

**OPINION NO. 82-063****Syllabus:**

When a township and a village join a joint fire district pursuant to R.C. 505.371, the taxable property in such township and village becomes subject to any taxes which may lawfully be levied by the board of fire district trustees and no additional voter approval is required for the levy of taxes in excess of the ten-mill limitation.

**To: David E. Lightlser, Licking County Prosecuting Attorney, Newark, Ohio**  
**By: William J. Brown, Attorney General, September 28, 1982**

I have before me your request for my opinion concerning the following question:

When two or more political entities, namely, a township and a village, with tax millage rates higher and lower, respectively, request admission to an existing Joint Fire District pursuant to Ohio Revised Code Section 505.371, by passing the appropriate resolutions, and such admission is approved by the Board of Trustees of the Fire District pursuant to said Section, is it necessary to obtain voter approval of the requesting entities in order to either increase or decrease the respective millage rates?

R.C. 505.371 permits a municipal corporation or township, or parts thereof, to "join an existing fire district by the adoption of a resolution requesting such membership and upon approval of the board of fire district trustees." No vote by the people of either area is required for admission to a district.

With regard to the levy of taxes in a joint fire district, R.C. 505.371 states:

The board of fire district trustees may exercise the same powers as are granted to a board of township trustees in sections 505.37 to 505.45, inclusive, of the Revised Code, including, but not limited to, the power to levy a tax upon all taxable property in the fire district, as provided in section 505.39 of the Revised Code. (Emphasis added.)

R.C. 505.39 states:

The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment. (Emphasis added.)

R.C. 505.39 authorizes a board of fire district trustees to levy a tax upon all taxable property in the district without vote of the people and without regard to when any particular property was added to the district. Therefore, if a township and a village are admitted to an existing district pursuant to R.C. 505.371, the

board of fire district trustees may levy a tax pursuant to R.C. 505.39 on the taxable property of the township and village without the approval of the voters of such areas at the same millage levied in the remainder of the district. However, the rate may in no instance exceed the limitation set forth in Ohio Const. art. XII, §2. See Cambridge City School District v. Guernsey County Budget Comm., 11 Ohio App. 2d 77, 228 N.E.2d 874 (Guernsey County 1967), aff'd, 13 Ohio St. 2d 77, 234 N.E.2d 512 (1968).

Ohio Const. art. XII, §2 states:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

This restriction on the power to tax has been termed the "ten-mill limitation" and is codified in R.C. 5705.02. It is my understanding that the ten-mill limitation was exceeded in the areas comprising the joint fire district and, therefore, the district has not levied its tax pursuant to R.C. 505.39; but rather, the tax has been approved by the voters of the district and is currently levied pursuant to R.C. 5705.19(1).<sup>1</sup> R.C. 5705.26 provides, in part:

Except as otherwise provided in section 5705.191 of the Revised Code, if the majority of the electors voting on a levy authorized by sections 5705.19 to 5705.25, inclusive, of the Revised Code vote in favor of such levy at such election, the taxing authority of the subdivision may levy a tax within such subdivision 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 or purposes. . . . (Emphasis added.)

The Ohio Supreme Court has stated: "In the absence of specific constitutional inhibitions, the principle applies that where the boundaries of a school district or other political subdivisions are legally extended, the added territory becomes subject to the same obligation [for taxes] as the other territory in the district or subdivision." Gigandet v. Brewer, 134 Ohio St. 86, 92, 15 N.E.2d 964, 966 (1938) (when a school district is created by the consolidation of two districts, a levy of a tax outside the limitation prescribed by art. XII, §2 on all property in the new district authorized by a vote of the people in only one of the original districts is not violative of art. XII, §2). See Kellenburger v. Bd. of Education of Ross County, 173 Ohio St. 201, 180 N.E.2d 834 (1962); 1956 Op. Att'y Gen. No. 6354, p. 185; 1944 Op. Att'y Gen. No. 6703, p. 75. Thus, once the voters of a joint fire district have voted in favor of the levy of a tax outside the ten-mill limitation, the board of trustees is authorized to levy the voted tax throughout the district regardless of whether any particular area in the district was part thereof when the question was submitted for voter approval.

In fact, such a result is mandated by the provision of Ohio Const. art. XII, §2 which states that, "[l]and and improvements thereon shall be taxed by uniform rule according to value. . . ." See Gigandet. In 1979 Op. Att'y Gen. No. 79-063, I opined that Ohio Const. art. XII, §2 requires that each tax levy apply uniformly throughout the district of a particular taxing authority. Therefore, any tax levied by a board of fire district trustees must be levied uniformly throughout the joint fire district. The question of whether the millage levied by the board of fire district trustees is greater or less than the amount which any area within the joint

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<sup>1</sup>R.C. 5705.01 includes a board of fire district trustees within the definition of "taxing authority" as used in R.C. Chapter 5705.

fire district had previously authorized another taxing authority to levy for the same purposes is irrelevant.<sup>2</sup>

Based on the foregoing, it is my opinion, and you are advised, that when a township and a village join a joint fire district pursuant to R.C. 505.371, the taxable property in such township and village becomes subject to any taxes which may lawfully be levied by the board of fire district trustees and no additional voter approval is required for the levy of taxes in excess of the ten-mill limitation.

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<sup>2</sup> Any authority to levy taxes which one taxing authority, such as a board of township trustees, has been granted is not per force destroyed by the creation of a power in a different taxing authority to tax for the same purpose. However, any authority to levy taxes exists only so far as a need can be shown. See R.C. 5705.341.