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1. UNIVERSITY — MUNICIPAL — AGREEMENT FOR SUPPORT — MAY PROVIDE SEPARABLE AMOUNTS OR FUNDS FOR USE BY UNIVERSITY FOR DEVELOPMENT, MAINTENANCE OR OPERATION OR ONE AMOUNT OR FUND TO BE UTILIZED BY AUTHORITIES FOR ANY OR ALL OF SUCH PURPOSES—SECTION 3349.24 RC.
2. WHERE AGREEMENT CONTAINS PROVISION FOR SEPARABLE AMOUNTS OR FUNDS FOR UNIVERSITY DEVELOPMENT, MAINTENANCE AND OPERATION, SPECIAL LEVY OUTSIDE TEN MILL LIMITATION PROCEEDS EAR-MARKED IN RESOLUTION OF TAXING AUTHORITY FOR MAINTENANCE OR OPERATION OF UNIVERSITY IS FOR CURRENT EXPENSES OF MUNICIPAL UNIVERSITIES—MAY BE APPROVED AT GENERAL ELECTION BY MAJORITY OF ELECTORS VOTING ON LEVY—STATUS AS TO AGREEMENT BETWEEN COUNTY COMMISSIONERS AND BOARD OF DIRECTORS OF UNIVERSITY AS TO DEVELOPMENT, MAINTENANCE AND OPERATION—GENERAL ELECTION—VOTE OF SIXTY PER CENT OF ELECTORS—SECTIONS 5705.19, 5705.26 RC.

## SYLLABUS:

1. Where an agreement for the support of a municipal university is made under the provisions of Section 3349.24, Revised Code, such agreement may provide separable amounts, or funds, for use by the university authorities for (1) development, (2) maintenance, or (3) operation of the municipal university concerned; or such agreement may provide one amount or fund which can be utilized by the university authorities for any or all of such purposes.

2. Where such an agreement for the support of a municipal university contains a provision for separable amounts, or funds, for use by the university for development, maintenance, and operation, a special levy outside the ten mill limitation, the proceeds of which are ear-marked in the resolution of the taxing authority for use only for maintenance or operation of the university, is one for "current expenses of \* \* \* municipal universities" and may, under the provisions of Section 5705.26, Revised Code, be approved at a general election by a majority of the electors voting on such levy; but if such levy under the terms of the agreement between the county commissioners and boards of directors of the university is designed generally for use for the "development, maintenance, and operation" of the university concerned, or is limited solely for use for the "development" of such university, such levy is neither (1) one for "current expenses" of such university nor (2) one for another "school purpose authorized by Section 5705.19 of the Revised Code," and can therefore be approved at a general election only by a vote of sixty per cent of the electors voting on such levy.

Columbus, Ohio, September 24, 1954

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The County Commissioners of Lucas County under the provisions of 3349.23, et seq., of the Revised Code have entered into an agreement with the Board of Directors of the University of the city of Toledo for participation by the county “in the development, maintenance and operation of the University,” and the question of a special tax levy outside the ten mill limitation for the purpose of securing funds to meet the conditions of this contract will be submitted to the electors of Lucas County outside the boundaries of the city of Toledo, at the forthcoming November election.

“Some question has arisen as to the percentage of affirmative vote which will be required in order to approve this levy. In your Opinion 3574, dated March 9th, 1954, you discussed the percentage required in the event a special election were held under the provisions of Section 5705.191. However, you have not specifically ruled on the percentage required when the proposal is submitted at a general election.”

The pertinent statutory provisions relating to the participation of the county commissioners in the financing of a municipal university, and to special levies outside the ten mill limitation are as follows :

Section 3349.23, Revised Code:

“The board of county commissioners of any county in which a municipal university is situated may enter into an agreement with the board of directors of such municipal university for participation by such county in the development, maintenance, and operation of such municipal university.”

Section 3349.24, Revised Code :

“Any agreement authorized by section 3349.23 of the Revised Code may provide for the amounts of such participation by such county in the development, maintenance, and operation of such municipal university, and the rights and privileges to be enjoyed by the county and its inhabitants by virtue of such

participation, to the end that all residents of said county shall be entitled to the educational advantages of said municipal university at the same rate of tuition, fees, and other charges as are provided for residents of the municipal corporation in which such university is situated.”

Section 3349.25, Revised Code :

“For the purpose of levying any tax which may be found necessary to meet fiscal obligations under any agreement authorized by section 3349.23 of the Revised Code, that portion of said county lying outside of the corporate limits of such municipality shall be a taxing district to be known as the county municipal university taxing district. \* \* \*

“The board of county commissioners, as such taxing authority for the purposes of the agreement authorized by section 3349.23 of the Revised Code, may also submit to the electors of such taxing district in the manner provided for by sections 5705.01 to 5705.26, inclusive, of the Revised Code, a proposal to levy a tax outside the ten mill limitation at a specified rate and for a specified period, not to exceed five years.”

With regard to the final paragraph of Section 3349.25, supra, I said in my opinion No. 3574, dated March 9, 1954 :

“It will be observed that the final paragraph of Section 3349.25, supra, provides the authority for the submission of the question of a special tax levy to the electors, and that the *manner* of such submission is governed by the provisions of the Uniform Tax Levy Law, Sections 5705.01 to 5705.26, inclusive, Revised Code. This reference to the Tax Levy Law, in the absence of any detailed provisions in the authorizing section, clearly indicates the legislative intent that in all respects in which Section 3349.25, Revised Code, is silent, the provisions of Section 5705.01, et seq., Revised Code, should govern whether such details relate merely to procedural matters or to substantive matters.”

In this view of the matter it would follow that the percentage vote required to approve a special levy outside the ten mill limitation as provided in Section 3349.25, supra, would be governed by the Tax Levy Law, and more specifically by the provisions of Section 5705.26, Revised Code. This section provides in part :

“If the majority of the electors voting on a levy for the *current expenses of schools or municipal universities*, or fifty-five per cent of the electors voting upon a levy for any other school purpose authorized by section 5705.19 of the Revised

Code, or sixty per cent of the electors voting upon a levy for any other purpose, vote in favor of such levy at such election, the taxing authority of the subdivision may levy a tax within such subdivision at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; \* \* \*

(Emphasis supplied.)

The question thus presented is whether we are here concerned with (1) a levy for the "current expenses of \* \* \* municipal universities," (2) a levy for "other school purposes authorized by Section 5705.19 of the Revised Code," or (3) "a levy for any other purpose."

The purpose of the levy in the instant case is, as stated in Section 3349.24, supra, "to meet fiscal obligations under any agreement authorized by Section 3349.23 of the Revised Code." In Section 3349.24, Revised Code, it was provided that any such agreement "may provide for the *amounts* of such participation by such county in the development, maintenance, and operation of such municipal university." (Emphasis added.)

The use of the plural word "amounts" in Section 3349.24, supra, is indicative of the legislative intent that separable amounts, or funds, could be provided for each of the three statutory purposes of participation, i.e., development, maintenance, and operation; and it would seem that in order to meet the obligations under an agreement which provided for separable funds in this connection, the taxing authority concerned could initiate proceedings to impose a levy for all of them, or separate levies for each of them.

One may readily conclude that funds raised by taxation in a "county municipal university taxing district," which are clearly ear-marked by the terms of the participation agreement for expenditure solely in "maintenance and operation" of the university concerned, could be deemed funds raised by "a levy for current expenses" of such university. Such being the case, a levy for this purpose could be approved by a majority vote of the electors voting on such a levy under the "current expenses" provision in Section 5705.26, supra.

It would seem, however, that funds raised in this manner for use in "development" of a municipal university could scarcely be placed in the category of current expenses. The term "development" in the case of an institution such as the university, rather clearly refers to such things as

capital improvements, expansion of plant and facilities, or expansion of educational programs. I am inclined to the view, therefore, that where the agreement is such as to permit the use of any of the funds raised by special levies within the taxing district for any or all of these three statutory purposes (including development,) such levies could not be considered "for the current expenses of \* \* \* municipal universities" within the meaning of Section 5705.26, supra.

We may next consider whether such a levy, specially ear-marked for "development," or designed for use in part for "development" at the option of the university authorities, can be considered a levy "for any other school purposes authorized by Section 5705.19 of the Revised Code."

In Section 5705.19, Revised Code, we find the following provision:

"The taxing authority of any subdivision \* \* \* 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:

"\* \* \* (E) For a municipal university not to exceed forty-five hundredths of a mill over the limitation of one mill prescribed in Section 3349.13 of the Revised Code;"

This reference to Section 3349.13, Revised Code, makes it clear that the reference in Section 5705.26, Revised Code, to "any other school purposes authorized by Section 5705.19" relates only to those levies for a municipal university which can be made on the property located within the municipal corporation concerned, in the limited amount authorized in Section 3349.13, Revised Code. For this reason I am impelled to conclude that a levy under the provisions of Section 3349.25, Revised Code, for the "development" of a municipal university cannot be deemed one "for any other school purpose authorized by Section 5705.19" within the meaning of the provision in Section 5705.26, supra, permitting approval by a vote of fifty-five per cent of the electors voting thereon. From this it directly follows that such a levy must be deemed one "for any other purpose" within the meaning of Section 5705.26, supra, and so would require the vote of sixty per cent of the electors voting on such levy for approval.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. Where an agreement for the support of a municipal university is made under the provisions of Section 3349.24, Revised Code, such agreement may provide separable amounts, or funds, for use by the university authorities for (1) development, (2) maintenance, or (3) operation of the municipal university concerned; or such agreement may provide one amount or fund which can be utilized by the university authorities for any or all of such purposes.

2. Where such an agreement for the support of a municipal university contains a provision for separable amounts, or funds, for use by the university for development, maintenance, and operation, a special levy outside the ten mill limitation, the proceeds of which are ear-marked in the resolution of the taxing authority for use only for maintenance or operation of the university, is one for "current expenses of \* \* \* municipal universities" and may, under the provisions of Section 5705.26, Revised Code, be approved at a general election by a majority of the electors voting on such levy; but if such levy under the terms of the agreement between the county commissioners and board of directors of the university is designed generally for use for the "development, maintenance, and operation" of the university concerned, or is limited solely for use for the "development" of such university, such levy is neither (1) one for "current expenses" of such university nor (2) one for another "school purpose authorized by Section 5705.19 of the Revised Code," and can therefore be approved at a general election only by a vote of sixty per cent of the electors voting on such levy.

Respectfully,

C. WILLIAM O'NEILL

Attorney General