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REGARDING THE FORM OF BALLOT TO BE USED THIS YEAR FOR THE RENEWAL OF SPECIAL LEVIES—REDUCTION OF LEVY—§§5713.11, 5705.25, R.C.

SYLLABUS:

1. When the county auditor has reduced the rate of an additional levy pursuant to the provisions of Section 5713.11, Revised Code, he has in effect reduced the "levy" as that term is used in Section 5705.25, Revised Code.
2. Where the rate of such a levy has been reduced from 3 mills to 2.6 mills pursuant to Section 5713.11, Revised Code, and it is proposed to "renew" the levy for another term at the original rate, the form of the ballot under Section 5705.25, Revised Code, should show that the levy will consist of a renewal of 2.6 mills and an increase of .4 mills, to constitute a tax not exceeding 3 mills.

Columbus, Ohio, August 25, 1960

Hon. James H. DeWeese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have had a number of inquiries from various taxing authorities in the county with respect to the form of ballot to be used this year for the renewal of special levies, and I would appreciate your opinion on the following:

"In case a levy of 3 mills was voted in excess of the 10 mill limitation in 1955 for a period of five years and in accordance with the provisions of R. C. 5713.11, said levy was subsequently reduced by the County Auditor to 2.6 mills due to increase in property valuation by reappraisal, and it is intended to submit to the voters this November the question of the extension of such levy at the same rate of 3 mills as authorized in 1955, should the ballot read that the new tax is 'a renewal of a tax—at a rate not exceeding 3 mills,' or should the ballot read that the new tax is 'a renewal of 2.6 mills and an increase of .4 mills to constitute a tax—at a rate not exceeding 3 mills.'

"I have not been able to find any former opinion dealing directly with this question, although 1953 Opinion No. 3061 would seem to indicate on page 459 that the levy would be a renewal of an existing levy rather than a renewal of an existing levy and an increase. Since it is necessary that the taxing authorities be advised in regard to this matter in time so that they can pass the necessary resolution and certify it to the Board of Elections by September 15th, I will appreciate an early reply to my inquiry."

Section 5705.25, Revised Code, dealing with the submission of a proposal for an additional levy and with the form of the ballot provides in part as follows:

"* * *

"The form of the ballots cast as such election shall be:

"'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 pur-
 suant to the provisions of section 5705.19 of the Revised Code,
 or the amount of the increase which may be continued for an
 indefinite period of time pursuant to the provisions of section
 5705.192 (5705.19.2)).'

“* * *

“If the levy submitted is a proposal to renew, increase, or
 decrease an existing levy, the form of the ballot specified in this
 section may be changed by substituting for the words ‘An
 additional,’ at the beginning of the form, the words ‘A renewal
 of a,’ in the case of a proposal to renew an existing levy in the
 same amount, the words ‘A renewal of mills and an
 increase of mills to constitute a,’ in the case of an
 increase, or the words ‘A renewal of part of an existing levy,
 being a reduction of mills, to constitute a’ in the case
 of a decrease in the proposed levy.

“* * *”

Section 5713.11, Revised Code, referred to in your request, reads in
 part, as follows:

“When the people of any taxing subdivision have voted addi-
 tional levies for any purpose in the year of reassessment or any
 year prior thereto, or when the board of tax appeals of Ohio
 has increased the aggregate value of the real property in any
 taxing subdivision in any year under the provisions of sections
 5715.24 to 5715.26, inclusive, of the Revised Code, and said
 additional levies are effective in the year of reassessment or
 thereafter or when the valuation is increased by order of the
 board of tax appeals to be effective in any year, and the levies
 are to be calculated on a total valuation of property higher than
 that of the year before reassessment, or the year before the valua-
 tion is increased by order of the board of tax appeals, the rate of
 said additional levy shall be reduced in the same proportion in
 which the total valuation of property in said taxing subdivision
 is increased by the reassessment or is increased by order of the
 board of tax appeals over the total valuation of the year preceding
 the reassessment or the order of the board of tax appeals.

“* * *”

As you note in your request, the language of Opinion No. 3061,
 Opinions of the Attorney General for 1953, page 457, seems to indicate
 that the levy would be a renewal of an existing levy rather than a renewal

of an existing levy and an increase, it being stated at page 459 of said opinion:

“We next come to the question of instances where the voters approve the renewal of existing levies, to which existing levies the provisions of Section 5548-2, General Code, had been applicable. It is true that Section 5625-17, General Code, refers specifically to the ‘renewal of an existing levy’ but I do not regard this language to have the effect of constituting such renewed levy as a mere extension of the old. Having in mind the legislative scheme and purpose above indicated, it will be observed that when the voters are asked to approve the ‘renewal of an existing levy’ they then have constructive knowledge of the current property valuations, valuations which have been increased in prior years by way of reassessment, and by reason of such knowledge they can form an estimate of the approximate dollar amount which will be realized by the proposed renewal levy. Accordingly, a vote of approval on such issue clearly would be one in favor of the application of the full amount of the proposed rate to such current property valuations. * * *”

(Former Section 5548-2, General Code, is now Section 5713.11, Revised Code; Former Section 5625-17, General Code, is now Section 5705.25, Revised Code.)

The same Attorney General in Informal Opinion No. 292, Informal Opinions of the Attorney General for 1953, issued on August 25, 1953, appears to have adopted an opposite viewpoint when he stated:

“It is my opinion that when the county auditor has reduced the rate of an additional levy pursuant to the provisions of Section 5548-2, *supra*, he has in effect reduced the ‘levy’ as that term is used in Section 5625-17. From this it follows that the only levy actually being renewed is the existing rate of levy and if that rate is to be increased, the voter should be so informed by adopting that form of ballot which refers to a renewal of mills and an increase of mills.

“While this question is not entirely free from doubt, it seems to me that any doubt must be resolved in favor of fully informing the voter that a rate to become effective in the future will be higher than the additional levy currently being imposed.”

It will be noted, however, that in said Informal Opinion No. 292, the question concerned was similar to that here under consideration, and the Attorney General was dealing only with the proper form of the ballot and not with the effect of Section 5713.11, *supra* (then Section 5548-2, General Code) on the “renewed” levy.

While, as my predecessor noted, the question might not be entirely free from doubt, I agree that any doubt should be resolved in favor of fully informing the voter of the effect of the proposed levy and conclude that in the instant case the ballot should read that the proposed levy is "a renewal of 2.6 mills and an increase of .4 mills to constitute a tax not exceeding 3 mills."

In further support of my position in this question is the fact that such interpretation has been followed in Ohio over the years and is the settled policy of the state in this regard. On this point it is stated in 37 Ohio Jurisprudence, Section 372, page 679:

"* * * Technical rules of construction should not, it has been declared, be permitted to overthrow the manifest and settled policy of the state. Hence, a construction which is contrary to the previously established public policy should be avoided. If a statute may be construed in two ways, one in accord with the public policy of the state and the other in conflict therewith, the former construction is favored. * * *"

Accordingly, it is my opinion and you are advised:

1. When the county auditor has reduced the rate of an additional levy pursuant to the provisions of Section 5713.11, Revised Code, he has in effect reduced the "levy" as that term is used in Section 5705.25, Revised Code.

2. Where the rate of such a levy has been reduced from 3 mills to 2.6 mills pursuant to Section 5713.11, Revised Code, and it is proposed to "renew" the levy for another term at the original rate, the form of the ballot under Section 5705.25, Revised Code, should show that the levy will consist of a renewal of 2.6 mills and an increase of .4 mills, to constitute a tax not exceeding 3 mills.

Respectfully,

MARK McELROY

Attorney General