

## OPINION NO. 76-016

**Syllabus:**

R.C. 718.01 does not prohibit a municipality from levying an income tax at specified but varying rates for definite terms under the municipality's power to levy income taxes as conferred by Section 3 and 7 of Article XVIII of the Ohio Constitution.

To: Donald L. Lane, Preble County Pros. Atty., Eaton, Ohio

By: William J. Brown, Attorney General, March 12, 1976

I have before me your request for my opinion which reads, in pertinent part, as follows:

"1. Does Section 718.01 of the Revised Code permit a municipal income tax to be imposed by majority vote of the electorate for a limited period of time as would be specified on the ballot issue (in this case three years)?

"2. Does Section 718.01 of the Revised Code permit the imposition of a municipal income tax by a majority vote of the electorate at a varying annual rate whether for either a definite or indefinite term (in this case a varying rate for a definite term: 1.1% the first year, and 1% for each of two subsequent years)?"

The constitutional bases for a municipality's power of taxation are Sections 3 and 7, Article XVIII, Ohio Constitution. These sections read as follows:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Section 3, Article XVIII, Ohio Constitution

"Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of Section 3 of this article, exercise thereunder all powers of local self-government."

Section 7, Article XVIII, Ohio Constitution

In State ex rel. Zielonka v. Carrel, 99 Ohio St. 220 (1919), the Ohio Supreme Court found that the power of taxation was a fundamental power of local government conferred upon municipalities pursuant to Section 3, Article XVIII, Ohio Constitution. However, the municipal power of taxation is limited by Section 6, Article

XIII and Section 13, Article XVIII, Ohio Constitution. Section 6, Article XIII, Ohio Constitution, provides as follows:

"The general assembly shall provide for the organization of cities, and incorporated villages, by general law, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

Section 13, Article XVIII, Ohio Constitution reads in pertinent part:

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes. . . ."

These provisions give the General Assembly the authority to limit a municipality's taxation power. In Angell v. City of Toledo, 153 Ohio St. 179 (1950), the Supreme Court held that Ohio municipalities have the power to levy income taxes, subject to the General Assembly's power to limit the municipal taxing power under the above constitutional provisions.

R.C. 718.01 is an exercise of the General Assembly's power to limit municipal taxation. It provides as follows:

"No municipal corporation with respect to that income which it may tax shall tax such income at other than a uniform rate.

"No municipal corporation shall levy a tax on income at a rate in excess of one percent without having obtained the approval of the excess by a majority of the electors of the municipality voting on the question at a general, primary, or special election. The legislative authority of the municipal corporation shall file with the board of elections at least sixty days before the day of the election a copy of the ordinance together with a resolution specifying the date the election is to be held and directing the board of elections to conduct the election. The ballot shall be in the following form:  
'Shall the Ordinance providing for a . . . percent levy on income for (Brief description of the purpose of the proposed levy) be passed?'

FOR THE INCOME TAX  
AGAINST THE INCOME TAX.

"In the event of an affirmative vote, the proceeds of the levy may be used only for the specified purpose.

"No municipal corporation shall exempt from such tax, compensation for personal services of individuals over eighteen years of age or the net profit from a business or profession.

"Nothing in this section shall prevent a municipal corporation from permitting lawful deductions as prescribed by ordinance.

"No municipal corporation shall tax the military pay or allowances of members of the armed forces of the United States, or the income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.

"Nothing in this section or section 718.02 of the Revised Code, shall authorize the levy of any tax on income which a municipal corporation is not authorized to levy under existing laws."

R.C. 718.01 limits a municipality's power to levy an income tax in the following respects: (1) income must be taxed at a uniform rate, (2) a municipality may not levy an income tax at a rate in excess of one percent without obtaining the required voter approval for the excess, (3) the legislative authority of the municipality must properly file the ordinance and resolution with the board of elections, (4) the ballot must conform with the statutory language, (5) proceeds from the tax may be used only for the purpose specified in the ballot, (6) no exemptions from taxation may be allowed for personal service compensation of individuals over eighteen years of age or net profits from a business or a profession, (7) lawful deductions prescribed by ordinance are allowable, (8) military pay or allowances of members of the armed forces of the United States and certain income of religious, fraternal, charitable, scientific, literary, or educational institutions are not taxable, and (9) municipalities are not authorized to levy income taxes forbidden under existing law. Only two of the above limitations are even tangentially related to the proposal you have described: the requirement of a uniform rate of taxation and the lack of authorization to levy taxes forbidden under existing law. However judicial interpretations of the relevant statutory language reveal that these limitations also do not affect the proposal.

In Youngstown Sheet & Tube v. City of Youngstown, 91 Ohio App. 431 (1951), the court struck down the Youngstown income tax as a denial of equal protection because the tax was imposed on individuals at one rate and on corporations at a substantially higher rate. In Thompson v. Cincinnati, 2 Ohio St. 2d 292 (1965), the Supreme Court related the Youngstown case to R.C. 718.01 in the following language:

"The Youngstown decision preceded the enactment of Section 718.01, Revised Code, which provides, in pertinent part, as follows:

'No municipal corporation with respect to that income which it may tax shall fix such income at other than a uniform rate.'

"The evils present in the Youngstown case have been effectively prohibited by the General Assembly." Id. at 296.

Thus the language as to uniformity of rates relates to uniformity among taxpayers, not uniformity between taxable years. Hence the varying annual rate of the proposed tax is not affected by this limitation.

The language of R.C. 718.01 concerning income taxes forbidden under existing law also does not relate to the proposal. In East Ohio Gas Co. v. City of Akron, 7 Ohio St. 2d 73 (1966), the Supreme Court stated that R.C. 718.01 did not authorize income taxes forbidden under existing law, and the phrase "under existing laws" referred to limitations that appear in the Constitution, statutes, or any limitations imposed by a court under the doctrine of pre-emption by implication. A municipal income tax at a varying annual rate for a definite term has never been forbidden by the above three sources.

Accordingly, it is my opinion and you are so advised that R.C. 718.01 does not prohibit a municipality from levying an income tax at specified but varying rates for definite terms under the municipality's power to levy income taxes as conferred by Sections 3 and 7 of Article XVIII of the Ohio Constitution.