

Note from the Attorney General's Office:

1969 Op. Att'y Gen. No. 69-055 was overruled in part by
1988 Op. Att'y Gen. No. 88-036.

OPINION NO. 69-055**Syllabus:**

1. Tax levies made under authority of Section 509.01, Revised Code (township police constable), Section 5705.06 (F), Revised Code (township road and bridge), Section 5573.13, Revised Code (township road fund), and Section 5573.21, Revised Code (township road district fund), are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township. Such levies are subject to the ten-mill limitation prescribed by Section 5705.02, Revised Code.

2. Tax levies made under authority of Section 5575.10, Revised Code, are to be made upon all the taxable property of the township outside any municipal corporation or part thereof, not exceeding, in the aggregate, two mills in any one year upon each dollar of the valuation of such property.

To: Richard J. Wessel, Butler County Pros. Atty., Hamilton, Ohio
By: Paul W. Brown, Attorney General, June 4, 1969

Your letter requesting my opinion states in part:

"The trustees of Lemon Township in Butler County, Ohio, have requested that this office seek an opinion from your office regarding the interpretation of the law regarding taxes to be collected within the ten mill limitation.

"It appears that the full inside millage is assessed and collected only in the Village of Monroe, which lies within Lemon Township. Beyond the corporate limits of the village, only 9.18 mills is being collected.

"The trustees' specific question is: Is there a method whereby the trustees may levy all or some part of the remaining 0.82 mills for the benefit of the township police, and/or the township road and bridge fund."

Your letter refers to a levy or levies within the ten-mill limitation. Section 5705.02, Revised Code, reads:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'ten-mill limitation,' and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution."

Section 5705.01, Revised Code, reads in pertinent part:

"As used in sections 5705.01 to 5705.47, inclusive, of the Revised Code:

"(A) 'Subdivision' means any county, municipal corporation, township, township police district * * *

"(B) 'Municipal corporation' means all municipal corporations, including those which have adopted a charter under Article XVIII, Ohio Constitution.

"(C) 'Taxing authority' * * * means, * * * in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; * * * in the case of a township, the board of township

trustees; and in the case of a township police district, * * * the board of township trustees of the township in which such district is located.

* * * * *

"(H) 'Taxing unit' means any subdivision or other governmental district having authority to levy taxes on the property in such district, * * * including * * * road districts * * *.

* * * * *

"(J) 'Tax list' and 'tax duplicate' mean the general tax lists and duplicates prescribed by sections 319.28 and 319.29 of the Revised Code.

"(K) 'Property,' as applied to a tax levy, means taxable property listed on such general tax lists and duplicates."

A village is a municipal corporation. A village, a township, and a township police district are each a subdivision, and a road district is a taxing unit within the meaning of such terms as defined by Section 5705.01, Revised Code.

Any tax authorized and levied by a subdivision or taxing unit must be levied uniformly upon all taxable property within such subdivision or taxing unit unless otherwise provided by law. The ten-mill limitation refers to the aggregate amount that may be levied by all subdivisions and taxing units collectively upon the taxable property located within such subdivisions and taxing units.

Assuming the facts stated in your letter, the taxable property located within the village which is within the township is being taxed the full ten mills. No further tax may be levied within the ten-mill limitation upon all the taxable property within a subdivision when a portion of that subdivision is already being taxed at the full ten mills. It is therefore necessary to consider whether the 0.82 millage may be levied upon the property within the township except for

the property located within the village for either of the purposes mentioned in your question. Each of the purposes mentioned in your question will be considered separately.

A board of township trustees is authorized to appoint police constables for the township but such board has no authority to appoint any other police officers, cf. Opinion No. 259, Opinions of the Attorney General for 1963.

Section 509.01, Revised Code, reads in pertinent part:

"* * * The board may pay each police constable, from the general funds of the township, such compensation as the board by resolution prescribes for the time actually spent in keeping the peace, protecting property, and performing duties as a police constable. Such police constable shall not be paid fees in addition to the compensation allowed by the board for services rendered as a police constable.
* * *"
(Emphasis added)

Any levy for the general fund of the township must be made upon all of the taxable property within the township which would necessarily include the taxable property located within the village which is already being subjected to the full ten mills. At the present time there is no additional millage available within the ten-mill limitation which may be levied for township general fund purposes. The township police constable is authorized to be paid from the general funds of the township, but under the present circumstances no additional levy may be made within the ten-mill limitation for such purpose.

The trustees of any township may create a township police district comprised of all or a portion of the unincorporated territory of the township pursuant to Section 505.48, Revised Code.

Section 505.51, Revised Code, reads:

"The board of trustees of a township police district may levy a tax upon all

of the taxable property in the township police district pursuant to sections 5705.19 and 5705.25 of the Revised Code to defray all or a portion of expenses of the district in providing police protection."

Such sections mentioned in Section 505.51, Revised Code, relate to levies which are outside the ten-mill limitation and therefore not within the scope of your question.

Specifically, no part of the 0.82 mills can be used for the benefit of a township police district if such a district now exists or if such a township police district were now created pursuant to Section 505.48, Revised Code.

Consideration will now be given to the second part of your question which refers to the levy of 0.82 mills for the township road and bridge fund.

Section 5705.05, Revised Code, reads in pertinent part:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligations to levy such special tax. * * *"

(Emphasis added)

Section 5705.06, Revised Code, reads in pertinent part:

"The following special levies are hereby authorized without vote of the people:

"(F) In the case of a township, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges on such roads, including the township's proportion of the cost of the construction, improvement, maintenance, and

repair of county roads and bridges;

"* * * * *"

"Each such special levy shall be within the ten-mill limitation and shall be subject to the control of the county budget commission, as provided by sections 5705.01 to 5705.47, inclusive, of the Revised Code.

"Except for the special levies authorized in this section any authority granted by the Revised Code to levy a special tax within the ten-mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses."

Sections 5705.05 and 5705.06, Revised Code, relate to levies upon all the taxable property within the township which necessarily must include the taxable property within the village. Upon the facts heretofore mentioned, there is no remaining unlevied millage within the ten-mill limitation available at the present time for an additional levy pursuant to Section 5705.06, Revised Code.

Section 5573.13, Revised Code, reads in pertinent part:

"* * * For the purpose of providing by taxation a fund for the payment of the township's proportion of the compensation, damages, and costs of constructing, reconstructing, resurfacing, or improving roads under sections 5571.01, 5571.06, 5571.07, 5571.15, 5573.01 to 5573.15, inclusive, and 5575.02 to 5575.09, inclusive, of the Revised Code, and for the purpose of maintaining, repairing, or dragging any public road or part thereof under their jurisdiction in the manner provided in sections 5571.02 to 5571.05, inclusive, 5571.08, 5571.12, 5571.13, and 5575.01 of the Revised Code, the board of trustees may levy, annually, a tax not exceeding three mills upon each dollar of the taxable property of said township. Such levy shall be in addition to all other levies authorized for township purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force. * * *" (Emphasis added)

Tax levies made under authority of Section 5573.13, Revised Code, are to be made upon all the taxable property of a township, including that of municipal corporations therein, cf. Opinion No. 207, Opinions of the Attorney

General for 1919. See also Section 5573.07 (B) (1), Revised Code. For reasons already given, no millage is available for an additional levy within the ten-mill limitation pursuant to Section 5573.13, Revised Code.

Section 5573.21, Revised Code:

"The board of township trustees of a township in which there is located a municipal corporation or a part thereof, may, by resolution, erect that portion of the township not included within the corporate limits of such municipal corporation into a road district, whenever in its opinion it is expedient and necessary and for the public convenience and welfare, for the purpose of constructing, reconstructing, resurfacing, or improving, the public roads within such district. The district so created shall be given an appropriate name by which it shall be designated.

"After such district has been created, the board shall have all the powers and duties which it has under sections 5571.01, 5571.06, 5571.07, 5571.15, 5573.01 to 5573.14, inclusive, and 5575.02 to 5575.09, inclusive, of the Revised Code, and it shall proceed in like manner in the constructing, reconstructing, resurfacing, improving, maintaining, repairing, and dragging of township roads, or part thereof, in such cases as provided for the board in township road construction."

A road district, created pursuant to Section 5573.21, Revised Code, does not include the territory within the corporate limits of a municipal corporation. However, the powers and duties of such road district (including the power to levy taxes) must be found within the sections specified. As hereinbefore mentioned, the power to levy a tax upon taxable property must include all the taxable property within the township, including the taxable property within the municipal corporation. See also Opinion No. 207, Opinions of the Attorney General for 1919. Under the circumstances, no millage is available for an additional levy within the ten-mill limitation pursuant to Section 5573.21, Revised Code.

Section 5575.10, Revised Code:

"After the annual estimate for each township has been filed with the board of township trustees by the county engineer, such board may increase or reduce the amount of any items contained in the estimate, and at its first meeting after such estimate is filed the board shall make its levies for the purposes set forth in the estimate and for creating a fund for dragging, maintenance, and repair of roads, upon all the taxable property of the township outside of any municipal corporation or part thereof, not exceeding, in the aggregate, two mills in any one year upon each dollar of the valuation of such property. Such levies shall be in addition to all other levies authorized for township purposes, and subject only to the limitation upon the combined maximum rate for taxes now in force. This section does not prevent the expenditures of any portion of the regular levy of two mills for township purposes, but is in addition thereto. The board shall provide annually by taxation, under this section or under section 5573.13 of the Revised Code, or under both, an adequate fund for the maintenance and repair of township roads.

"The maintenance and repair fund so provided shall not be less than one hundred dollars for each mile of improved township road and twenty dollars for each mile of unimproved township road. Such levies for maintenance and repair purposes shall be separately set forth in the annual budget of the board presented to the budget commission, and the maintenance and repair levies made by the board, pursuant to this section, shall be preferred levies as against any others made for township road purposes by the board. Should the budget commission of any county be unable to allow all of the road levies made by the board, such reductions as are necessary shall be first made in levies other than for maintenance and repair purposes made under this section. The fund produced by such levies for maintenance and repair purposes shall not be subject to transfer, by order of court or otherwise, and shall be used solely for the maintenance and repair of the township roads within the township. This section does not prevent the board from using any other available road funds for the maintenance and repair of township roads."

(Emphasis added)

Section 5575.10, Revised Code, provides for a levy upon all property outside any municipal corporation or part thereof. Assuming that the other conditions exist and such a levy does not violate any of the limitations provided,

the 0.82 mills remaining within the ten-mill limitation are available within the territory of the township and outside the village for levy by the board of township trustees pursuant to the provision of Section 5575.10, Revised Code.

It should be noted that levies pursuant to Chapters 5573 and 5575, Revised Code, are for road fund purposes which differ from levies for road and bridge purposes. Each of such funds is separately maintained and must be used only for the purpose authorized. Although your letter of request referred only to the road and bridge fund, the purposes of the road funds are sufficiently similar to also be given consideration with reference to the question presented.

In summary, you are advised that:

1. Tax levies made under authority of Section 509.01, Revised Code (township police constable), Section 5705.06 (F), Revised Code (township road and bridge), Section 5573.13, Revised Code (township road fund), and Section 5573.21, Revised Code (township road district fund), are to be made upon all the taxable property within the township, including the taxable property within any municipal corporations within such township. Such levies are subject to the ten-mill limitation prescribed by Section 5705.02, Revised Code.

2. Tax levies made under authority of Section 5575.10, Revised Code, are to be made upon all the taxable property of the township outside any municipal corporation or part thereof, not exceeding, in the aggregate, two mills in any one year upon each dollar of the valuation of such property.