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1. HOSPITAL, COUNTY GENERAL—COUNTY MAY INCLUDE IN GENERAL LEVY FOR CURRENT EXPENSES IN EXCESS OF TEN MILL LIMITATION ADDITIONAL AMOUNTS—PURPOSE “FOR CURRENT EXPENSES OF THE SUBDIVISION”—PERCENTAGE OF ELECTORS VOTING—FUNDS RAISED BY LEVY PAYABLE TO GENERAL FUND—SECTIONS 5705.19, 5705.22, 5705.26 RC.
2. SECTION 5705.22 RC ALTERNATIVE METHOD TO RAISE FUNDS FOR SUPPORT OF GENERAL HOSPITAL OUTSIDE TEN MILL LIMITATION—LIMITATION OF LEVY—APPROVAL MAJORITY OF ELECTORS VOTING ON LEVY—SPECIAL FUND.
3. SECTION 5705.191 RC PROVIDES FOR SPECIAL METHOD TO SUPPLEMENT GENERAL FUND TO MAKE APPROPRIATIONS FOR VARIOUS PURPOSES INCLUDING SUPPORT OF GENERAL HOSPITALS—LEVY LIMITED TO TWO YEAR PERIOD—APPROVAL, FIFTY-FIVE PER CENT OR MORE OF ELECTORS VOTING AT PRIMARY, GENERAL OR SPECIAL ELECTION—SECTION 5705.22 RC.

SYLLABUS:

1. Section 5705.22, Revised Code, does not prevent a county from including in a general levy for current expenses in excess of the ten-mill limitation under the provisions of Section 5705.19, Revised Code, additional amounts which may be appropriated for support of a county general hospital. However, such a levy can only have for its stated purpose “For current expenses of the subdivision” and must be approved by sixty percent of the electors voting upon the levy as required by Section 5705.26, Revised Code. Funds raised by this levy are payable to the general fund.

2. Section 5705.22, Revised Code, is an alternative method of raising funds for the support of a general hospital outside the ten-mill limitation, and although the levy is limited to sixty-five one-hundredths of a mill, it need be approved by only a majority of the electors voting on the levy and the amounts so raised are payable to a special fund for the purpose for which the levy was made.

3. By Section 5705.191, Revised Code, the legislature has provided a special method for supplementing the general fund for the purpose of making appropriations for various purposes including the support of general hospitals. This section does not impose a limitation such as contained in Section 5705.22, Revised Code, on the amount of the levy. However, the levy is limited to a two-year period and must be approved by fifty-five percent or more of the electors voting on the question at a primary, general or special election.

Columbus, Ohio, August 4, 1955

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The Greene County Commissioners have requested that I obtain your Opinion on the following tax matter :

“Greene County operates and maintains a County Hospital which was established under authority of G. C. 3127 and following sections. At the time this hospital went into operation, a special tax levy of two mills outside the ten mill limitation was adopted by vote of the people of the county. This levy was passed under authority of G. C. 5625-15 (now R. C. 5705.19). At that time, the opinion of the Attorney General being 1949 OAG 365 held that a levy could be legally made under authority of this section for providing funds for the operation of a county hospital.

“However, on the thirteenth day of June 1951, G. C. 5625-15c (now R. C. 5705.22) was passed by the legislature. This section provides for a levy to be made outside the ten mill limitation by the County Commissioners for providing operating funds for the support of the County Hospital and further provides that ‘the total levy for this purpose shall not exceed sixty five one hundredths of a mill.’

“The question which these two sections raise is whether or not the county can still legally adopt a tax levy outside the ten mill limitation in excess of sixty five one hundredths of a mill under authority of R. C. 5705.19 (section A), or whether section 5705.22 must now be considered as a limiting section permitting no tax levy for this purpose in excess of sixty five one hundredths of a mill.”

Section 5625-15c, General Code, Section 5705.22, Revised Code, enacted June 13, 1951, specifically provides for an additional levy for support of county hospitals and limits the levy for this purpose to sixty-five one-hundredths of a mill. This levy requires only a majority of electors voting on the levy for approval. Funds raised by such levy may be used only for the support of county hospitals.

Section 5705.19, Revised Code, authorizes levies in excess of the ten-mill limitation for various purposes, among them being “For current ex-

penses of the subdivision.” In Opinion No. 365, Opinions of the Attorney General for 1949, the then Attorney General ruled as follows in the syllabus of said opinion:

“A county is not permitted to vote a special tax levy for maintenance of a county hospital outside of the ten mill limitation under Sections 3127 to 3138-4 of the General Code. An additional tax for such purpose may be submitted to the electors under Section 5625-15, General Code, and related sections.”

A levy under Section 5705.19, Revised Code, must be approved by sixty percent of the electors voting upon the question and must be submitted at a general election. The purpose of the levy as set forth on the ballot must conform to the purposes set forth in Section 5705.19, Revised Code.

While a county can include in the levy for current expenses additional amounts for purposes for which a special tax is authorized, such funds raised by this levy for current expenses must be paid into the general fund. Section 5705.10, Revised Code, provides:

“All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

“* * * All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made. * * *”

This is in contrast to a levy specifically earmarked for support of general hospitals under Section 5705.22, Revised Code, which would necessarily be credited to a special fund for the purpose for which the levy was made.

Even though Section 5705.22, Revised Code, is special legislation enacted subsequent to Section 5705.19, Revised Code, it does not abrogate the power to include in the levy “for current expenses” amounts for the support of general hospitals. It does provide an alternative method to raise additional funds in a limited amount which may be approved by a majority rather than sixty percent of the electors voting on the question.

A levy for current expenses, however, as stated above, must be paid into the general fund and is not earmarked as a special levy would be, so

that each year the amounts for the support of the hospital must be appropriated from the general fund in the discretion of the board of county commissioners. This levy being paid into the general fund would be available, however, for all proper appropriations for current expenses.

As a supplement to Section 5705.19, Revised Code, the legislature has enacted Section 5705.191, Revised Code. This section was enacted as emergency legislation by the 101st General Assembly effective June 27, 1955. This section effective only until June 30, 1957, authorizes levies in excess of the ten-mill limitation for various purposes including supplementing the general fund for the purpose of making appropriations for support of general hospitals. Such a levy can be submitted at a primary, general or special election as contrasted to levies under Sections 5705.19 and 5705.22, Revised Code, which must be submitted at a general election. Levies under Section 5705.191, Revised Code, require a vote of fifty-five percent or more of the electors voting on the question for approval. While this section does not contain the limitation as to amounts as in Section 5705.22, Revised Code, it is limited to a two-year period.

In specific answer to your inquiry, it is my opinion that Section 5705.22, Revised Code, does not prevent a county from including in a general levy for current expenses in excess of the ten-mill limitation under the provisions of Section 5705.19, Revised Code, additional amounts which may be appropriated for support of a county general hospital. However, such a levy can only have for its stated purpose "For current expenses of the subdivision" and must be approved by sixty percent of the electors voting upon the levy as required by Section 5705.26, Revised Code. Funds raised by this levy are payable to the general fund.

Section 5705.22, Revised Code, is an alternative method of raising funds for the support of a general hospital outside the ten-mill limitation, and although the levy is limited to sixty-five one-hundredths of a mill, it need be approved by only a majority of the electors voting on the levy and the amounts so raised are payable to a special fund for the purpose for which the levy was made.

By Section 5705.191, Revised Code, the legislature has provided a special method for supplementing the general fund for the purpose of making appropriations for various purposes including the support of general hospitals. This section does not impose a limitation such as con-

tained in Section 5705.22, Revised Code, on the amount of the levy. However, the levy is limited to a two-year period and must be approved by fifty-five percent or more of the electors voting on the question at a primary, general or special election.

Respectfully,

C. WILLIAM O'NEILL

Attorney General