

OPINION NO. 86-103

Syllabus:

1. All revenue derived from a special tax levied pursuant to R.C. 5705.19(L), for the support of the county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house board programs, must, pursuant to R.C. 5705.10, be placed in a special fund established pursuant to R.C. 5705.09(D) for the purposes for which the tax was levied.
2. Where a tax is levied pursuant to R.C. 5705.19(L) for the purpose of supporting a county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house the county board's programs, the proceeds of the levy may be used for the current operating expenses of the board. To the extent the proceeds are not budgeted for operating expenses, the county board of mental retardation and developmental disabilities may, with the approval of the county board of commissioners, use the proceeds to construct a facility.

To: Richard Ross, Morgan County Prosecuting Attorney, McConnelsville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion regarding the proceeds derived from a special tax levied for the support of the county board of mental retardation and developmental disabilities. In your letter, you state that a special levy in excess of the ten-mill limitation was passed for the purpose of supporting the county board of mental retardation and developmental disabilities, and providing funds for the construction and operation of a facility to house programs for the mentally retarded. In light of subsequent information which you provided to my staff, I have rephrased your questions as follows:

1. Should the moneys derived from the levy be placed into a special fund for the county board of mental retardation and developmental disabilities or into the county construction fund?
2. May the money be used by the board of mental retardation and developmental disabilities for current operating expenses or must it be reserved for the construction and operation of a new facility?

Your first question concerns the proper fund to which revenue derived from the levy should be credited. For the following reasons, I find that the proceeds should be placed in a special fund established for the purposes specified in R.C. 5705.19(L).

The first step in determining the appropriate fund for the proceeds of a levy is to ascertain the statutory basis for the levy. R.C. 5705.19 provides the statutory scheme under which

taxes in excess of the ten-mill limitation may be levied, and provides in pertinent part:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

...
 (F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

...
 (L) For community [sic] mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code....Funds derived from a tax levy passed or renewed after October 25, 1967, which are not budgeted for operating purposes may be dispensed by the county board of mental retardation and developmental disabilities after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving facilities for programs and services pursuant to Chapter 5126. of the Revised Code.

See R.C. 5705.01(A)(defining "subdivision" to include counties); R.C. 5705.01(C)(defining "taxing authority;" in the case of a county, the taxing authority is the board of county commissioners); R.C. 5705.01(E)(defining "permanent improvement"). If the construction or acquisition of a permanent improvement, or the support of services, programs, or facilities of the county board of mental retardation and developmental disabilities cannot be adequately funded from the proceeds of levies within the ten-mill limitation, see R.C. 5705.04-.06, the board of commissioners may, pursuant to R.C. 5705.19, propose a special tax levy in order to acquire the needed revenue. See R.C. 5705.07.

R.C. 5705.19 also provides that the taxing authority's resolution must be confined to the purpose or purposes specified in one division of the statute. The ballot placing the question of the tax levy before the voters must set forth the purpose of the additional tax, as stated in the resolution. R.C. 5705.25(A). Thus, the purpose of the tax levy, as set forth in the resolution and ballot language, may not be broader than the purpose or purposes authorized by one division of R.C. 5705.19.

R.C. 5705.19(F) authorizes the board of county commissioners, upon the approval of the voters, to levy a tax for the construction of a permanent improvement. In your correspondence you state that, in this instance, the resolution and ballot proposition described the purposes of the tax in question as being: "For the purpose of supporting the 169 Board of Mental Retardation, Mary Hammond School for Mentally Retarded Adults and Children, and providing funds for the construction and operation of a facility to house all programs for mental retardation."

The purposes stated in the resolution and ballot proposition clearly are not limited to those specified in R.C. 5705.19(F). The purposes for which the tax was levied include not only the construction of a facility, but also the support of the county board of mental retardation and developmental disabilities and its school, and the operation of a facility to house programs. Thus, in light of the requirement that the purposes described in the resolution and ballot language be limited to those specified in one division of R.C. 5705.19, the tax could not have been properly based on the authority provided under division (F).

In contrast, the purposes for which the tax was levied fit neatly with those purposes authorized by R.C. 5705.19(L). The language used in division (L) clearly contemplates the use of a single tax levy for the purposes of supporting the county board of mental retardation and developmental disabilities and constructing facilities to house board programs. See 1969 Op. Att'y Gen. No. 69-113 (a special levy for the county board of mental retardation should be submitted under the provisions of R.C. 5705.19(L)). Cf. Roddy v. Andrix, 32 Ohio Op. 2d 349, 201 N.E.2d 816 (C.P. Madison County 1964) (prior to amendment of R.C. 5705.19 to allow the taxing authority's resolution to provide for more than one purpose and to provide for the construction of facilities under division (L), the court held that revenue from a special levy under R.C. 5705.19(L) may not be used for construction of a permanent improvement). Therefore, I conclude that the tax was properly submitted under the authority provided in division (L).¹

Having established the statutory basis upon which the tax was levied, I may now resolve the issue of which fund should be credited with the revenue derived from the tax. Pursuant to R.C. 5705.09, each subdivision is required to establish certain funds for the deposit of its moneys. Among the funds which each subdivision is required to establish is a special fund for each special levy. R.C. 5705.09(D). R.C. 5705.10 requires that the revenue derived from each special levy be placed in a special fund established for the purpose for which the levy was made. See 1969 Op. Att'y Gen. No. 69-015 (a separate fund must be established pursuant to R.C. 5705.10 for revenue derived from a special levy for the support of a county board of mental retardation); 1962 Op. Att'y Gen. No. 2997, p. 337 (revenue derived from a special levy may not be paid into the general fund but must, in accordance with R.C. 5705.10, be credited to a special fund for the purpose for which the levy was made). In the present context, the purposes of the levy, as stated in the resolution and ballot proposition, were the support of the county board of mental retardation and developmental disabilities' programs and services, the construction of a facility to house the board's programs, and the operation of

¹ The fact that a construction fund is provided for by a separate division of R.C. 5705.19 does not prevent a tax from being levied for construction purposes pursuant to division (L). R.C. 5705.19 expressly provides:

The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

the facility. Thus, the proceeds from the tax levied under R.C. 5705.19(L) should be placed in a special fund established for these purposes. As discussed above, 5705.19(F) is too narrow in scope to support the tax in question. Thus, a construction fund established to hold funds derived from the tax levied under division (F) or other special tax levied solely for construction purposes would not be the proper fund to hold the revenue from this levy.

Your second question concerns the purposes for which the revenue derived from the tax levy may be used. In particular, you ask whether the proceeds of the levy may be used by the county board of mental retardation and developmental disabilities to pay for current operating expenses. As discussed above, R.C. 5705.10 requires that the moneys derived from a special levy be credited to a special fund established for the purposes for which the levy was made. See also, Ohio Const. art. XII, §5 (proceeds of a tax levy must be used for the purpose for which the tax was levied); R.C. 5705.19 (taxing authority's resolution proposing tax levy must specify the purpose or purposes of the tax, for which the revenue derived from the tax shall be applied); R.C. 5705.25 (ballot language must state the purpose for which the tax is being levied, as stated in the taxing authority's resolution).

In this instance, the resolution and the proposition placed on the ballot stated that the levy was made for the purposes of supporting the county board of mental retardation and developmental disabilities and its school, providing for the construction of a facility to house the board's programs, and providing funds for the operation of the facility. As discussed above, these purposes are consistent with R.C. 5705.19(L), which authorizes a levy for both operating expenses and the construction of facilities. Pursuant to division (L), the revenue derived from a tax which was levied under that division may only be used for the construction of a facility, inter alia, if the revenue has not been budgeted for operating purposes. Thus, R.C. 5705.19(L) clearly contemplates the use of revenue derived from a levy authorized by that division for operating expenses.

Furthermore, the ordinary meaning of the language employed by the board of county commissioners in both the resolution and the ballot proposition supports the conclusion that the revenue from the tax levy is available for use by the county board of mental retardation and developmental disabilities to pay for current operating expenses as well as for the construction of a facility. The first phrase of the language included on the ballot and in the resolution, which states that the revenue is to be used for the purpose of supporting the board, could arguably be read as prefatory. Such an interpretation would, however, render the phrase a mere surplusage. Cf. State v. Reiner, 58 Ohio St. 2d 67, 388 N.E.2d 1226 (1979) (it is a general rule of statutory construction that every portion of a sentence should be given effect). The better interpretation of the resolution and ballot language is that "support" refers to the use of the revenue to cover current operating expenses. Further, the resolution and ballot language provide that the tax is to be used for the operation of the facility, once constructed. Thus, reading the resolution and ballot language together with R.C. 5705.19(L), the authority upon which the levy was passed, I conclude that the proceeds from the levy may be used for current operating expenses. To the extent that the revenue is not budgeted for operating purposes, the board of

mental retardation and developmental disabilities may, with the approval of the board of county commissioners, use the proceeds to construct a facility.

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

1. All revenue derived from a special tax levied pursuant to R.C. 5705.19(L), for the support of the county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house board programs, must, pursuant to R.C. 5705.10, be placed in a special fund established pursuant to R.C. 5705.09(D) for the purposes for which the tax was levied.
2. Where a tax is levied pursuant to R.C. 5705.19(L) for the purpose of supporting a county board of mental retardation and developmental disabilities and its school, and for the construction and operation of a facility to house the county board's programs, the proceeds of the levy may be used for the current operating expenses of the board. To the extent the proceeds are not budgeted for operating expenses, the county board of mental retardation and developmental disabilities may, with the approval of the county board of commissioners, use the proceeds to construct a facility.