

Note from the Attorney General's Office:

1966 Op. Att'y Gen. No. 66-136 was overruled by
2004 Op. Att'y Gen. No. 2004-008.

OPINION NO. 66-136**Syllabus:**

1. A university branch district, created pursuant to Chapter 3355, Revised Code, is not required by law to share the cost, as determined by Section 3501.17, Revised Code, of an election for a levy for said district, held pursuant to Section 3355.09, Revised Code. Such district is not a "sub-division" as the term is used in Section 3501.01, Revised Code. Since the costs of such an election, related to the university branch district, may not be apportioned to said

district, such costs must be "paid in the same manner as other county expenses are paid," according to Section 3501.17, supra, and must be borne by the county rather than by any of the subdivisions thereof.

2. A university branch district created pursuant to Chapter 3355, Revised Code, has no statutory authority to anticipate the proceeds of a levy approved in accordance with Section 3355.09, Revised Code, and therefore may not issue notes in anticipation of such proceeds. The district may not use the proceeds from such levy to repay loans either upon notes or notes and mortgages on district property since such use of these proceeds is not one of the purposes for such levy as specified in Section 3355.09, supra.

To: Harlan R. Spies, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: William B. Saxbe, Attorney General, August 15, 1966

Your recent letter requesting my opinion contains two main questions related to the Tuscarawas County University Branch District, created by the board of county commissioners pursuant to Chapter 3355, Revised Code. Both questions concern a five-year one-half mill levy, approved by the voters of the District (the entire county in November, 1965, to provide funds for the specific purpose "of purchasing a site or enlargement thereof, and for the erection and equipment of buildings, or for the purpose of enlarging, improving, or rebuilding thereof," pursuant to Section 3355.09, Revised Code.

Your first question states in part:

* * * * *

"Under the provisions of 3501.17, certain election expenses are apportioned among the subdivisions, but the District is not included within the definition of subdivision either in Chapter 3501 of the Ohio Revised Code relating to elections, nor in Chapter 5705 of the Ohio Revised Code, being the Uniform Tax Levy Law. In the light of the * * * facts that the District does not have operating funds nor can it levy for this purpose or for current expenses; that the levy under 3355.09 is a special levy for a particular purpose; and that the District does not establish an annual budget as provided under the Uniform Budgetary Law, I respectfully request your opinion on the following:

"(1) Whether or not the University Branch District, created under Chapter 3355 of the Ohio Revised Code is required to share in the cost of an election for a levy presented to the voters under favor of Ohio Revised Code 3355.09--such cost as determined in Section 3501.17 of the Ohio Revised Code?

"(2) If your answer to (1) is yes, can this expense as determined be paid or withheld by the County Auditor from the proceeds of the levy passed for a specific purpose pursuant to Ohio Revised Code Section 3355.09?

"(3) If the University Branch District is not obligated to pay for the expenses of such an election under the present law, how shall the Board of Elections apportion the expenses of such an election among the subdivisions of the County constituting the District?"

Section 3501.17, Revised Code, provides in part:

"* * * If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections, such board may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and such amount shall be appropriated. * * * Such expenses shall be apportioned among the county and the various subdivisions as provided in this section, * * *.

"* * * all other expenses of the board which are not chargeable to a political subdivision in accordance with this section shall be paid in the same manner as other county expenses are paid."

Sections 3355.01 (A) and 3355.03, Revised Code, define a university branch district as a "political subdivision of the state," yet within the sections pertaining to elections and their expenses, "political subdivision" includes only counties, townships, cities, villages, and school districts, as defined in Section 3501.01 (N), Revised Code. A university branch district is therefore not a "subdivision" as that term is used in the section on election expenses. Section 3355.06 (E), Revised Code, provides that the district may "receive and expend gifts or grants from the state for the payment of operating expenses * * *," but there has been no state appropriation for this purpose. It seems apparent that had the legislature intended that such a district should share the expenses of an election for a special levy, a statutory provision would have been made therefor, or sufficient funds or a power to levy for operating expenses would have been granted to such district.

Since none of the costs of the levy election related to a university branch district may be apportioned to the district, then these costs must be "paid in the same manner as other county expenses are paid." Section 3501.17, supra. Therefore, it seems reasonable to conclude that the levy election expenses related to the district must be borne by the county and not by any of the political subdivisions of the county.

Your second question states:

"* * * Under Ohio Revised Code 5705.191, --.193 and --.21 of the tax levy law, proceeds of certain levies authorized under that Chapter may be anticipated by the issuance of notes; and under Ohio Revised Code 133.30 the taxing authority of a subdivision may anticipate one-half of the next settlement for current expenses. I note that specific provisions to anticipate the proceeds of a levy are set forth in the Community College Law (Chapter 3354), Ohio Revised Code Section 3355.06 (B) provides that the District may "hold, encumber" etc. property. In the light of the foregoing, I respectfully request your opinion:

(1) May a University Branch District, created under Chapter 3355 of the Ohio Revised Code, anticipate the proceeds of a levy passed under favor of 3355.09 of the Ohio Revised Code by the issuance of notes; and

(2) May the same District borrow funds from any bank or other lending institution, either upon a note or by note and mortgage on District property, such borrowed funds to be repaid from the levy?"

As you have indicated, the Chapter on Community College Law contains a specific provision allowing the anticipation of proceeds of a levy, in Section 3354.12, Revised Code. There is no similar provision in Chapter 3355 concerning university branch districts. It should be noted that in 1961, the Legislature approved two similar statutes. (129 Ohio Laws 515, 522; 528, 532, both effective October 20, 1961), dealing with tax levies for the two types of educational districts: community college districts (Section 3354.12, supra), and university branch districts (Section 3355.09, supra). In 1963, the section dealing with the community college district was amended (130 Ohio Laws 788, 798) to permit anticipation of a fraction of the proceeds of a levy for such district and the issuance of anticipation notes thereon. No such amendment has been made for the university branch district.

Section 5705.191, Revised Code, provides for the anticipation of proceeds of certain special levies, and the issuance of notes thereon, by the taxing authority of any "subdivision" other than a school district board of education. This section also specifies that:

"'Taxing authority' and 'subdivision' have the meanings assigned to them respectively by section 5705.01 of the Revised Code."

The definitions in Section 5705.01, supra, do not include a university branch district, and such district is not authorized to anticipate any levy proceeds under this section. The provisions of Section 133.30, Revised Code, do not apply to a university branch district for similar reasons since such dis-

trict does not come within the meaning of "subdivision" as defined in Section 133.01, Revised Code.

You have asked whether a university branch district may borrow upon a note, or on a note and mortgage on district property and repay such borrowed funds from the proceeds of the voted levy authorized by Section 3355.09, supra. As already indicated, such a levy is for "the purpose of purchasing a site or enlargement thereof, and for the erection and equipment of buildings, or for the purpose of enlarging, improving, or rebuilding thereof." Section 3355.09, supra. It seems apparent that while the district has the power to encumber its property as necessary for the creation and maintenance of the university branch campus, on whatever terms and for whatever consideration may be appropriate for the purposes of the facility," Section 3355.06, Revised Code, the proceeds from a levy pursuant to Section 3355.09, supra, may not legally be used to pay for such encumbrance. Since the levy authorized by this section is a special levy, the only purpose for which the proceeds may be used are those stated specifically within the section. It seems clear also that to allow the district to borrow money from a bank on a note, to be paid from the proceeds of the levy would be to allow an anticipation of such proceeds, even if such payment were a proper use for such funds.

Therefore it is my opinion, and you are hereby advised that:

1. A university branch district, created pursuant to Chapter 3355, Revised Code, is not required by law to share the cost as determined by Section 3501.17, Revised Code, of an election for a levy for said district, held pursuant to Section 3355.09, Revised Code. Such district is not a "subdivision" as the term is used in Section 3501.01, Revised Code. Since the costs of such an election, related to the university branch district, may not be apportioned to said district, such costs must be "paid in the same manner as other county expenses are paid," according to Section 3501.17, supra, and must be borne by the county rather than by any of the subdivisions thereof.

2. A university branch district created pursuant to Chapter 3355, Revised Code, has no statutory authority to anticipate the proceeds of a levy approved in accordance with Section 3355.09, Revised Code, and therefore may not issue notes in anticipation of such proceeds. The district may not use the proceeds from such levy to repay loans either upon notes or notes and mortgages on district property since such use of these proceeds is not one of the purposes for such levy as specified in Section 3355.09, supra.