

OPINION NO. 69-141**Syllabus:**

The 108th General Assembly, by its enactment of Amended Substitute House Bill No. 531, and specifically Section 19 thereof, intended that the determination of rate reduction for school operating levies as provided by such section, whether as a result of an equalization order or increase in value from a sexennial reappraisal, is to be calculated on the basis of increase in value, excluding the value of new construction.

To: Francis B. Douglass, Chairman, Board of Tax Appeals, Columbus, Ohio
By: Paul W. Brown, Attorney General, October 23, 1969

I have before me your request for my opinion which reads essentially as follows:

"To comply with Section 19 of Am.Sub. H.B. 531, as recently enacted by the 108th General Assembly, is the value of new construction in the year of a reappraisal or of an equalization order to be included in determining the increase in value for purposes of calculating the rate reduction in a given school district?"

Amended Substitute House Bill No. 531 was adopted by the 108th General Assembly as an emergency measure, approved by the Governor and filed in the Office of the Secretary of State on August 18,

1969. Being an emergency measure, it is effective as of such filing. Section 19 of that enactment reads as follows:

"Notwithstanding sections 5705.31, 5705.331, and 5713.11 of the Revised Code, and until January 1, 1971, after an increase in any school district in the real and public utility property tax list under the sexennial reappraisal required by section 5713.01 of the Revised Code or as a result of an equalization or the application of a uniform taxable value percent of true value pursuant to a rule or order of the board of tax appeals, the county budget commission shall not certify for collection any voted operating tax rate for such district until the commission has first reduced the voted operating millage authorized to be levied for that year and the subsequent year only to such a level as will, when certified for collection, produce the same amount of local voted operating revenue for such district as would have been produced had the real and public utility tax list not been increased in such manner, except that, in determining the amount of an increase resulting from sexennial reappraisal required by section 5713.01 of the Revised Code, the budget commission shall attribute only one-half of such increase in calculating the amount of local voted operating revenue which would have been produced had the real and public utility tax list not been so increased.

"During the fiscal year 1970-71, no school district whose millage is reduced under this section shall receive under division (A) of section 3317.02 of the Revised Code less than the amount it would have received under division (A) of section 3317.02 of the Revised Code, if there had been no valuation increase causing such millage reduction.

"Until July 1, 1971, any school district which had in effect on the effective date of this act a total operating levy for current expenses of at least 17 1/2 mills and which has its millage reduced under this section shall be deemed to comply with division (A) of section 3317.01 of the Revised Code provided such millage is reduced no further than the amount required under this section."

The issue with which your request for an opinion deals is whether or not the value of new construction is to be included as part of the increase in value, as a result of a sexennial reappraisal or as a result of an equalization order, for purposes of determining the reduction in voted operating millage authorized to be levied for the year in question (and subsequent year) as provided by Section 19, supra.

If it were not for Section 19, supra, there is no question as to the treatment of the value of new construction for the purposes of determining rate reduction as the result of a reappraisal or an increase pursuant to a rule or order of the Board of Tax Appeals for equalization purposes. Section 5713.11, Revised Code, provides in pertinent part as follows:

"When the people of any taxing subdivision have

voted additional levies for any purpose in the year of reassessment or any year prior thereto, or when the board of tax appeals of Ohio has increased the aggregate value of the real property in any taxing subdivision in any year under the provisions of sections 5715.24 to 5715.26, inclusive, of the Revised Code, and said additional levies are effective in the year of reassessment or thereafter or when the valuation is increased by order of the board of tax appeals to be effective in any year, and the levies are to be calculated on a total valuation of property higher than that of the year before reassessment, or the year before the valuation is increased by order of the board of tax appeals, the rate of said additional levy shall be reduced in the same proportion in which the total valuation of property in said taxing subdivision is increased by the reassessment or is increased by order of the board of tax appeals over the total valuation of the year preceding the reassessment or the order of the board of tax appeals, * * *."

Section 5705.331, Revised Code, in dealing with a limitation on the reduction under Section 5713.11, *supra*, of additional levies for current expenses for school districts, specifically provides as follows:

"* * *No reduction shall be made in the rates of such levies because of additions to the total valuation of property within the school district which have resulted from improvements which have added to the tax duplicate since the year preceding the reassessment."

In 1963, The Supreme Court of Ohio had before it the case of Board of Education of Campbell City School District, v. Mahoning County Budget Commission et al., 174 Ohio St. 294. In a *per curiam* decision, the Court specifically held as follows:

"The Board of Tax Appeals held that the reduction should be affected by all changes in the real, public utility and personal property duplicates excepting, because of the specific provisions of Section 5705.331, new construction on real property. The appellant contends that the reduction should be affected only by the increase caused by the reassessment.

"In our opinion, the words of Section 5713.11 plainly indicate that appellant's contention must be sustained. There is nothing in Section 5705.331, Revised Code, which would reasonably support a different conclusion."

Thus the Ohio Supreme Court recognized the propriety of excluding the value of new construction and, in addition, limited the increase in value to be utilized, for purposes of adjusting the tax rate, to that increase in value caused by the reassessment.

It seems quite clear, that were it not for Section 19, *supra*, the value of new construction would not be included in the increased value for purposes of determining rate reduction. The

authority for excluding such value is contained in Section 5705.331, supra.

Section 19, supra, however, was enacted into law and, as can be seen by reference to that Section as quoted above, the first sentence begins: "Notwithstanding Sections 5705.31, 5705.331, and 5713.11 of the Revised Code". The problem presented is a determination of the intent of the General Assembly in enacting Section 19, supra. To be more precise, did the General Assembly, by beginning Section 19, supra, with "Notwithstanding Sections * * * 5705.331 * * * Revised Code" intend to make completely inoperative the provision in that section that no reduction is to be made in rates of operating levies in school districts because of additions to total valuation of property resulting from new construction.

The Ohio Supreme Court, in State, ex rel. Carmean et al., v. Board of Education of Hardin County, 170 Ohio St. 415 (1960), had before it the question of the meaning of the word "notwithstanding" as used in an enactment by the General Assembly, and specifically held, at page 422 of the opinion, as follows:

" 'Notwithstanding' is defined in Webster's New International Dictionary (2 Ed.) as meaning "without prevention or obstruction from or by; in spite of." See State, ex rel. Morse, v. Christianson, 262 Wis., 262, 55 N.W. (2d), 20.

"It is axiomatic in statutory construction that words are not inserted into an act without some purpose. The General Assembly enacted Sections 3311.26 and 3311.261, Revised Code, at the same time. With full knowledge that these acts had been adopted and that conflicts might arise thereunder, the General Assembly inserted the word, 'notwithstanding,' and by so doing clearly indicated its intent that proceedings under Section 3311.261, Revised Code, should take precedence over pending proceedings previously instituted under the other enumerated sections."

Based on the foregoing, the Ohio Supreme Court has interpreted the phrase "notwithstanding" when used in statutory enactments to mean that if there is a recognized inconsistency between two or more statutory enactments, the enactment which provides "notwithstanding" the other enactments, would prevail. Applying this reasoning to Section 19, supra, the General Assembly intended that in the event of any inconsistency between such Section 19, supra, and Sections 5705.31, 5705.331, and 5713.11 of the Revised Code, Section 19, supra, is to prevail. Thus, in order to answer your question, we must look to such sections, including Section 19, supra, to determine whether or not an inconsistency exists with respect to the exclusion of the value of new construction for purposes of determining rate reductions.

Section 5705.31, supra, deals with powers of budget commissions to reduce certain tax levies and, among other things, provides for the determination a certain level or floor below which operating levies for school districts shall not be reduced. Section 5705.331, supra, likewise, provides, among other things, for the determination a level or floor below which operating levies for school districts shall not be reduced under the terms of Section 5713.11, supra. Section 5713.11, supra, in addition to those

provisions already discussed, provides for a floor or level below which current school operating levies shall not be reduced (except as provided in Sections 5705.31 and 5705.331, Revised Code).

Section 19, supra, on the other hand, provides for reduction of school operating levies different than those reductions provided for in Sections 5705.31, 5705.331, and 5713.11, supra, and, in addition, provides for floors with respect to receipts from the school foundation program (Section 3317.01, et seq., Revised Code) so that no school district shall receive less from the school foundation program than it would have received had there been no valuation increase. It also provides that no school district shall be affected in the event the total operating levy for current expenses in that school district was at least 17 1/2 mills and as a result of the operation of Section 19, supra, was subsequently reduced below 17 1/2 mills insofar as receipts from the school foundation program are concerned.

Thus there were clear inconsistencies between the provisions of Section 19, supra, and certain provisions of Sections 5705.31, 5705.331, and 5713.11, of the Revised Code, with respect to lower limits of reduction of school operating levies. The General Assembly, in its wisdom, was fully aware of such inconsistencies and obviously intended and provided that Section 19, supra, is to control insofar as such inconsistencies are concerned. Nowhere in Section 19, supra, however, is there any provision or any mention of the treatment of the value of new construction during the year of reappraisal, or during the year of an equalization order, insofar as the inclusion or exclusion of such value for purposes of determining rate reduction. There can scarcely be an inconsistency between the provision of Section 5705.331, supra, requiring that such value not be included for purposes of determining rate reduction and Section 19, supra, since nothing is said in Section 19, supra, with respect to that issue. I can only conclude that the General Assembly intended no change with respect to the treatment of the value of new construction for purposes of determining rate reductions by its enactment of Section 19, supra. This conclusion is supported by the fact that the General Assembly provided in Section 19, supra, that the purpose of the reduction and method of computing same, as a result of an equalization order, is to "produce the same amount of local voted operating revenue for such district as would have been produced had the real and public utility tax list not been increased in such manner." (Emphasis added.) I have already analyzed the treatment of the value of new construction in the event there had been no reappraisal of equalization order.

To conclude that the General Assembly intended the value of new construction in the appropriate year to be included as a part of the increased value for purposes of rate reduction would require a conclusion that the General Assembly intended to make Sections 5705.31, 5705.331, and 5713.11, supra, completely inoperative, at least for the purposes of Section 19, supra. To so conclude, in view of the foregoing, would require a much clearer statement of the intent of the General Assembly than the mere use of the word "notwithstanding", especially in view of the interpretation of that term, as used in statutory enactments, by the Ohio Supreme Court in the Carmean case, supra.

Therefore, it is my opinion and you are hereby advised that the 108th General Assembly by its enactment of Amended Substitute

House Bill No. 531, and specifically Section 19 thereof intended that the determination of rate reduction for school operating levies as provided by such section, whether as a result of an equalization order or increase in value from a sexennial reappraisal, is to be calculated on the basis of increase in value, excluding the value of new construction.