

OPINION NO. 88-068**Syllabus:**

1. With the passage of a replacement levy pursuant to R.C. 5705.191, the levy that was replaced becomes ineffective and incapable of being renewed.
2. A replacement levy proposed pursuant to R.C. 5705.191 that does not win voter approval has no effect upon the levy that it seeks to replace. A resolution to renew the existing levy may be placed on the ballot pursuant to R.C. 5705.25 following the failure of a replacement levy to win voter approval.

To: Mark A. Ochsenbein, Jackson County Prosecuting Attorney, Jackson, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 6, 1988

I have before me your request for my opinion regarding the operation of a replacement levy authorized by R.C. 5705.191. You related that the current county-wide levy for the provision of emergency medical services, adopted pursuant to R.C. 5705.19(U), runs for a five year period, from 1984 through 1988. The replacement levy question is to be presented to the voters at the November 1988 election. If it does not pass, a renewal levy might be submitted to the voters in 1989, pursuant to R.C. 5705.25, which states, in relevant part:

Except as otherwise provided in this division, a resolution to renew or replace an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year.

Both options are possible in the instant case since 1988 is the last year that the existing tax may be extended and 1989 is the ensuing year. You ask two specific questions:

If the replacement ballot passes in November of 1988, does the renewal have to be run on the November 1989 ballot, or is it automatically moot by virtue of the passage of the replacement levy?

If the replacement levy which is placed on the November 1988 ballot fails, can the renewal levy still be run in 1989, or does a new levy have to be placed on the ballot for 1989?

R.C. 307.05 authorizes a board of county commissioners to provide emergency medical services, by providing, in part:

A board of county commissioners may provide ambulance service or emergency medical service, or may enter into a contract with one or more counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, in order to furnish or obtain ambulance service, to furnish or obtain additional ambulance service in times of emergency, to furnish or obtain emergency medical services, or to furnish or obtain the interchange of ambulance service or emergency medical services within the territories of the contracting subdivisions.

You indicate that the board of county commissioners provides such emergency medical service through a contract with other political subdivisions and a nonprofit corporation.

A county may levy a tax for providing ambulance service, emergency medical service, or both. R.C. 5705.19(U); R.C. 5705.191. By the express terms of R.C. 5705.19 and R.C. 5705.191, the board of county commissioners, in declaring the necessity of a tax levy for emergency medical services, must submit a resolution to the board of elections at least seventy-five days prior to the date of the election at which the levy shall be voted upon. The resolution shall specify the increase in rate that it is necessary to levy, the purpose of the levy and the number of years the levy shall be in effect. Renewal or replacement of all or a portion of a levy for the provision of emergency medical services is authorized by R.C. 5705.191, which provides, in relevant part:

If a levy limited to the purpose of providing emergency medical service is proposed to renew all or a portion of an existing levy for that purpose, it shall be called a renewal levy and shall be so designated on the ballot. If a levy limited to the purpose of providing emergency medical service is proposed to replace all or a portion of an existing levy for that purpose, it shall be called a replacement levy and shall be so designated on the ballot. A replacement levy shall appear separately on the ballot and shall not be conjoined with an additional levy or the renewal of an existing levy. A resolution for a renewal or replacement levy shall specify the amount of the proposed rate, the first year in which the levy will be imposed, and whether the levy is to renew or replace all, or a portion of, the existing levy.

R.C. 5705.25(B) prescribes the general ballot language, which must read, in part, as follows:

An additional tax for the benefit of (name of subdivision or public library)....for the purpose of (purpose stated in the resolution)....at a rate not exceeding....mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents)....For each one hundred dollars of valuation, for....(life of indebtedness or number of years the levy is to run).

Where, as here, the tax levy is a "replacement" levy, the form of the ballot is changed by substituting for the words "an additional," the words "a replacement of a" in the case of a proposal to replace an existing levy in the same amount, or the words "a replacement of part of an existing levy, being a reduction of....mills to constitute a" in the case of a replacement of only a part of an existing levy.

A replacement levy is a distinct category of tax levy, different from other types of levies. Ohio Legislative Service Commission, Analysis of Am. H.B. 810 (1980)(as reported by S. Education & Health). The major advantage of a replacement levy is that the real property rate reduction factor mandated by R.C. 319.301 does not apply to a replacement levy. R.C. 319.301(D)(1). The net effect is that a replacement levy can yield more revenue than would a renewal levy. See Analysis of Am. H.B. 810, at 2-3 (several examples of revenue yields for new, renewal and replacement levies).

R.C. 5705.191 and R.C. 5705.25 provide explicitly that a "replacement levy" is a levy which replaces an existing levy. No express definition of "replace," in this context is provided in R.C. Chapter 5705. Absent a statutory definition, words are accorded their common meaning. R.C. 1.42; *Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (1946); *Carter v. Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946). "Replace" has been given its plain, ordinary meaning as "to supplant with substitute or equivalent." *Black's Law Dictionary* 1168 (5th ed. 1979). See also *Royer v. Shawnee Mutual Insurance Co.*, 91 Ohio App. 356, 106 N.E.2d 784 (Franklin County 1950)("replace" means "to take the place of").

Inasmuch as a replacement levy replaces the existing levy — that is, it supplants the existing levy with a substitute — the replacement levy renders the existing levy ineffective. The replacement levy, pursuant to R.C. 5705.25, runs for the period of years designated on the ballot. R.C. 5705.191 mandates designation of the first year in which the replacement levy will be imposed and R.C. 5705.25 mandates the designation of the term for which the levy is to run.

A proposed levy has no effect until passed. *See* R.C. 5705.191 (majority vote, or 55% majority at special elections, required for passage; then subdivision may levy tax upon tax list and duplicate). *See generally Evans v. Lumber Co.*, 21 Ohio C.C. 80, 82, (Franklin County 1901)(until the day the act takes effect the law has no force); *State ex rel. Rogers v. Price*, 8 Ohio C.C. 25, 30, (Summit County 1893)("the act was never legally passed, — there is no law..."). There is no statute indicating that the lack of voter approval of a replacement levy has an effect on an existing levy. It follows that the existing levy is not affected by the failure of such a replacement levy. Since R.C. 5705.25 permits a resolution to renew an existing levy to be placed on the ballot in either the last year the existing levy is upon the tax list and duplicate or in the ensuing year and 1989 would be such an ensuing year in this case, a resolution to renew the existing levy could be placed on the 1989 ballot if the replacement levy fails in 1988.

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

1. With the passage of a replacement levy pursuant to R.C. 5705.191, the levy that was replaced becomes ineffective and incapable of being renewed.
2. A replacement levy proposed pursuant to R.C. 5705.191 that does not win voter approval has no effect upon the levy that it seeks to replace. A resolution to renew the existing levy may be placed on the ballot pursuant to R.C. 5705.25 following the failure of a replacement levy to win voter approval.