

Syllabus:

1. The passage of a bond issue for fire protection is restricted by R.C. 505.40, but the passage of a tax levy by the township for the same purpose under R.C. 5705.19 (I) and 5705.191 is not restricted by R.C. 505.40.

2. A township may not pass a bond issue for fire protection in any amount exceeding \$50,000, but it may pass a tax levy in an amount exceeding \$50,000 under R.C. 5705.19 (I) and 5705.191.

3. The term, "debt charges", as used in R.C. Chapter 5705, is defined in R.C. 5705.01 (G) as interest, sinking fund, and retirement charges on bonds, notes, or certificates of indebtedness.



To: H. Michael Moser, Auglaize County Pros. Atty., Wapakoneta, Ohio  
 By: William J. Brown, Attorney General, March 20, 1973

Your request for my opinion poses the following three questions:

1. Does Ohio Revised Code section 505.40 in any way restrict the passage of a bond levy by a township for fire protection under Ohio Revised Code sections 5705.19 (I) and 5705.191?

2. May a township pass a bond levy for fire protection under Revised Code sections 5705.19 (I) and 5705.191 in any amount exceeding \$50,000.00?

3. What is the meaning of the term debt charges as used in Ohio Revised section 5705.19 in the first full paragraph after sub-paragraph (B) when it states "The number of years may be any number not exceeding five, except when the

additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness . . . . .?"

Provision is made in R.C. 5705.19 for levies by taxing authorities in excess of the ten-mill limitation for certain enumerated purposes, one of these being fire protection. The Section reads in pertinent part as follows:

The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which 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 such limitation for any of the following purposes:

\* \* \* \* \*

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time, or volunteer firemen or fire fighting companies to operate the same;

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R.C. 5705.191 provides for submission of the issue to the electorate and for the issuance of tax anticipation notes, if the levy is approved, in an amount not to exceed fifty percent of the estimated proceeds of the levy.

Under R.C. 505.40 township trustees are prohibited from the issuance of bonds in excess of \$50,000 for the purpose of providing fire-fighting equipment. That Section provides:

No bonds shall be issued by the board of township trustees for the purpose of providing fire apparatus and appliances, buildings or sites therefor, sources of water supply and materials therefor, or for the establishment and maintenance of lines of fire-alarm telegraph, or for the payment of permanent, part-time, or volunteer fire-fighting companies to operate such equipment, unless approved by vote of the people in a township or fire districts in the manner provided by sections 133.09 to 133.13 inclusive, of the Revised Code, and in no event in an amount exceeding fifty thousand dollars. (Emphasis added.)

The above Sections offer a township two different ways of raising revenues for fire protection. R.C. 505.40 allows revenue to be raised through bond issues, while R.C. 5705.19 provides for the raising of revenue through a tax levy. The two Sections are conceptually distinct, for the former provides for revenue by

the creation of indebtedness through issuance of bonds, while the latter deals with the raising of revenue through taxation. Each has its own limitation. The bond issue may not exceed \$50,000. The anticipation notes issued upon approval of the tax levy are limited to fifty percent of the estimated proceeds - no more may be spent in advance of collection.

In my opinion the \$50,000 limit contained in R.C. 505.40 does not affect a township tax levy for fire equipment in any way. That Section pertains to bond issues only, and it places a limitation on the amount of township bonded indebtedness in accordance with the indebtedness restriction of R.C. 133.07, which does not apply to tax levies.

A comparison of R.C. 505.40 with R.C. 505.39 offers support for this view. The latter Section reads as follows:

The board of township trustees may, in any year, levy a sufficient tax upon all taxable property in the township or in a fire district, to provide protection against fire, to provide and maintain fire apparatus and appliances, buildings and sites for apparatus and appliances, sources of water supply, materials for such water supply, lines of fire-alarm telegraph, and to pay permanent, part-time, or volunteer fire-fighting companies to operate such equipment.

It is to be noted that while this Section states that the board of township trustees may "levy a sufficient tax" for fire protection purposes, it sets no limit on the amount to be raised by such tax. R.C. 505.40, on the other hand, sets a specific limit on the size of bond issues for fire protection. Thus in companion Sections of the Revised Code, the General Assembly has distinguished between tax levies and bond issues as a means of raising fire protection revenues by limiting the size of the latter while not limiting the size of the former.

Section 56.05 of the text in Baldwin's Ohio Township Law also recognizes this distinction between the use of bonds and taxation as a means of raising revenue. It states: "Fire protection may be financed by drawing on the general fund, or by submitting a levy to the vote of the people (R.C. 505.39), as well as by voting a bond issue (R.C. 505.40)."

Thus, since R.C. 505.40 and 5705.19 are conceptually distinct and have been so treated by the General Assembly and the authorities, and since R.C. 505.40 limits the amount of bonds only, I conclude, in answer to your first two questions, that the \$50,000 bond limitation in no way affects the amount of a tax levy. One of my predecessors, in Opinion No. 808, Opinions of the Attorney General for 1949, apparently ignored this distinction between the levy of a tax and the issuance of bonds. A year later, however, when considering the same general subject, the same Attorney General clearly did recognize the distinction. Opinion No. 2396, Opinions of the Attorney General for 1950; see also Opinion No. 5798, Opinions of the Attorney General for 1943.

In regard to your third question the term, "debt charges", as used in R.C. Chapter 5705, is defined in R.C. 5705.01 (G) as follows: "'Debt charges' means interest, sinking fund, and

retirement charges on bonds, notes, or certificates of indebtedness."

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The passage of a bond issue for fire protection is restricted by R.C. 505.40, but the passage of a tax levy by the township for the same purpose under R.C. 5705.19 (I) and 5705.191 is not restricted by R.C. 505.40.

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