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TAX LEVY OUTSIDE TEN-MILL LIMITATION—FOR CURRENT OPERATING EXPENSES—IF APPROVED, PROCEEDS MAY BE EXPENDED TO PAY COSTS OF A COUNTY PLANNING COMMISSION—§§ 5705.19, 713.22 RC.

SYLLABUS:

A board of county commissioners, acting under authority of Section 5705.19, Revised Code, may submit the question of a tax levy, outside the ten-mill limitation, for current operating expenses, and if such levy is approved may use the proceeds thereof to meet the expenses of a county planning commission as authorized by Section 713.22, Revised Code.

Columbus, Ohio, October 7, 1957

Hon. Thomas H. Eshman, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir :

I have your request for my opinion reading as follows :

“Will you kindly give me your opinion as to whether or not there is any authority for the submission to the electors of a

county of a proposed tax levy for the purpose of paying a County Planning Commission?"

Section 713.22, Revised Code, authorizes the board of county commissioners to provide for the organization and maintenance of a county planning commission :

"The board of county commissioners of any county may, and on petition of the planning commissions of a majority of the municipal corporations in the county having such planning commission shall, provide for the organization and maintenance of a county planning commission. Such county planning commission shall consist of eight citizens of the county appointed by the board, together with the members of the board. If the population of any city in the county exceeds fifty per cent of the total population of the county, then at least three of the appointive members shall be selected from persons nominated by the planning commission of such city. The appointive members shall be appointed for terms of three years, except that of the eight members first appointed three shall be appointed for terms of two years and two shall be appointed for a term of one year. The members shall serve without pay.

"The county planning commission may employ such engineers, accountants, and other employees as are necessary, and make such purchases as may be needed to the furtherance of its operation.

"The county planning commission may accept, receive and expend funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information as may be necessary to secure such financial aid.

"The compensation of such employees and the expenses of the appointive members of the county planning commission shall be paid from appropriations made by the board. (Emphasis added.)

As stated in the underlined passage above, the board of county commissioners appropriates funds to meet the expenses of the appointive members and to pay the salaries of employees of the county planning commission. Inherent in your request is the assumption that the current revenues are insufficient to meet the anticipated appropriations necessary to finance the county planning commission. In order to increase the funds subject to appropriation by the board of county commissioners a tax levy for current expenses of the county is authorized by the terms of Section 5705.19, Revised Code:

“The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

(A) *For current expenses of the subdivision*

* * *

(Emphasis added.)

The proceeds of the levy provided for in Section 5705.19, *supra*, are placed in the general fund of the subdivision as provided for in Section 5705.10, Revised Code, reading in pertinent part:

“All revenue derived from the general levy for current expense within the ten-mill limitation, from any *general levy for current expense authorized by vote in excess of the ten-mill limitation*, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, *shall be paid into the general fund.*” (Emphasis added.)

Once the board of county commissioners has provided for the organization and maintenance of a county planning commission, the funds necessary for the operation of the commission which are appropriated by the board of county commissioners as provided in Section 713.22, Revised Code, constitute current operating expenditures of the county. Funds for meeting such current operating expenses may be secured from a levy upon real property in the subdivision in excess of the ten-mill limitation as authorized by Section 5705.19, *supra*. Proceeds from such a levy are paid into the general fund and may be appropriated by the board of county commissioners to finance any current expense of the subdivision, including the county planning commission as provided by Section 713.22, Revised Code. Such funds cannot, however, be “earmarked” *solely* for planning commission purposes nor be identified as such on the ballot on which the issue of such special levy is submitted to the electors. See Opinion No. 5585. Opinions of the Attorney General for 1955, page 339.

Therefore, it is my opinion and you are accordingly advised that a board of county commissioners, acting under authority of Section 5705.19, Revised Code, may submit the question of a tax levy, outside the ten-mill

limitation, for current operating expenses, and if such levy is approved may use the proceeds thereof to meet the expenses of a county planning commission as authorized by Section 713.22, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General