

## SYLLABUS:

1. Where the electors of a township which included a municipal corporation have authorized a special tax levy outside the ten-mill limitation for specific township purposes and after such favorable vote by the electors a new township has been created to include only the limits of the municipal corporation as provided by Section 503.07, Revised Code, the board of trustees of the township which has retained its original name may, pursuant to Sections 503.18 and 503.19, Revised Code, levy such special tax on all of the property formerly within the township, including the municipal corporation, for the payment of contracts, engagements, or liabilities contracted prior to the change in the township boundaries.

2. The board of township trustees of the original township is without authority to levy such special tax outside the ten-mill limitation upon the property included within such new township to pay for contracts, engagements, or liabilities contracted or to be contracted after the effective date of the creation of a new township to include a municipal corporation which was formerly part of the said original township.

Columbus, Ohio, December 20, 1963

Honorable Everett Fahrenholz  
 Prosecuting Attorney  
 Preble County  
 Eaton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The City of Eaton has detached from Washington Township, Preble County, Ohio, effective in September, 1963.

“Prior to detachment, certain tax levies were renewed. The ballots used to renew these levies read as follows:

“PROPOSED TAX LEVY—(RENEWAL)

“A renewal of a tax for the benefit of Washington Township for the purpose of RESURFACING AND REPAIR OF ROADS at a rate not exceeding one-half (.5) mill for each one dollar of valuation, which amounts to five (0.05) cents for each one hundred dollars of valuation, for a period of five (5) years, said levy to begin in the tax year of 1962.

“PROPOSED TAX LEVY—(RENEWAL)

"A renewal of a tax for the benefit of Washington Township for the purpose of CURRENT OPERATING EXPENSES OF MOUNT HILL CEMETERY OF SAID TOWNSHIP AT a rate not exceeding one-half ( $\frac{1}{2}$ ) mill for each one dollar of valuation, which amounts to five (0.05) cents for each one hundred dollars of valuation, for five (5) years, said levy to begin in the tax year 1960.

"Of course the above levies effected township and city property at the time of their enactment.

"Are the taxes to be levied upon all township and city property, or does the detachment terminate the levies or either of them, within the City of Eaton?"

Section 503.07, Revised Code, provides the method by which a municipal corporation may withdraw from a township; that section reads:

"When the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than one township the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, may petition the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation. The board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, shall upon the petition of a city change the boundaries of the township or erect such new township, and may upon the petition of a village change the boundaries of the township or erect such new township."

This withdrawal of the City of Eaton from Washington Township does not relieve the territory within the municipal corporation from liability for contracts entered into or debts contracted prior to detachment from such township. Section 503.17, Revised Code, reads:

"When a township is altered, diminished, or changed in any way by the formation of new townships, additions to other townships, or otherwise, such original township and all portions thereof shall remain liable to the same extent on contracts, engagements, or liabilities contracted by such township prior to the change as if no such alteration, diminution, or change had taken place."

Your letter suggests that Washington Township remains in existence, although the territorial limits have been diminished. Sections 503.18 and 503.19, Revised Code, direct the board of township trustees as to the procedure to be followed. Section 503.18, Revised Code, reads:

“In case of a division or change of a township which has retained its original name, the board of township trustees, in levying a tax for the payment of any legal or just claims against such township contracted prior to the change, shall procure a certified abstract from the county auditor, or, in case parcels of such township have been attached to townships of different counties, from the county auditors of the counties to which any portion of such township has been attached, of all the taxable property situated in such attached portions, with the names of the persons owing them.”

Section 503.19, Revised Code, reads as follows:

“In making the assessment and levy for the payment of any indebtedness as provided by section 503.18 of the Revised Code, or interest thereon, the board of township trustees shall levy an amount, not exceeding that limited by sections 5705.01 to 5705.47, inclusive, of the Revised Code, for the payment of claims against townships, on the taxable property within the limits of such township as it was bounded before the change, and shall certify an abstract thereof to the county auditor of the proper county.”

Your attention is invited to Opinion No. 2686, Opinions of the Attorney General for 1958, page 542, in which I said this, as shown by the fifth paragraph of the syllabus:

“Where a board of county commissioners acts under authority of Sections 503.07 and 503.08, Revised Code, to alter, diminish or change in any way the territorial limits of a township, Section 503.17, Revised Code, requires that the entire original township and all portions thereof shall remain liable for all contracts, engagements or liabilities contracted prior to such change, and there is no authority in law for an apportionment of such previously existing obligations.”

The foregoing discussion relates only to the levy and collection of taxes for the payment of debts contracted prior to the change in the township limits. To the extent that debts were then incurred in anticipation of revenue to be received from the special

levies authorized by the electors of Washington Township, the entire territory, including that within the municipal corporation, remains liable, and the special tax levies necessary to pay such debts must be levied against all property formerly within the township.

The special levies you have mentioned were authorized or approved by the electors of the township pursuant to the procedures established in Chapter 5705, Revised Code. The taxing authority, the board of township trustees, determined as provided by law that it was necessary to levy an additional tax. The electors of Washington Township then, by voting in favor of the tax levy, authorized the taxing authority of the subdivision to levy the additional tax in excess of the ten-mill limitation. In order for the tax to be levied, however, the taxing authority of the township must proceed as directed by Chapter 5705, Revised Code.

It has been pointed out that the taxing authority of Washington Township has statutory authority to levy the taxes necessary to pay claims against the township as it formerly existed. I find no authority in law for the board of township trustees to levy the authorized special taxes on property in the new township, which includes only the City of Eaton, for the payment of any expenditure of the Township made or to be made after the effective date of the withdrawal of the municipality from the township where no contract, engagement or liability had been contracted prior to the alteration of the township. It is my conclusion that there is no implied authority to levy such tax. A taxing authority, as defined in Section 5705.01, Revised Code, operates only within a taxing unit, which is a subdivision or governmental district having authority to levy taxes. The municipal corporation is no longer part of the subdivision for which the board of township trustees is the taxing authority.

I am not aware of my statutory provision under which the legislative authority of the municipal corporation could assume the power to levy this special tax which was authorized in the township; this is an entirely separate entity and taxing authority. As you were advised in Opinion No. 3170, Opinions of the Attorney General for 1962, issued July 27, 1962, the duties of the township officers of the new township are assumed by the officers of the municipal corporation in a situation such as this where the

township limits are identical with those of the municipal corporation.

In Opinion No. 3170, *supra*, you were advised in part as follows, as shown by the second paragraph of the syllabus:

“2. In such a situation, where a special levy for the purpose of the township cemetery exists in the original township, the proceeds of such levy should be apportioned between the two townships under Section 503.03, Revised Code, the amount due the new township being allocated to the city under Section 703.22, Revised Code.”

It was said in the course of that opinion that the board of county commissioners should apportion the funds held by Washington Township, including the funds received under the special tax levy; citations of authority were shown. I do not find, however, that the question of the authority to continue to levy this special tax after the alteration of the township was considered.

It is, therefore, my opinion and you are advised:

1. Where the electors of a township which included a municipal corporation have authorized a special tax levy outside the ten-mill limitation for specific township purposes and after such favorable vote by the electors a new township has been created to include only the limits of the municipal corporation as provided by Section 503.07, Revised Code, the board of trustees of the township which has retained its original name may, pursuant to Sections 503.18 and 503.19, Revised Code, levy such special tax on all of the property formerly within the township, including the municipal corporation, for the payment of contracts, engagements, or liabilities contracted prior to the change in the township boundaries.

2. The board of township trustees of the original township is without authority to levy such special tax outside the ten-mill limitation upon the property included within such new township to pay for contracts, engagements, or liabilities contracted or to be contracted after the effective date of the creation of a new township to include a municipal corporation which was formerly part of the said original township.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General