

OPINION NO. 71-033**Syllabus:**

Funds from a voted tax levy under Section 5705.191, Revised Code, for "Constructing and Equipping a New Children's Home" may be expended to erect, on the same premises, a service building to house vehicles and maintenance equipment to be used in connection with such home.

To: James R. Scott, Guernsey County Pros. Atty., Cambridge, Ohio
By: William J. Brown, Attorney General, June 16, 1971

You have requested my opinion on a matter arising from a set of facts that may be summarized as follows:

"A special tax levy, pursuant to Section 5705.191, Ohio Revised Code, was approved by the electors in May, 1968, covering a period of five years for "Constructing and Equipping a New Children's Home." Plans and specifications prepared thereafter included an alternate item for a 'service building', a separate structure, to house vehicles and maintenance equipment. Due to a then anticipated shortage of funds such alternate item was not awarded. It has been determined now that sufficient funds are available to construct such 'service building'."

On the basis of such history your question is phrased as follows:

"A question has now arisen as to whether or not the Board of County Commissioners may properly expend monies from this Children's

Home Levy Fund for the purpose of constructing the Service Building."

While funds from such special tax levy may not be accumulated ordinarily for subsequent disbursement (Opinion No. 144, Opinions of the Attorney General for 1966), this is not the case here where the money is available during the term of the levy. Thus, the question for consideration is whether or not a "service building" of this type may be constructed in fulfillment of the purpose for which the tax was approved by the voters and subsequently levied.

Section 5705.191, Revised Code, authorizes a tax levy to supplement the general fund for certain purposes and "for any of the purposes in section 5705.19 of the Revised Code". In pertinent part, this Section reads as follows:

"The taxing authority of any subdivision, other than the board of education of a school district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount 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 purposes in section 5705.19 of the Revised Code, * * *."

The latter Section, in turn, limits a resolution for a tax levy "to a single purpose" as follows:

"Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year. * * *"

A "single purpose" has been said to require less specific definition in such resolution than is required in the case of a bond issue where the resolution under Section 133.10, Revised Code, must "relate only to one purpose". (Opinion No. 956, Opinions of the Attorney General for 1927.) That Section reads as follows:

"The resolution provided for in section 133.09 of the Revised Code shall relate only to one purpose. 'One purpose' includes, in the case of a county or township, any number of roads, highways, bridges, and viaducts, including the municipal corporation's share in streets to be improved in part by assessment; in the case of a school district, any number of school buildings; and in any case, all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building, or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges, and viaducts included in the same resolution."

As to the similar and perhaps more restrictive requirements of the Uniform Bond Law (Chapter 133, Revised Code), "one purpose" has been explained, in State, ex rel. v. Carney, 163 Ohio St. 159, 184 (1955), as follows:

"The purpose of the statute is to prevent the union in one act of diverse, incongruous and disconnected matters, having no relation to or connection with each other (See Heffner v. City of Toledo, 75 Ohio St., 413, 426, 427, 80 N.E., 8); to give electors a choice to secure what they desire without the necessity of accepting something which they do not want (See 4 A.L.R. [2d], 622). In applying the rule, the courts invoke a test as to the existence of a natural relationship between the various structures or objects united in one proposition so that they form 'but one rounded whole'." See 4 A.L.R. [2d], 630.

Among other things, the Carney case, *supra*, held that the "purpose" of "constructing subways" included, as a necessary part of the construction cost, fees for such professional services as consulting engineers to determine the location and method of construction of such subways.

Following a similar view of the statutory intention, various predecessors of mine have approved expenditures for facilities deemed necessary for the accomplishment of the "single" or "one" purpose approved by the voters. In Opinion No. 956, *supra*, it was held that a voted levy "for the improvement of streets generally, may comprehend the construction of pavements, curbs, gutters, sanitary sewers, storm water sewers, sidewalks, grading and graveling."

It was also held in Opinion No. 425, Opinions of the Attorney General for 1949, that a levy for constructing and equipping fire-proof additions to existing school buildings could be used in part for the installation of a new furnace in an existing building of sufficient size to heat the existing building and the addition. Also, a voted levy for road purposes has been deemed to cover the county's cost of eliminating a grade crossing. (Opinion No. 3331, Opinions of the Attorney General for 1931.)

On the other hand, the "single" or "one" purpose may not be read broadly enough to cover merely related matters. It has been held that a voted levy for bridge construction cannot be used in part for the development of a master plan for sanitary sewer, water and storm drainage (Opinion No. 107, Opinions of the Attorney General for 1967). Nor may voted operating funds be used to improve the electrical lighting fixtures in a children's home because the improvement is in the nature of capital expenditure which may not be made under a levy that, at best, would cover repairs of existing structures. (Opinion No. 455, Opinions of the Attorney General for 1951.)

The foregoing, while not exhaustive, are illustrative of the lines of reasoning followed by my predecessors and I see no reasonable basis to disagree with their analysis.

In your letter you do not describe in detail the equipment to be housed in the proposed "service building", but from the general description I conclude the equipment would be limited to items used in connection with the maintenance and operation of the children's

home, such as lawn mowers, snow plows, vehicles for the transportation of children and supplies, etc.

Just as a public improvement must be planned, streets curbed and drained and a building heated, provision must ordinarily be made in any construction for ancillary functions necessary to the convenient and economical use thereof. A children's home cannot ordinarily be without a kitchen or office space nor space to store cleaning and maintenance equipment such as vacuum cleaners and floor polishers, as well as supplies. Reasonable space for storage within the perimeter of the building itself would ordinarily pass without question. It would seem impossible reasonably to distinguish between constructing the space as a part of the building and constructing it in a separate building, as long as the separate building is on the same premises. (See Opinion No. 425, supra, approving the construction of a separate building on the premises under a levy authorizing an addition to an existing building.)

For the foregoing reasons, I find no objection to the use of voted tax levy funds here for the erection of a "service building" as long as this building is related to the operation of the home itself.

In specific answer to your question, it is my opinion that funds from a voted tax levy under Section 5705.191, Revised Code, for "Constructing and Equipping a New Children's Home" may be expended to erect, on the same premises, a service building to house vehicles and maintenance equipment to be used in connection with such home.