

OPINION NO. 91-042**Syllabus:**

When a special election for a tax levy for community mental retardation and developmental disabilities programs and services pursuant to R.C. Chapter 5126 is held under R.C. 5705.19(L) on the primary election date in an odd-numbered year, the county is the "subdivision submitting the special election" for purposes of R.C. 3501.17. Accordingly, the board of county commissioners must pay costs relating to the special election as provided in R.C. 3501.17.

To: R. Larry Schneider, Union County Prosecuting Attorney, Marysville, Ohio
By: Lee Fisher, Attorney General, September 26, 1991

I have before me your request for an opinion relating to the costs of a special election. You ask "[w]hether the Board of County Commissioners or the Board of Mental Retardation and Developmental Disabilities (organized pursuant to Chapter 5126) is responsible for the costs of a special election from a new tax levy under 5705.19(L) to be held on the primary election date in an odd-numbered year."

R.C. 3501.17 provides, in general, that the expenses of a board of elections shall be paid from the county treasury. Certain costs relating to elections are charged to various subdivisions and withheld by the county auditor from the moneys payable to such subdivisions at the time of the next tax settlement. R.C. 3501.17.

With respect to special elections, R.C. 3501.17 states that "the subdivision submitting the special election shall be charged for the cost of ballots and advertising for such special election, in addition to the charges prorated to such subdivision for the election or nomination of candidates in each precinct within the subdivision...." Your question is whether the county board of mental retardation and developmental disabilities ("county MR/DD board") should be charged for the costs of the election pursuant to R.C. 3501.17, or whether the costs should be borne by the county.

The tax levy to which your question relates originates under R.C. 5705.19(L). That provision authorizes the taxing authority of a subdivision to submit to the voters a tax levy "[f]or community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code." R.C. 5705.19(L) specifies that the procedure for such levies shall be governed by R.C. 5705.222.

In order for a tax levy to be submitted to the voters in accordance with R.C. 5705.222, the board of county commissioners must declare by resolution that the amount of taxes that can be raised within the ten-mill limitation, *see* Ohio Const. art. XII, §2; R.C. 5705.02, will be insufficient to provide the necessary requirements of the county MR/DD board, and that it is necessary to levy a tax in excess of the limitation "for the operation of mental retardation and developmental disabilities programs and services and for the acquisition, construction, renovation, financing, maintenance, and operation of mental retardation and developmental disabilities facilities." The board of county commissioners then certifies the resolution to the board of elections. *See* R.C. 5705.222; R.C. 5705.25. After such a tax is approved by the voters and levied, the county MR/DD board "within its budget and with the approval of the board of county commissioners through annual appropriations," may use the tax proceeds for any of the purposes authorized by R.C. 5705.222. *See* R.C. 5705.222.

A county MR/DD board created pursuant to R.C. Chapter 5126 is given statutory responsibilities with respect to the operation of facilities, programs, and services for mentally retarded and developmentally disabled persons, including the provision of special education programs pursuant to R.C. Chapter 3323. *See* R.C. 5126.05. A county MR/DD board has authority to receive property by gift, grant, devise, or bequest. *See* R.C. 5126.05. A county MR/DD board is, however, granted no authority to impose taxes, and it does not receive payments directly at the time of tax settlement. *See, e.g.,* R.C. 321.24; R.C. 321.31; R.C. Chapter 5705. *See generally* 1957 Op. Att'y Gen. No. 638, p. 209. Instead, a county MR/DD board receives funding from the board of county commissioners. *See* R.C. 5126.05(I) ("[t]he board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation and developmental disabilities to perform its functions and duties as provided by this section, and may utilize any available local, state, and federal funds for such purpose"); *Jackson County Board of Mental Retardation & Developmental Disabilities v. Board of Commissioners*, 49 Ohio St. 3d 63, 551 N.E. 2d 133 (1990). *See generally* 1988 Op. Att'y Gen. No. 88-096; 1984 Op. Att'y Gen. No. 84-054; 1968 Op. Att'y Gen. No. 68-093. In certain circumstances, a county MR/DD board may also receive state funds. *See* R.C. 5123.351; *Jackson County Board of Mental Retardation & Developmental Disabilities v. Board of Commissioners*.

It is clear, in the situation you have described, that the county is the entity that submits the special election. A county MR/DD board has jurisdiction that is coextensive with the county. *See, e.g.,* R.C. 5126.02; R.C. 5126.05. The board of county commissioners has the duty of providing funds to the county MR/DD board. *See* R.C. 5126.05(I); *Jackson County Board of Mental Retardation & Developmental Disabilities v. Board of Commissioners*. The board of county commissioners is the body with authority to make the decision to present to the voters a tax levy to fund mental retardation and developmental disabilities programs, services, and facilities under R.C. 5705.19(L) and R.C. 5705.222. Further, the board of county commissioners is the taxing authority that certifies to the board of elections the resolution proposing the levy. R.C. 5705.222; R.C. 5705.25. After the tax is approved by the voters and levied, proceeds are available to a county MR/DD board only "with the approval of the board of county commissioners through

annual appropriations." R.C. 5705.222. *See generally* 1984 Op. Att'y Gen. No. 84-089; 1982 Op. Att'y Gen. No. 82-018. It is also clear that a county is a subdivision. *See, e.g.*, R.C. 3501.01(T); R.C. 5705.01(A). It follows that the county is the "subdivision submitting the special election" for purposes of R.C. 3501.17, and that the county should be charged for the appropriate costs pursuant to R.C. 3501.17.

You have asked specifically whether the term "subdivision," as used in R.C. 3501.17, has the same meaning as the term "political subdivision," defined in R.C. 3501.01(T), and also whether a county MR/DD board might be classified as a "school district" and thus come within the definition set forth in R.C. 3501.01(T). It is not necessary to address these issues in order to answer to your question. It is clear, regardless of what definition of "subdivision" is used, that a county MR/DD board is not the entity "submitting the special election" under R.C. 5705.19(L) for purposes of R.C. 3501.17, and it follows that the county MR/DD board may not be charged for costs pursuant to R.C. 3501.17. Further, it would be impossible for a school district to be the subdivision that submits a special election for a tax levy under R.C. 5705.19(L), because R.C. 5705.19 states expressly that it "does not apply to school districts."

It is, therefore, my opinion, and you are hereby advised that, when a special election for a tax levy for community mental retardation and developmental disabilities programs and services pursuant to R.C. Chapter 5126 is held under R.C. 5705.19(L) on the primary election date in an odd-numbered year, the county is the "subdivision submitting the special election" for purposes of R.C. 3501.17. Accordingly, the board of county commissioners must pay costs relating to the special election as provided in R.C. 3501.17.