

OPINION NO. 86-021**Syllabus:**

1. Where a tax levy for current operating expenses of a city school district was passed in November of 1984 pursuant to a resolution stating that the levy would be placed upon the tax lists of the current tax year, the levy was properly placed upon the tax lists for 1984 and reflected on the 1984 tax bills prepared in December of 1984.
2. Where the question of the decrease of a levy was approved by voters under R.C. 5705.261 in November of 1985, the decrease was effective beginning with the tax year following the tax year during which the voters' approval was obtained; thus, such decrease will first appear on the 1986 tax bills prepared in December of 1986.

To: Michael Ward, Athens County Prosecuting Attorney, Athens, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 11, 1986

I have before me your request for an opinion concerning the date on which the decrease of a tax levy should go into effect. In the situation with which you are concerned, the Athens City Board of Education adopted a resolution on August 17, 1984, stating that it was necessary to levy a tax for current operating expenses at a rate not exceeding 6.9 mills for a continuing period of time, and resolving that "said levy be placed upon the tax lists of the current tax year in compliance with the provisions of Sec. 5705.34, if a majority of the electors voting thereon vote in favor thereof." The levy was approved by the voters on November 6, 1984, and the tax increase was first put on the 1984 tax bills, which were mailed to the taxpayers in December of 1984.

In 1985, a citizens' group circulated petitions for an election on the question of reducing the 6.9 mills levy to 3.0 mills under R.C. 5705.261. The question of reduction was placed on the ballot on November 5, 1985. The ballot language stated that the tax would be reduced "commencing at the expiration of the current year," and the voters approved the reduction in the levy.

You have raised two questions:

1. Was it correct for the 6.9 mills increase to have been reflected on the 1984 tax bills?
2. Does the reduction from 6.9 mills to 3.0 mills apply to the 1985 tax bills (prepared in December of 1985) or will it not apply until the 1986 tax bills (prepared in December of 1986)?

In order to answer your questions, it is helpful to examine the concept of "current tax year." R.C. 319.28 provides that, on or before the first Monday of August, the county auditor shall compile, in duplicate, a general tax list of real and public utility property in the county. R.C. 319.28 also provides that the county auditor shall make necessary corrections to such lists by the first Monday of September, and that he shall deliver one copy to the county treasurer on the

first day of October. R.C. 319.28 further states: "The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year." Thus, the tax list for 1984 is the list which was prepared by the county auditor in 1984. See generally 1962 Op. Att'y Gen. No. 3472, p. 974.

R.C. 323.13 provides that, "immediately upon receipt of any tax duplicate from the county auditor, but not less than twenty days prior to the last date on which the first one-half taxes may be paid without penalty," the county treasurer shall cause tax bills to be mailed or delivered to the persons charged with taxes on the duplicate. Under R.C. 323.12(A), "[e]ach person charged with taxes shall pay to the county treasurer the full amount of such taxes on or before the thirty-first day of December, or shall pay one-half of the current taxes together with the full amount of any delinquent taxes before such date, and the remaining half on or before the twentieth day of June next ensuing." R.C. 323.17 authorizes a delay in the delivery of the tax duplicate to the county treasurer in certain circumstances, and authorizes corresponding extensions in the times for payment of taxes. Such extensions are expressly authorized when a taxing authority has certified a resolution that would place upon the ballot at an election held subsequent to the first Tuesday after the first Monday in August the question of a tax to be levied on the current tax list and duplicate for any purpose. Taxes charged on the 1984 tax list were, thus, required to be paid in December of 1984 and June of 1985, or by deadlines which were appropriately extended.

Your first question asks whether it was correct for the 6.9 mills increase passed in November of 1984 to be reflected on the 1984 tax bills mailed in December of 1984. It is instructive to consider the budgeting process which was in effect for school districts in 1984.¹ Pursuant to R.C. 5705.28 as in effect in 1984, see 1969-1970 Ohio Laws, Part II, 1704-05 (Am. H.B. 1, eff. March 18, 1969), the taxing authority of each subdivision, including the board of education of a city school district, was required, on or before July fifteenth, to adopt a tax budget for the next fiscal year, which was then the calendar year. See 1981-1982 Ohio Laws, Part I, 1397-98 (Sub. H.B. 1, eff. Aug. 5, 1981) (under R.C. 5705.01(A) and (C), the board of education of a city school district was included as the taxing authority of a subdivision for purposes of R.C. Chapter 5705); note 1, supra. The county budget commission was authorized to examine such tax budgets and make certain revisions and adjustments. See, e.g., R.C. 5705.31; R.C. 5705.32. The county budget commission was required to complete

¹ By the enactment of 1983-1984 Ohio Laws, Part II, 4668 (Sub. H.B. 747, eff. March 19, 1985; certain sections eff. other than March 19, 1985), the fiscal year of school districts was changed from the calendar year to the period July 1 to June 30, beginning with fiscal year July 1, 1986 through June 30, 1987. See R.C. 9.34 (formerly R.C. 115.08). Corresponding changes were made to the budgeting schedule for school districts. See R.C. 5705.28-.30; R.C. 5705.34; R.C. 5705.35. Under Section 3 (uncodified) of Sub. H.B. 747, the statutory amendments made by the bill became, in general, effective on January 1, 1986. Because the events with which you are concerned occurred prior to the effective date of those statutory changes, those changes are not being considered in this opinion.

its work on or before September first, unless, for good cause, the Tax Commissioner extended the time for completing the work. 1983-1984 Ohio Laws, Part II, 2708-09 (Am. Sub. H.B. 260, eff. Sept. 27, 1983) (prior version of R.C. 5705.27).

When the budget commission had completed its work on the tax budget of a particular subdivision, it was required to certify its action to the subdivision under R.C. 5705.34,² and the taxing authority of the subdivision was then required to authorize the necessary tax levies and certify them to the county auditor, on or before October first, or such later date as was approved by the Tax Commissioner. Thus, in 1984, the Athens City School District was working on its budget for calendar year 1985. Prior to the election in November of 1984, the board of education of the Athens City School District was in a position to authorize and certify the necessary tax levies, to be billed in December of 1984 to pay for expenses budgeted for the 1985 fiscal year. The board could, however, certify only such levies as were then in effect.

I turn now to the question whether it was correct for the 6.9 mills tax increase to be reflected on the 1984 tax bills. The resolution declaring it necessary to levy that tax was adopted on August 17, 1984, and stated expressly: "RESOLVED, that said levy be placed upon the tax lists of the current tax year in compliance with the provisions of Sec. 5705.34, if a

² R.C. 5705.34, as in effect in 1984, stated:

When the budget commission has completed its work it shall certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. Each taxing authority by ordinance or resolution shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the tax commissioner. If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47 of the Revised Code, or refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

1983-1984 Ohio Laws, Part II, 2710-11 (Am. Sub. H.B. 260, eff. Sept. 27, 1983). R.C. 5705.34 was amended by 1983-84 Ohio Laws, Part II, 4668 (Sub. H.B. 747, eff. March 19, 1985; certain sections eff. other than March 19, 1985), effective January 1, 1986. See note 1, *supra*; note 4, *infra*.

majority of the electors voting thereon vote in favor thereof...." R.C. 5705.34 provided for placing a levy upon the tax lists of the current year, stating: "If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under [R.C. 5705.01-.47]...the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed...." See note 2, *supra*. As discussed above, in 1984 the tax lists of the current tax year were tax lists for 1984, and levies on such lists were to be billed initially in December of 1984. Thus, a resolution passed in 1984 which properly called for the levying of a tax to be placed upon the tax lists of the current year would, if the levy were approved by the voters in 1984, operate under R.C. 5705.34 to place the levy on the tax lists of 1984, to be billed initially in December of 1984 or such later date as was authorized under R.C. 323.17.

It is clear that the 6.9 mills levy placed on the ballot in November of 1984 was based upon a resolution which called for placing the levy upon the tax lists of the current tax year. It appears, further, that such resolution was properly adopted pursuant to R.C. 5705.21, as then in effect. See 1983-1984 Ohio Laws, Part II, 3557-59 (Am. Sub. H.B. 372, eff. Nov. 8, 1983). That version of R.C. 5705.21, which is in all relevant respects identical to R.C. 5705.21 as currently in effect, authorized a special election on the question of an additional tax levy for current expenses, a purpose specified in R.C. 5705.19(A) and authorized, by reference, in R.C. 5705.21. R.C. 5705.21 does not expressly authorize a resolution which provides that a levy be included on the current tax list.³ It is, however, clear that R.C. 5705.21 contemplates that it is possible to include a levy on the current tax list, since R.C. 5705.21 authorizes the issuance of anticipation notes "after

³ The version of R.C. 5705.21 which was in effect immediately prior to November 8, 1983, *see* 1983-1984 Ohio Laws, Part I, 646-47 (Am. S.B. 213, eff. Oct. 13, 1983) stated expressly: "Such resolution shall not include a levy on the current tax list and duplicate unless such election is to be held at or prior to the first Tuesday after the first Monday in November of the current tax year." 1983-1984 Ohio Laws, Part II, 3557-58 (Am. Sub. H.B. 372, eff. Nov. 8, 1983) eliminated this sentence. It appears that the need for the November deadline was rendered unnecessary by the fact that R.C. 5705.21 provided that the date of holding the election should be consistent with R.C. 3501.01, and R.C. 3501.01(D) provided that "[a] special election may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election." 1983-1984 Ohio Laws, Part I, 637 (Am. S.B. 213, eff. Oct. 13, 1983). A provision specifying the dates on which special elections could be held was first adopted in 1981-1982 Ohio Laws, Part I, 2128 (Am. Sub. H.B. 235, eff. Jan. 1, 1982). See generally 1966 Op. Att'y Gen. No. 66-096; 1962 Op. Att'y Gen. No. 3472, p. 974. It was, thus, in 1984, not possible for an election on a levy under R.C. 5705.21 to be held later in the year than the first Tuesday after the first Monday in November. Cf. 1963 Op. Att'y Gen. No. 718, p. 643 (discussing the collection of taxes levied under R.C. 5705.21 at elections held in December).

the approval of a levy on the current tax list and duplicate for current expenses." It appears, therefore, that it is permissible under R.C. 5705.21 for a resolution to raise taxes for the current expenses of a school district to provide that the levy will be placed upon the tax lists of the current tax year, and that a resolution providing that a levy would be placed upon the tax lists of the current year could properly have been adopted under R.C. 5705.21 in 1984.

In response to your first question, I conclude, therefore, that, where a tax levy for current operating expenses of a city school district was passed in November of 1984 pursuant to a resolution stating that the levy would be placed upon the tax lists of the current tax year, the levy was properly placed upon the tax lists for 1984 and reflected on the 1984 tax bills prepared in December of 1984.

Your second question concerns the effective date of the tax reduction which was approved by the voters on November 5, 1985. The ballot language on that question stated:

Pursuant to Revised Code Section 5705.261 qualified electors have petitioned to require that the tax currently being levied for a continuing period of time upon the taxable property in the Athens City School District to meet the necessary requirements of said school district be reduced from 6.9 mills to 3 mills commencing at the expiration of the current year. (Emphasis added.)

R.C. 5705.261, as in effect both at the time of the election and at the present time, states, in part:

The question of decrease of an increased rate of levy approved for a continuing period of time by the voters of a subdivision may be initiated by the filing of a petition with the board of elections of the proper county not less than seventy-five days before the general election in any year requesting that an election be held on such question. Such petition shall state the amount of the proposed decrease in the rate of levy and shall be signed by at least ten per cent of the qualified electors residing in the subdivision and voting at the last general election. Only one such petition may be filed during each five-year period following the election at which the voters approved the increased rate for a continuing period of time.

After determination by it that such petition is valid, the board of elections shall submit the question to the electors of the district at the next succeeding general election....If a majority of the qualified electors voting on the question of a decrease at such election approve the proposed decrease in rate, the result of the election shall be certified immediately after the canvass by the board of elections to the subdivision's taxing authority, which shall thereupon, after the current year, cease to levy such increased rate or levy such tax at such reduced rate upon the duplicate of the subdivision. If notes have been issued in anticipation of the collection of such levy, the taxing authority shall continue to levy and collect under authority of the election authorizing the original levy such amounts as

will be sufficient to pay the principal of and interest on such anticipation notes as the same fall due. (Emphasis added.)

The ballot language thus stated that the reduction would commence "at the expiration of the current year." That language was consistent with R.C. 5705.261, which provided that, after receiving the results of the election, the taxing authority would, "after the current year," levy the tax at the reduced rate upon the duplicate of the subdivision. As discussed above, in 1985 the tax list for the current year was the tax list which was prepared during 1985. See R.C. 319.28. Taxes charged on that list were initially billed in December of 1985, and were to be paid in full by June twentieth of 1986, unless extensions were authorized. See R.C. 323.12; R.C. 323.17.⁴

The references to "current year" which appear in R.C. 5705.261 and in the ballot language in question must, in light of the context in which they are used, be construed as references to the current tax year. See R.C. 1.42. See generally 1967 Op. Att'y Gen. No. 67-020; 1963 Op. Att'y Gen. No. 718, p. 643; 1961 Op. Att'y Gen. No. 2657, p. 676 (modified by 1963 Op. No. 718); 1961 Op. Att'y Gen. No. 2145, p. 199 (approved and followed by 1963 Op. No. 718); 1949 Op. Att'y Gen. No. 1009, p. 650 (modified by 1961 Op. No. 2145). The provision that the tax reduction would commence at the expiration of the current year thus meant that the reduction would become effective following the current tax year. A reduction adopted in 1985 was, therefore, not applicable to the 1985 tax year but, rather, was to go into effect beginning with the 1986 tax year, for which bills would be initially prepared in December of 1986.

You have expressed some concern that the interpretation expressed above results in the fact that the 6.9 mills levy in question will be collected for two years, even though the reduction to 3.0 mills was adopted only one year after the 6.9 mills levy was passed. While the result may appear anomalous, I believe that it is compelled by the fact that R.C. 5705.21 permitted a levy for current expenses passed in 1984 to go into effect on the current tax list, whereas R.C. 5705.261 did not

⁴ Under the changes brought about by 1983-1984 Ohio Laws, Part II, 4668 (Sub. H.B. 747, eff. March 19, 1985; certain sections eff. other than March 19, 1985), see note 1, supra, a board of education is, with respect to tax budgets for fiscal years beginning on July first, to authorize the necessary tax levies and certify them to the county auditor by April first, or such later date as is approved by the Tax Commissioner. R.C. 5705.34. Further, revenues from real property taxes are generally not available for appropriation by a board of education prior to the fiscal year in which the settlement date for such revenue occurs. See R.C. 321.24; R.C. 5705.35. The amendments made by Sub. H.B. 747 do not, however, affect the provisions of R.C. Chapters 319 and 323 concerning the preparation of tax lists and the collection of real estate taxes. Thus, levies will continue to be charged on the tax duplicate, see R.C. 323.13, and billed in December and May, unless extensions are authorized, see R.C. 323.12; R.C. 323.17.

permit a decrease adopted in 1985 to take effect until after the current year.

This result is, further, consistent with the general budgeting procedure outlined above. In general, under the law in effect in 1984 and 1985, a school district had its budget for 1984 submitted by July fifteenth and reviewed by the budget commission by September first; thus, the board of education was, by October first, able to certify the tax levies necessary to meet that budget on the 1984 tax list, to be billed in December of 1984. R.C. 5705.34 expressly authorized the county budget commission to reconsider and revise its action on the budget of a school district if a tax to be levied on the tax list of the current year was approved by the electors. Thus, statutory provision was made for additional taxes secured by levies under R.C. 5705.01-.47 to be included in the budget for the current tax year. No comparable provision authorized the county budget commission to review and revise a budget if a reduction was approved under R.C. 5705.261. The absence of such a provision provides strong support for the conclusion that such a reduction was not to apply to the tax list of the current tax year, since, if such a reduction could affect that current year's taxes, it would be imperative that the subdivision's budget be revised to bring its spending in line with the reduced amount of tax proceeds that it could expect to receive.

In response to your second question, I conclude, therefore, that, where the question of the decrease of a levy was approved by voters under R.C. 5705.261 in November of 1985, that decrease was to take effect in the tax year following the tax year during which the voters' approval was obtained. Thus, such decrease will initially become effective for the 1986 tax year, for which bills will be prepared in December of 1986.⁵

Based upon the foregoing, it is my opinion, and you are hereby advised, as follows:

1. Where a tax levy for current operating expenses of a city school district was passed in November of 1984 pursuant to a resolution stating that the levy would be placed upon the tax lists of the current tax year, the levy was properly placed upon the tax lists for 1984 and reflected on the 1984 tax bills prepared in December of 1984.
2. Where the question of the decrease of a levy was approved by voters under R.C. 5705.261 in

⁵ I note that the fact that a levy of 6.9 mills was authorized in 1984 does not mean that the entire amount must be levied. Both the ballot language and the resolution spoke of "a rate not exceeding 6.9 mills." See R.C. 5705.25. Hence, it would be possible for the school district to levy an amount less than 6.9 mills. See R.C. 5705.26. Where, however, the school district adopts a budget which shows a need for the entire amount of a levy that has been properly authorized, the county budget commission must approve the levy without modification. See R.C. 5705.31; R.C. 5705.341. See generally Village of South Russell v. Budget Commission, 12 Ohio St. 3d 126, 465 N.E.2d 876 (1984); Village of Waite Hill v. Budget Commission, 46 Ohio St. 2d 543, 350 N.E.2d 411 (1976).

November of 1985, the decrease was effective beginning with the tax year following the tax year during which the voters' approval was obtained; thus, such decrease will first appear on the 1986 tax bills prepared in December of 1986.