years. The resolution declaring it necessary to levy a tax in excess of the ten-mill limitation, *see* Ohio Const. art. XII, §2; R.C. 5705.02, set forth the purpose of the tax as follows: "the care, treatment and maintenance of residents of the County who are suffering from tuberculosis and related diseases (current expenses)." You have asked whether proceeds of this levy may be used for the following purposes:

1. Providing educational grants, for research concerning tuberculosis and related diseases, to professionals and students.

2. Providing information concerning tuberculosis and related diseases to schools, nursing homes, child care centers, high-risk groups, and the general public.

The levy in question was apparently adopted pursuant to R.C. 5705.20, which states:

The board of county commissioners of any county, in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, or for the support of tuberculosis clinics established pursuant to section 339.36 or section 339.39 of the Revised Code, by vote of two-thirds of all the members of said board may 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 support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to such section, or for the support of tuberculosis clinics established pursuant to such sections, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

Such resolution shall conform to section 5705.19 of the Revised Code and be certified to the board of elections not less than seventy-five days before the general election and submitted in the manner provided in section 5705.25 of the Revised Code.

If the majority of electors voting on a levy to supplement general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, or for the support of tuberculosis clinics established pursuant to section 339.36 or 339.39 of the Revised Code, vote in favor thereof, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of said years. (Emphasis added.)

R.C. 5705.20 thus authorizes the adoption of levies for three purposes related to the treatment of tuberculosis: (1) the support of tuberculosis hospitals; (2) the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board of county commissioners has contracted pursuant to R.C. 339.20; and (3) the support of tuberculosis clinics established pursuant to R.C. 339.36 or 339.39. You have informed my staff that your county does not have a tuberculosis hospital or clinic and does not participate in a district tuberculosis hospital or a joint county tuberculosis clinic. See R.C. 339.21; R.C. 339.31; R.C. 339.34; R.C. 339.36; R.C. 339.39. Rather, the county contracts with local hospitals for the care, treatment, and maintenance of tuberculosis patients, and the evident intent of the levy in question was to provide funds to pay for such care, treatment and maintenance. It thus appears that the levy in question was intended to serve the second of the purposes authorized by R.C. 5705.20,¹ even though the language of the resolution declaring it necessary

¹ The presence of the words "current expenses" in the resolution may suggest that the levy is one for current expenses of the subdivision under R.C. 5705.19(A). Indeed, it would be proper for a county to adopt a levy for current expenses under R.C. 5705.19(A) and to use the proceeds of that levy for the care of persons suffering from tuberculosis and for other health-related expenses. See, e.g., 1954 Op. Att'y Gen. No. 4104, p. 388; 1945 Op. Att'y Gen. No. 394, p. 505 (considering an earlier version of R.C.

to levy the tax is not identical with that contained in R.C. 5705.20.² See generally *Lima v. McBride*, 34 Ohio St. 338 (1878); 1986 Op. Att'y Gen. No. 86-103;

5705.20, then G.C. 5625-15a). See generally 1955 Op. Att'y Gen. No. 5585, p. 339. The statement of purpose contained in the resolution in question indicates, however, that the levy is not a general levy for current expenses of the subdivision under R.C. 5705.19(A). See 1963 Op. Att'y Gen. No. 154, p. 240 at 246 ("[t]he declaration of purpose contained in the resolution is controlling"). It is firmly established that a levy for current expenses of the subdivision under R.C. 5705.19(A) is to be paid into the general fund, see R.C. 5705.10, and must remain available for all current expenses of the subdivision, rather than being earmarked for a particular purpose. See, e.g., 1984 Op. Att'y Gen. No. 84-083; 1965 Op. Att'y Gen. No. 65-187 (syllabus) ("[w]hen a tax is proposed to be levied under Section 5705.19(A), Revised Code, the term 'current expenses' must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot"); 1957 Op. Att'y Gen. No. 1123, p. 508; 1955 Op. No. 5585 (syllabus, paragraph one) (a levy in excess of the ten-mill limitation for current expenses under R.C. 5705.19(A) "can only have for its stated purpose 'For current expenses of the subdivision'"). It would, accordingly, be improper to adopt a levy pursuant to R.C. 5705.19(A) for the limited purpose of the care, treatment, and maintenance of persons who are suffering from tuberculosis. See Op. No. 65-187; 1955 Op. No. 5585; cf. R.C. 5705.191 (authorizing a tax levy in excess of the ten-mill limitation to supplement the general fund for, *inter alia*, health or the support of general or tuberculosis hospitals); 1962 Op. Att'y Gen. No. 2997, p. 337. See generally *McNamara v. Kinney*, 70 Ohio St. 2d 63, 434 N.E.2d 1098 (1982) (a court cannot sanction the adoption of a levy in a manner that is contrary to law); 1986 Op. Att'y Gen. No. 86-103. It appears, therefore, that the levy in question is a special one, for the limited purpose set forth therein, and that the parenthetical insertion of the words "current expenses" on the resolution of necessity for the levy was intended to indicate that the moneys derived from the levy would be used for current expenses relating to the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis. See generally Op. No. 86-103.

I note that the resolution of necessity was prepared on a form that references R.C. "5705.19, .192 [repealed in 1977-1978 Ohio Laws, Part I, 1412 (Am. Sub. H.B. 1, eff. Aug. 26, 1977)], .26." The absence of a reference to R.C. 5705.20, together with the presence of a reference to R.C. 5705.19, is not in itself determinative of the section under which the levy was adopted, since R.C. 5705.20 states expressly that a resolution under its provisions "shall conform to" R.C. 5705.19. See generally *City of Lima v. McBride*, 34 Ohio St. 338 (1878); see also R.C. 5705.191.

2 The resolution of necessity for the tax levy in question indicates that the purpose of the levy includes the care, treatment, and maintenance of residents of the county who are suffering from diseases related to tuberculosis. Your opinion request does not specifically inquire as to the propriety of providing medical care for such persons. I note, however, that the language of R.C. 5705.20 permitting a levy for the care, treatment, and maintenance of persons suffering from tuberculosis does not include persons suffering from related diseases, and I am aware of no theory that would permit a board of county commissioners, by the inclusion of particular language in a resolution of necessity for a tax levy, to expand the purposes of the levy beyond those authorized by statute. See, e.g., *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); *Clark Restaurant Co. v. Evatt*, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph three) ("[i]n the construction and application of taxing statutes, their provisions cannot be extended by implication beyond the clear import of the language used; nor can their operation be so enlarged as to embrace subjects not specifically enumerated"); *State ex rel. Locher v.*

1959 Op. Att'y Gen. No. 899, p. 610; 1954 Op. Att'y Gen. No. 3623, p. 119. For purposes of this opinion, I am assuming that the levy in question is a levy under R.C. 5705.20. See 1973 Op. Att'y Gen. No. 73-013.

The relevant language of R.C. 5705.20 authorizes a levy "for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code." R.C. 339.20 states:

The department of health shall have general supervision of all sanatoria, hospitals, and other institutions engaged in the maintenance, care, and treatment of persons suffering from tuberculosis, and shall formulate and enforce such rules and regulations for the government of such institutions as are necessary.

As used in this section, "maintenance, care, and treatment" means proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, as the medical director of each tuberculosis institution prescribes.

The location, plans, and estimates of cost for all county, district, and other hospitals for tuberculosis, and additions thereto, shall be submitted to and approved by the department. The formation of a district for the purpose of providing a hospital for the care and

Menning, 95 Ohio St. 97, 115 N.E. 571 (1916); *Roddy v. Andrix*, 95 Ohio L. Abs. 311, 201 N.E.2d 816 (C.P. Madison County 1964); 1986 Op. Att'y Gen. No. 86-103 at 2-569 (for a tax levy adopted under R.C. 5705.19, "the purpose of the tax levy, as set forth in the resolution and ballot language, may not be broader than the purpose or purposes authorized by one division of R.C. 5705.19"); 1983 Op. Att'y Gen. No. 83-069; 1959 Op. Att'y Gen. No. 899, p. 610; 1954 Op. Att'y Gen. No. 3623, p. 119. I am, accordingly, for purposes of this opinion, assuming that all proceeds derived from the levy in question will be expended for the care, treatment, and maintenance of persons suffering from tuberculosis. I make this assumption notwithstanding the fact that moneys levied for the support of tuberculosis hospitals may, because of the authority granted to those facilities by statute, be expended for the care of persons suffering from diseases other than tuberculosis. See, e.g., R.C. 339.45; 1961 Op. Att'y Gen. No. 2312, p. 337. See generally 1986 Op. Att'y Gen. No. 86-053; 1982 Op. Att'y Gen. No. 82-107.

I am not able to determine in this opinion whether, as a matter of medical practice, diseases related to tuberculosis may be classified as tuberculosis and thus come within the authorized purpose. I note, however, that earlier versions of statutes relating to tuberculosis used the term "pulmonary tuberculosis." See 1926 Op. Att'y Gen. No. 3827, p. 492. In discussing the elimination of the word "pulmonary," one of my predecessors stated:

The word "tuberculosis" has been defined by Webster as follows:

"A disease accompanied by the formation of some tubercles in the tissues."

It is fair to assume that the legislature intended the common and ordinary meaning of the language which was used. Having omitted from the section in its amendment the word "pulmonary," it would seem conclusive that it was not intended to limit such relief to the original form. Furthermore, from the standpoint of policy and humanitarian interests, it would seem that relief from such a disease in any of its forms should be the object of government.

1926 Op. No. 3827, at 493.

treatment of tuberculosis, for additions to such hospital, or for withdrawals from such hospital, shall be submitted to and approved by the department.

Provisions expressly authorizing a board of county commissioners to contract with hospitals for the treatment of patients suffering from tuberculosis appear in R.C. 339.38, as follows:

The board of county commissioners of any county may contract with the board of trustees of a county or district tuberculosis hospital or with the director of health for clinic services or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis. The board of county commissioners of the county in which such patients reside shall pay to the board of trustees of such county or district tuberculosis hospital, or to the treasurer of state, the amount provided in the contract. They shall also pay for the transportation of patients and attendants. *The board of county commissioners may also contract for the care and treatment of residents of the county suffering from tuberculosis with a general hospital*, properly equipped both as to personnel and facilities for the care and treatment of tuberculosis, or with a person, firm, association, or corporation operating a hospital exclusively for the care and treatment of the tuberculous. No contract shall be made unless such general or private hospital has been inspected and approved by the department of health. Such approval may be withdrawn and such contract shall be cancelled, if, in the judgment of the department, such general or private hospital is not properly managed. If such approval is withdrawn, the person, firm, association, or corporation operating such institutions may appeal to the public health council for a decision. (Emphasis added.)

The interaction between R.C. 5705.20 and R.C. 339.38 was discussed by one of my predecessors as follows:

It will be observed that Section 5705.20...refers to residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to Section 339.20, Revised Code. The section thus referred to, 339.20, Revised Code, does not in itself contain provisions for contracts of the sort mentioned. This section is, however, a recodification of Section 3139, General Code, and that section was the initial one in House Bill 59, 119 Ohio Laws, p. 721, by which a general revision was made of the statutes relating to tuberculosis hospitals. Within such act Section 19, afterward codified as Section 3139-18, General Code, and now recodified as Section 339.38, Revised Code, did provide for contracts by the county commissioners for the hospitalization of tubercular residents of the county concerned. Although the matter did not receive particular attention in Opinion No. 394, *supra*, it would appear that the writer of that opinion deemed the reference in Section 5625-15a, General Code, to Section 3139, General Code, to be a reference in effect to Section 3139 et seq., General Code, and specifically to include Section 3139-18, General Code.

1954 Op. No. 3623 at 121. It is, thus, apparent that the reference in R.C. 5705.20 to R.C. 339.20 extends also to R.C. 339.38. It is, further, clear that, while the definition of "maintenance, care, and treatment" appearing in R.C. 339.20 is not, by its terms, directly applicable to R.C. 339.38 or R.C. 5705.20, it is relevant to their interpretation.

A levy adopted under R.C. 5705.20 is a levy "for the purpose stated in the resolution." R.C. 5705.20. Such a levy is a special levy, and revenue derived from such a levy must, in accordance with R.C. 5705.10, "be credited to a special fund for the purpose for which the levy was made" and "be used only for the purposes for which such fund is established." *See, e.g.*, 1987 Op. Att'y Gen. No. 87-107; 1983 Op. Att'y Gen. No. 83-069; 1982 Op. Att'y Gen. No. 82-037 at 2-108 ("as a general rule, where the particular expenditures which a taxing authority wishes to make are

not specifically enumerated in the statement of purpose for the levy, whether the proposed expenditures may be made depends upon whether such uses come within the purpose as stated in the resolution and on the ballot"); 1977 Op. Att'y Gen. No. 77-097; 1974 Op. Att'y Gen. No. 74-032; 1962 Op. Att'y Gen. No. 2997, p. 337; 1954 Op. Att'y Gen. No. 4104, p. 388; 1954 Op. No. 3623; 1933 Op. Att'y Gen. No. 972, vol. II, p. 936. See generally *Roddy v. Andrix*, 95 Ohio L. Abs. 311, 201 N.E.2d 816 (C.P. Madison County 1964). Revenue derived from the levy in question must, accordingly, be paid into a special fund for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis,³ and may be expended only for that purpose.⁴ See note 2, *supra*.

You have asked whether the revenue may be expended to provide educational grants to professionals and students for research concerning tuberculosis and related diseases, and whether it may be expended to provide information concerning tuberculosis and related diseases to schools, nursing homes, child care centers, high-risk groups, and the general public. I must conclude that the levy proceeds may not be expended for such purposes. The concept of care, treatment, and maintenance of persons who are suffering from tuberculosis is clearly limited to activities that have a direct impact upon the persons who are being cared for, treated, or maintained. R.C. 339.20 defines the terms "maintenance, care, and treatment" to mean: "proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, as the medical director of each tuberculosis institution prescribes." While this definition includes educational services, those services, like the prevocational rehabilitation expressly mentioned, are obviously intended to apply to those persons who are suffering from tuberculosis. See 1954 Op. No. 3623; see also R.C. 339.45 ("[c]osts of hospitalization for non-tuberculosis diseases and disabilities...shall not be a charge upon public funds appropriated or levied for the care, treatment, and maintenance of tuberculosis patients whether in hospitals or clinics"); Op. No. 86-103. The purposes about which you have inquired are not directed to the persons who suffer from tuberculosis and, accordingly, cannot be considered part of the care, treatment, and maintenance of those persons. Rather, the educational grants or provision of information proposed in your request would be directed to persons who do not suffer from the disease. While the goals of those proposed expenditures may be laudable, they do not come within the purpose for which the levy in question was adopted⁵ and, for that reason, levy proceeds may not be used for such purposes. See generally, e.g., *Roddy v. Andrix*; Op. No. 77-097 at 2-323 (citing *Clark Restaurant*

³ The relevant language of R.C. 5705.20 authorizes the expenditure of levy funds only for persons who are suffering from tuberculosis "at hospitals with which the board has contracted" pursuant to R.C. 339.20. The resolution of necessity does not include that restriction, and I am assuming that it is not an issue with which you are concerned. I note, however, that one of my predecessors did conclude that the proceeds of a levy adopted under such provision may not be expended for the care, treatment, and maintenance of patients who are not hospitalized at an appropriate institution. 1954 Op. Att'y Gen. No. 3623, p. 119.

⁴ In limited circumstances, moneys may be transferred from one fund to another. See R.C. 5705.14-.17; 1986 Op. Att'y Gen. No. 86-082; 1962 Op. Att'y Gen. No. 2997, p. 337; 1959 Op. Att'y Gen. No. 899, p. 610; 1933 Op. Att'y Gen. No. 972, vol. II, p. 936.

⁵ R.C. 5705.20 would permit the adoption of a levy for the support of tuberculosis hospitals or the support of tuberculosis clinics established pursuant to R.C. 339.36 or 339.39. Proceeds from such a levy might be available for certain of the purposes to which your question relates, since those entities have statutory powers that exceed the care, treatment, and maintenance of persons suffering from tuberculosis. See, e.g., R.C. 339.30 and 339.33 (the board of trustees of a district tuberculosis hospital or a county tuberculosis hospital may "provide scholarships for education in the health care professions, tuition reimbursement, and other staff development programs to its employees for the purpose of recruiting and retaining

Co. v. Evatt, 146 Ohio St. 86, 64 N.E.2d 113 (1945)) ("the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein"); 1961 Op. Att'y Gen. No. 2312, p. 337 (distinguishing between a levy for the support of a tuberculosis hospital, which may be expended for hospital purposes relating to diseases other than tuberculosis, and a levy for the care, treatment, and maintenance of tuberculosis patients, which may be expended only for the care, treatment and maintenance of such patients).

I note that the conclusion reached in this opinion is consistent with the principles expressed in Ohio Const. art. XII, §5: "No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." See, e.g., *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914); 1959 Op. No. 899; 1958 Op. Att'y Gen. No. 1504, p. 7; 1957 Op. Att'y Gen. No. 772, p. 287; see also *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (any doubt in the expenditure of public moneys must be resolved in favor of the public and against the grant of power). But see *City of Cleveland v. Zangerle*, 127 Ohio St. 91, 93, 186 N.E. 805, 806 (1933) (indicating that Ohio Const. art. XII, §5 "pertains to the levying and distribution of general taxes for state purposes and not to taxes levied and distributed for local purposes").

It is, therefore, my opinion, and you are hereby advised, that, when a tax is levied under R.C. 5705.20 for "the care, treatment and maintenance of residents of the County who are suffering from tuberculosis and related diseases (current expenses)," proceeds of the levy may not be expended for purposes that are not included within the stated purpose; accordingly, proceeds of such a levy may not be expended to provide educational grants to professionals and students for research concerning tuberculosis and related diseases, or to provide information concerning tuberculosis and related diseases to schools, nursing homes, child care centers, high-risk groups, and the general public.

qualified employees"); R.C. 339.39 (a board of county commissioners may "establish and maintain one or more tuberculosis clinics in the county [and] may employ physicians, public health nurses, and other persons for the operation of such clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis"). See generally *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105, 113 (1981) ("it is within the implied power of a public agency to disseminate information both to those who are directly affected by its operation and the general public. Such a function may be fairly implied where it is reasonably related to the duties of the public agency"); 1973 Op. Att'y Gen. No. 73-013; 1959 Op. Att'y Gen. No. 899, p. 610. Proceeds from a levy under R.C. 5705.19 or R.C. 5705.191 might also be available for such purposes. See notes 1 and 2, *supra*.