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WHERE A TAX LEVY IS APPROVED BY THE VOTERS OF A TAXING DISTRICT IN NOVEMBER AND THE TAXING AUTHORITY RESOLVES TO PLACE THE ADDITIONAL TAX ON THE TAX LIST FOR THE CURRENT YEAR, THE COUNTY AUDITOR IS REQUIRED TO EXTEND SUCH TAX ON THE TAX LIST PROVIDED THE BOARD OF COUNTY COMMISSIONERS AND THE DEPARTMENT OF TAXATION MAY EXTEND THE TIME OF PAYMENT OF TAXES BEYOND THE DECEMBER COLLECTION DATE—§323.17, R.C. OPINION NO. 1009 OAG 1949 §5705.191, R.C.

## SYLLABUS:

1. Where a tax levy is approved by the voters of a taxing district at the November general election pursuant to Section 5705.25, Revised Code, and the taxing authority resolves to place the additional tax on the tax list for the current year pursuant to that section, the county auditor is required to extend such tax on the tax list and duplicate for the current year, provided, however, that in such a case the board of county commissioners and the department of taxation, pursuant to Section 323.17, Revised Code, may extend the time of payment of taxes beyond the December collection date. (Opinion No. 1009, Opinions of the Attorney General for 1949, page 650, modified).

2. Where a tax levy is approved by the voters of a taxing district at a special election held in December pursuant to Section 5705.191, Revised Code, the county auditor is not required to extend such tax levy on the tax list and duplicate for the current year.

Columbus, Ohio, April 24, 1961

Hon. Lynn B. Griffith, Jr., Prosecuting Attorney  
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Auditor and the Treasurer of Trumbull County have found it impossible to make timely collections of real estate taxes because of the necessary procedures required by statute for certification from the Board of Election and approval from the Board of Tax Appeals.

"I am aware of 1949 O.A.G. 1009 which opined that it was incumbent upon the Auditor and Treasurer to collect by December, 1949, a levy approved by the voters in November, 1949. I realize that a situation such as this would not occur if taxing authorities exercised sufficient foresight to obviate this dilemma. Our Auditor has not been successful in his many vain attempts to instill this knowledge with the various taxing authorities in the county.

"O.R.C. 5705.25 provides that when a levy is passed in the general election to be placed upon the tax list of the current year' . . . the result of the election shall be certified immediately after the canvass by the Board of Elections to the taxing authority, who shall *forthwith* make the necessary levy and certify it on the tax list for collection.'

"The statute and the opinion are quite clear and we do not intend to burden your office with repetitious opinions, but we have been assured by our Auditor that the demands made herein are physical (and fiscal) impossibilities.

"Do you feel that a change in this opinion is justified in view of the statutory calendar required?"

"The Auditor is also concerned and seeks your opinion with respect to special elections held in December for purposes of levying taxes."

The syllabus in Opinion No. 1009, Opinions of the Attorney General for 1949, page 650, reads as follows:

"If a School District votes an additional tax levy in the November, 1949 election, pursuant to Section 5625-15, General Code, and the Board of Education resolves to place the tax on the books for the current year, pursuant to Section 5625-17a, General Code, the county auditor is required to certify and the county treasurer to collect said tax in December, 1949, despite the provisions of Section 2584, General Code."

The rationale of Opinion No. 1009, *supra*, is found in the following language appearing at page 654 of the opinion:

"From the above cited authorities it is clear that if two statutes are in irreconcilable conflict, the later enactment in point of time must control.

"Are the statutes with which we are herein concerned in irreconcilable conflict? It is my opinion that they are. Under Section 2584, *supra*, page 3 of this opinion, the county auditor

is directed in mandatory language to complete the general tax list 'on or before the third Monday in August.'

"Section 5625-17a, *supra*, page 2 of this opinion, provides in mandatory language that the county auditor 'shall extend' on the tax list any tax levy which has been voted upon at an election and been certified to the county auditor in the manner provided for in Section 5625-17a.

"It is obvious that many elections involving the tax levy mentioned in Section 5625-17a, General Code, could be held in November of a given year and under Section 5625-17a, the county auditor must place it on the tax list when properly certified even though requested to do so at a date subsequent to the date provided in Section 2584, *supra*. Therefore, it is my opinion that the statutes are in irreconcilable conflict and that the later enactment, namely Section 5625-17a, General Code, must govern."

The pertinent language in Section 5625-17a, General Code, which was in effect at the time Opinion No. 1009, *supra*, was written, is now found in Section 5705.25, Revised Code, reading as follows:

"\* \* \* If such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. \* \* \*"

You will observe that there is no requirement in Section 5705.25, *supra*, that the auditor certify and the treasurer collect such additional tax levy in December. Section 5705.25, *supra*, merely provides that the auditor "shall extend it on the tax list (for the current year) for collection." You will also observe that the rationale of Opinion No. 1009, *supra*, merely finds that there is a conflict in the statutes and that Section 5625-17a, *supra*, must, therefore, govern. There is no authority cited in Opinion No. 1009, *supra*, to support the proposition in the syllabus that the auditor is required to certify and the treasurer to collect such additional tax levy in December of the current year.

The proposition stated in the syllabus apparently is based on the authority of Sections 323.12 and 5719.17, Revised Code, which provide, in effect, that one half the taxes for the current year must be paid on or before the twentieth day of December of such year. Since the treasurer must have the duplicate in order to collect the taxes, it follows that the

auditor must certify the duplicate to the treasurer in time for the treasurer to collect such taxes in December. As you point out in this case, however, "the demands made herein are physical (and fiscal) impossibilities."

Fortunately, the legislature recognized that such cases might arise from time to time and provided for them in Section 323.17, Revised Code, as follows :

"The board of county commissioners, by resolution spread upon its journal, may extend the time of payment of taxes for not more than thirty days after the time fixed by Sections 323.10, 323.12, and 323.16 of the Revised Code. The department of taxation may further extend the time of payment of taxes in any county *in case of an emergency unavoidably delaying the delivery of duplicates for the collection of taxes*. Such extension shall be for such time as the department fixes in its order. In all cases where an installment of taxes, other than taxes and assessments charged on real estate, has not been paid on the last day prescribed by such sections or within the time so prescribed as extended pursuant to this section, a penalty of ten per cent of the amount due and unpaid shall be added by the county auditor and the taxes and penalty collected by the county treasurer."

(Emphasis added)

Opinion No. 1009, *supra*, makes no mention, however, of the provisions in Section 323.17, *supra*.

If it were not for the provisions of Section 5705.25, *supra*, then the auditor, under the provisions of Section 319.28, Revised Code, would be required to deliver the duplicate of *real* property to the treasurer on the first day of October (note: Opinion No. 1009, *supra*, dealt with the duplicate of personal property which must be delivered on or before the third Monday of August pursuant to Section 319.29, Revised Code).

Thus it can be seen that in the ordinary case the treasurer will have the duplicate more than two and one half months prior to the time when the first half taxes for the current year must be paid. In the instant case, however, the auditor cannot even begin to extend the tax levy approved by the voters in the November election upon the tax list and duplicate until the board of election makes its canvass and certifies the result of the election to the taxing authority, who then must make the necessary levy and certify it to the auditor. Obviously, it is next to impossible for the auditor to deliver the duplicate to the treasurer prior to the twentieth day of December following the November election.

Furthermore, even assuming that the auditor could deliver the duplicate to the treasurer sometime before the twentieth day of December, the treasurer would have to complete the tax bills and mail them prior to that day. In other words, the treasurer would have to do in a few days what he ordinarily has more than two and one half months to do, namely, complete the tax bills and mail them. It is obvious, therefore, that if the auditor must extend the November levy on the tax list for the current year as Opinion No. 1009, *supra*, so holds, then he will be unavoidably delayed in delivering the tax duplicate to the treasurer.

It is my opinion, therefore, that Opinion No. 1009, *supra*, should be modified insofar as it holds, without reservation, that the auditor is required to certify and the treasurer to collect in December, a levy approved by the voters in the preceding November.

In regard to your question concerning special elections held in December for purposes of levying taxes your attention is directed to Section 5705.25, *supra*, providing in part as follows:

“A copy of any resolution adopted as provided in Sections 5705.19 or 5705.192 (5705.19.2) of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county prior to the fifteenth day of September in any year, and *said board shall submit the proposal to the electors of the subdivision at the succeeding November election*. Such board shall make the necessary arrangements for the submission of such questions to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. \* \* \*” (Emphasis added)

It is apparent from the foregoing language that a special election for the purpose of levying taxes cannot be held in December under the provisions of Section 5705.25, *supra*. Such a special election could be held in December, however, pursuant to Section 5705.191, Revised Code, but the result of such election is not required by this section to be certified immediately and the taxes extended on the duplicate for the current year as provided for in Section 5705.25, *supra*. On the contrary, Section 5705.191, *supra*, specifically provides that, “Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.” It is my opinion, therefore, that where a tax levy is approved by the voters of a taxing district at a special election held in December pursuant

to Section 5705.191, *supra*, the county auditor is not required to extend such tax on the tax list and duplicate for the current year.

Accordingly, it is my opinion and you are advised:

1. Where a tax levy is approved by the voters of a taxing district at the November general election pursuant to Section 5705.25, Revised Code, and the taxing authority resolves to place the additional tax on the tax list for the current year pursuant to that section, the county auditor is required to extend such tax on the tax list and duplicate for the current year, provided, however, that in such a case the board of county commissioners and the department of taxation, pursuant to Section 323.17, Revised Code, may extend the time of payment of taxes beyond the December collection date. (Opinion No. 1009, Opinions of the Attorney General for 1949, page 650, modified).

2. Where a tax levy is approved by the voters of a taxing district at a special election held in December pursuant to Section 5705.191, Revised Code, the county auditor is not required to extend such tax levy on the list and duplicate for the current year.

Respectfully,

MARK McELROY

Attorney General