

February 21, 2025

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

SYLLABUS:

2025-004

When renewal or replacement special levies are designated specifically for the provision of health and human or social services under R.C. 5705.191, the taxing authority has no authority to utilize funds for the wholly separate purpose of constructing permanent improvements. 1963 Ohio Atty.Gen.Ops. No. 63-154 followed.



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OPINION NO. 2025-004

The Honorable Michael C. O'Malley
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street
Cleveland, Ohio 44113

Dear Prosecutor O'Malley

You have requested a formal opinion regarding:

Whether the County may use funds derived from the HHS Levy for capital expenditures for the acquisition, construction, or renovation of permanent improvements that are inextricably intertwined with and made for the purpose of providing such services, or are the funds to be used solely for non-capital items in the nature of current operating expenses?

As context for the question, you have advised me:

The answer to the question being asked in this letter has immediate application.

The Alcohol, Drug Addiction & Mental Health Services Board of Cuyahoga County ("ADAMHS Board") is intending to use funds derived from the County's HHS Levy for capital items, including treatment facilities and the fixtures and equipment necessary to provide services at these facilities.

In making this inquiry, you ask me to re-examine a prior opinion on this subject, 1963 Ohio Atty.Gen.Ops. No. 63-154, which concluded that the proceeds of a levy under R.C. 5705.191 for child welfare services could only be expended for services for children and not for the construction of permanent improvements.

I

Cuyahoga County adopted a county charter form of government in 2011 pursuant to Article X, Section 3 of the Ohio Constitution. The county's charter provides that the county council is the legislative and taxing authority of the county. Cuy. Cty. Charter, art. III, §3.01.

Cuyahoga County has two ongoing levies for health and human services. Voters approved both levies "for the purpose of supplementing general fund appropriations for health and human or social services," according to the authorizing resolutions and the ballot language. A replacement levy with an increase seeking an

additional 4.7 mills was last approved in 2020, and it expires in 2028. The second levy, for 4.8 mills, was originally levied from 2016 to 2024, but it was approved for renewal in the 2024 primary election. Each time, the Cuyahoga County Council authorized the levies and placed them on the ballot for voter approval.

The Cuyahoga County Council employed identical language for each authorization, except for dates and millage. The authorizing resolution states that the levy is “for the purpose of supplementing general fund appropriations for health and human or social services” and that “it is necessary for the levy to become immediately effective in order that critical services provided by Cuyahoga County can continue.”

In 2020, the ballot language read:

A replacement of 3.9 mills of an existing levy and an increase of 0.8 mill, to constitute a tax for the benefit of the County of Cuyahoga for the purpose of supplementing general fund appropriations for health and human or social services at a rate not exceeding 4.7 mills for each one dollar of valuation, which amounts to 47 cents for each one hundred dollars of valuation, for eight years, commencing in 2020, first due in calendar year 2021.

II

Important to my analysis is whether a levy is a “general” or “special” levy as set forth in R.C. 5705.04. According to that provision:

The taxing authority of each subdivision shall divide the taxes levied into the following *separate* levies:

(A) The general levy for debt charges within the ten-mill limitation;

(B) The general levy for current expense within the ten-mill limitation;

(C) Special levies authorized by sections 5705.01 to 5705.47, inclusive, of the Revised Code, within the ten-mill limitation;

(D) The general levy for debt charges authorized by law or by vote of the people in excess of the ten-mill limitation;

(E) Other special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation.

(Emphasis added)

Because the tax levies at issue were authorized and levied pursuant to R.C. 5705.191, they are “special” levies with the proceeds designated for a specific

purpose. R.C. 5705.191 establishes the elements and requirements for a taxing authority to propose a tax issue to the electorate. It provides in relevant part:

The taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount 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 purposes in section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary, or special election to be held at a time therein specified.

The taxing authority of the county is also restricted by the Ohio Constitution, which provides:

No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.

Ohio Const., art. XII, §5.

III

A “general” tax levy for current expenses provides revenue derived from taxation for one general operating fund, out of which expenditures for any current expenses of any kind may be made. R.C. 5705.05. The revenue from a general tax levy may be used to carry into effect any of the general or special powers granted by law to the levying political subdivision, including the acquisition or construction of permanent improvements and, in the case of counties, the construction, reconstruction, resurfacing, or repair of roads and bridges. *Id.* “Permanent improvement” is defined as “any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.” R.C. 5705.01(E).

The two levies referenced in your question are “special” levies rather than general levies; they were levied pursuant to R.C. 5705.191 for specific purposes. 2013 Ohio Atty.Gen.Ops. No. 2013-005 addresses the difference between special levies and general levies, noting:

The term “special levy” is not defined by statute; however, prior Attorney General opinions have read “special levy” to mean “a levy for a specific purpose, as opposed to a general levy for current expenses.” 2011 Op. Att’y Gen. No. 2011-009, at 2-72 (quoting 2010 Op. Att’y Gen. No. 2010-028, at 2-205); 1999 Op. Att’y Gen. No. 99-015, at 2-115 (“[a] special levy is a tax that is levied for a special purpose”); 1992 Op. Att’y Gen. No. 92-058, at 2-239 fn. 1 (“[s]pecial levy’ is not expressly defined by statute . . . However, “special levy” is the term applied to a levy for a specific purpose, as opposed to a general levy for current expenses”). A special levy’s purpose may be limited to a particular use by the authorizing statute and further limited by the language of the levy resolution or ballot. 2012 Op. Att’y Gen. No. 2012-014, at 2-119; 2010 Op. Att’y Gen. No. 2010-028, at 2-205; 2005 Op. Att’y Gen. No. 2005-044, at 2-479 fn. 1 (“[t]he resolution and ballot language

cannot expand the purposes for which tax revenues may be expended beyond the purposes established by the language [of the levy statute], but may restrict the purposes for which tax revenues may be expended to specified purposes that come within the purposes authorized by [the levy statute]”); 1998 Op. Att’y Gen. No. 98-023, at 2-126 to 2-127; 1977 Op. Att’y Gen. No. 77-097, at 2-323 (“the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein”). Revenue collected as a result of a special levy must be credited to a special fund and used only for the purpose for which the levy was imposed. R.C. 5705.10(C) and (H); 2011 Op. Att’y Gen. No. 2011-031, at 2-251; 2009 Op. Att’y Gen. No. 2009-054, at 2-408 fn. 6; 1998 Op. Att’y Gen. No. 98-023, at 2-127; 1987 Op. Att’y Gen. No. 87-107, at 2-711.

In contrast, the purpose of a general levy for current expenses is to generate revenue from which “any expenditures for current expenses of any kind may be made.” R.C. 5705.05; 2011 Op. Att’y Gen.

No. 2011-009, at 2-72; 2010 Op. Att'y Gen. No. 2010-028, at 2-205. Because revenue from a general levy is used to make expenditures of any kind, the purpose of a general levy may not be limited by resolution or ballot language. 2009 Op. Att'y Gen. No. 2009-054, at 2-407 to 2-408 fn. 5. Furthermore, "proceeds of a general levy for current expenses must be available for all current expenses of a subdivision." 2010 Op. Att'y Gen. No. 2010-028, at 2-205 (quoting 1992 Op. Att'y Gen. No. 92-058, at 2-239).

Id. at 2-50, 51.

When proposing the replacement or renewal of an existing levy, the purpose of the replacement or renewal levy must be the same as the levy that is to be renewed or replaced. 2013 Ohio Atty.Gen.Ops. No. 2013-005 at 2-56. For example, R.C. 5705.192(B) establishes the requirements for a replacement tax levy, and one of those requirements is that "a replacement levy shall be limited to the purpose of the existing levy, and shall appear separately on the ballot from . . . the renewal of any other existing levy."

R.C. 5705.19 lists a variety of purposes for which a taxing authority may levy a tax if approved by voters, including:

(A) For current expenses of the subdivision;

...

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

...

(K) For the maintenance and operation of a county home or detention facility;

...

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

...

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

...

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

You have also asked me to re-examine a prior opinion on this subject, 1963 Ohio Atty.Gen.Ops. No. 63-154. In that opinion, the Attorney General advised:

2. A levy under Section 5705.191, Revised Code, for "the purpose of supplementing the General Fund for current expenses * * * for the purpose of making an appropriation for Child Welfare Services" is a special levy and all revenue derived therefrom shall be credited to a special fund for the purpose for which the levy was made.

3. The proceeds of a levy under Section 5705.191, Revised Code, for "the purpose of supplementing the General Fund for current expenses * * * for the purpose of making an appropriation for Child Welfare Services" may only be expended for services for children, viz. assistance, maintenance, etc., and may not be used

for the construction of permanent improvements.

You make the following inquiry:

I ask for your considered opinion on whether the prior opinion, 1963 Op. Att'y Gen. No. 1963-154, is controlling, such that funds derived from the County's HHS levy may only be used for the provision of "health and human or social services" to the exclusion of capital/permanent improvements, or whether it is appropriate to revisit that prior opinion and read the terms "health and human or social services" more broadly such that the levy funds in question may also be used for capital expenditures for permanent improvements – provided that the permanent improvements are associated with and necessary to provide such "health and human or social services."

The Ohio Revised Code does not define "human and social services." However, the provision of "services" is the subject of numerous laws enacted by the General Assembly. These appear generally to describe the provision of care and benefits and not physical structures. *See* R.C. 120.52 (legal services), R.C. 5121.01 (cost of support of residents in institutions; care and treatment

in private facilities), R.C. 5123.01 (Medicaid funded home and community based services), R.C. 5153.16 (listing types of services to be provided by county children services agency), R.C. 3701.61 [Amended and renumbered as R.C. 5180.21 by 2023 Am.Sub.H.B. 33, effective January 1, 2025], and Adm.Code 3701-8-09(C) (Help Me Grow home visiting services).

Examining the tax levy resolutions that you have provided for my review, alongside the levies' ballot language and the text of R.C. 5705.191 authorizing the tax, each states that the purpose of the levies is to supplement the general fund appropriations for health and human or social services. The purpose of the renewal and the replacement levies, therefore, must be construed to further "the purpose of the existing levy." R.C. 5705.192.

By contrast, the General Assembly has authorized counties to levy taxes specifically for the acquisition, renovation, and construction of permanent improvements in numerous sections of the Revised Code, including R.C. 5705.05 and 5705.19. In fact, R.C. 5705.221 is specifically designated for an ADAMHS board to raise tax dollars for "the acquisition, construction, renovation, financing, maintenance, and operation of alcohol and drug addiction facilities and mental health facilities." The levies under inquiry here, however, like the original levies, were levied for the stated and particular "purpose of supplementing general fund

appropriations for health and human or social services” under R.C. 5705.191.

The General Assembly has clearly differentiated between levies for public assistance, human or social services, relief, welfare, hospitalization, health, or support of general hospitals on the one hand, and those for the acquisition, construction, or renovation of permanent improvements, on the other hand. See 2000 Ohio Atty.Gen.Ops. No. 2000-048. “[T]he Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute.” *Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37 (1948). Had the General Assembly intended a particular result, “it would not have been difficult to find language which would express that purpose[,]” because it has used language elsewhere that plainly and clearly compelled that result. *Lake Shore Elec. Ry. Co. v. Pub. Util. Comm.*, 115 Ohio St. 311, 319 (1926); accord *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 66-67 (1915). Having used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended. See, *Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76 (1927).

Opinions of the Attorney General have continually recognized the difference between tax levies for social services and permanent improvements. Although services

may be more difficult to perform or effect without necessary facilities, by enacting distinct language for R.C. 5705.191 and 5705.221, the General Assembly intended separate and specific results for each. Cuyahoga County, as the taxing authority here, asked the electors to renew or replace levies for the sole and specific purpose of supplementing the county's general fund appropriations for health and human or social services pursuant to R.C. 5705.191. The levies in question could have been, but were not, levied pursuant to R.C. 5705.221. Under these circumstances, I must adhere to the rule that "the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein." 1998 Ohio Atty.Gen.Ops. No. 98-023, at 2-126 to 2-127; 1977 Ohio Atty.Gen.Ops. No. 77-097, at 2-323.

Conclusion

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

When renewal or replacement special levies are designated specifically for the provision of health and human or social services under R.C. 5705.191, the taxing authority has no authority to utilize funds for the wholly separate purpose of construction of permanent

improvements. 1963 Ohio Atty.Gen.Ops. No.
63-154 followed.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D" and a long, sweeping tail on the "Y".

DAVE YOST
Ohio Attorney General