

OPINION NO. 75-016

Syllabus:

Where it is desired to renew a .03 mill levy for mental health and retardation purposes, which has been reduced by the county budget commission to .01 mill under R.C. 5705.32, the form of the ballot under R.C. 5705.25 should show that the levy will consist of a renewal of the .03 mill levy rather than an increase of the .01 mill levy. (1965 Op. Att'y Gen. No. 65-176, 1960 Op. Att'y Gen. No. 1664, p. 600, and 1953 Op. Att'y Gen. No. 3061, p. 457, distinguished)

To: John D. Martin, Fairfield County Pros. Atty., Lancaster, Ohio
By: William J. Brown, Attorney General, March 17, 1975

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

"On November 3, 1970, a five (5) year local operating levy in the amount of .03 mills was approved by the voters of Fairfield County, which provided, with State participation, the continuance of existing mental health and mental retardation services plus allowing a means of greater extension and comprehensiveness of these services.

"In August, 1973, a decision by the Fairfield County Budget Commission, reduced the amount of millage to be collected in calendar year, 1974 to .01 mills; the .01 millage level will also carry through the calendar year, 1975.

"In calendar year 1975, the 648 Board of Fairfield County must again go before the voters to request a renewal of the aforementioned mental health and mental retardation levy. Resultingly, the 648 Board of Fairfield County asks for an opinion as to whether or not the 648 Mental Health and Mental Retardation levy can be renewed at .03 mill as originally approved by the voters or at .01 mill as established by the Fairfield County Budget Commission."

A tax levy for mental health and retardation purposes is submitted by the board of county commissioners pursuant to R.C. 5705.221. As recently amended, this Section permits a ten-year levy. See 1974 Op. Att'y Gen. No. 74-061.

A question similar to yours has been answered by several previous Opinions of the Attorney General. Upon close in-

spection, however, they reveal a crucial difference from the instant case.

1960 Op. Att'y Gen. No. 1664, p. 600, advised in the syllabus as follows:

"1. When the county auditor has reduced the rate of an additional levy pursuant to the provisions of Section 5713.11, Revised Code, he has in effect reduced the 'levy' as that term is used in Section 5705.25, Revised Code.

"2. Where the rate of such a levy has been reduced from 3 mills to 2.6 mills pursuant to Section 5713.11, Revised Code, and it is proposed to 'renew' the levy for another term at the original rate, the form of the ballot under Section 5705.25, Revised Code, should show that the levy will consist of a renewal of 2.6 mills and an increase of .4 mills, to constitute a tax not exceeding 3 mills."

This Opinion was approved and followed in 1965 Op. Att'y Gen. No. 65-176. See also, 1953 Op. Att'y Gen. No. 3061, p. 457.

All these Opinions involved a reduction of a tax levy pursuant to R.C. 5713.11. Such reduction is made by the budget commission according to a formula set forth in R.C. 5713.11, whenever there is an increase in the total property valuation within a taxing district subsequent to the passage of a levy. The evident purpose of this reduction is to keep the total amount of money to be collected at the level approved by the taxpayers.

The effect of this reduction is permanent; therefore, millage as reduced under R.C. 5713.11 is considered the legal millage for purposes of renewal. This reasoning was the basis of the Opinions cited previously, although it was most fully explained in Op. No. 3061, *supra*. R.C. 5713.11 now provides expressly that a reduction in millage pursuant to its authority is permanent, as follows:

"* * *Such levies shall be subject to further adjustment in the succeeding year under section 5713.111 of the Revised Code, but if no such adjustment is made, the adjustment made under this section shall be a permanent reduction applicable for the life of the levy * * *."

However, the levy for mental health and retardation purposes mentioned in your letter was not decreased pursuant to R.C. 5713.11. There had been no such increase in the total property valuation in Fairfield County, subsequent to the passage of the original levy in 1970, as would have brought R.C. 5713.11 into play. Rather, the county budget commission reduced the levy pursuant to R.C. 5705.32, which reads in part as follows:

"The county budget commission shall adjust the estimated amounts required from the general property tax for each fund as shown by such budgets, so as to bring the tax levies required therefor within the limi-

tations specified in sections 5705.01 to 5705.47, inclusive, of the Revised Code, for such levies, but no levy shall be reduced below a minimum fixed by law. The commission shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom. * * *

This Section grants the budget commission discretionary authority to reduce the millage allotted to each subdivision or other taxing authority, in order to bring the total amount within the applicable limitations. See State ex rel. Dayton v. Patterson, 93 Ohio St. 25 (1915). A reduction can be made in a particular levy when it appears that the millage rate will yield a greater amount than will be necessary for operating expenses during any one year.

In 1973, the budget commission reduced the levy for mental health and retardation purposes from .03 mill, as approved by a vote of the people in 1970, to .01 mill. Your letter states that this reduction is to continue through 1975, but I know of no authority for the commission to adjust the 1975 budget in its 1973 meeting. R.C. 5705.31 requires the county auditor to present the budget commission with the annual tax budgets submitted to him under R.C. 5705.01 to 5705.47, along with other information. The budget commission is required to approve certain levies pursuant to R.C. 5705.31, and adjust the rest pursuant to R.C. 5705.32. These functions must be performed every year. Thus, while the budget commission may anticipate a similar reduction of the levy to .01 mill in a succeeding year, it must once again reduce the levy to that amount in its annual meeting for such action to be effective.

Herein lies the difference between R.C. 5713.11 and 5705.32 for present purposes. The general millage reduction required by R.C. 5713.11 is effective for the life of the levy, or until further action; but the selective millage reduction authorized by R.C. 5705.32 must be effected annually. Thus, it is quite sensible to consider a millage as reduced pursuant to R.C. 5713.11 to be "the levy", for purposes of renewal. In contrast, there is nothing in R.C. 5705.32 to prevent the budget commission from restoring a particular levy to its original level, or making some lesser increase, in a subsequent year. Its determinations are made on an annual basis, and are discretionary, to be based on the needs of each taxing authority. Hence, there is no logical reason to consider a levy as reduced pursuant to R.C. 5705.32 in any particular year or years to be "the levy" for purposes of renewal. Rather, the original levy approved by vote of the people should be so considered. If adjustment is necessary in subsequent years to comply with the limitations imposed by R.C. Chapter 5705., and the budget commission determines that the needs of the 648 Board justify only a .01 mill levy, it can always reduce the annual levy to that amount pursuant to R.C. 5705.32.

In specific answer to your question, it is my opinion and you are so advised that where it is desired to renew a .03 mill levy for mental health and retardation purposes, which has been reduced by the county budget commission to .01 mill under R.C. 5705.32, the form of the ballot under R.C. 5705.25 should show that the levy will consist of a renewal of the .03 mill levy rather than an increase of the .01 mill levy.

(1965 Op. Att'y Gen. No. 65-176, 1960 Op. Att'y Gen. No. 1664,
p. 600, and 1953 Op. Att'y Gen. No. 3061, p. 457, distinguished)