

**OPINION NO. 79-063****Syllabus:**

1. Subject to the mandated minimum taxes under R.C. 5705.31 and the ten-mill limitation, the county budget commission, in certifying a tax levy, may modify or reduce any levy so long as each tax levy applies uniformly throughout the taxing district within the terms of Ohio Const. art. XII, §2.
2. Levies in excess of the minimum specified in R.C. 5705.31 may be reduced or modified in any reasonable manner at the discretion of the budget commission.
3. In determining whether a park district levy should be certified,

the budget commission may take into account the fact that to certify the park levy would necessitate a reduction in other levies, and may decline to certify the levy for that reason.

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**To: Ronald J. Mayle, Sandusky County Pros. Atty., Fremont, Ohio**  
**By: William J. Brown, Attorney General, September 27, 1979**

I have before me your request for my opinion in which you incorporate the following information:

As background, I would set forth several facts. The Sandusky County Park District includes all of Sandusky County, Ohio. At no time during its existence has the Board of Commissioners of the Sandusky County Park District attempted to levy taxes under the authority of Section 1545.20 of the Ohio Revised Code. At all times during its existence, real estate in numerous subdivisions in Sandusky County, Ohio, has been taxed at the maximum permitted under the single "10 mill limitation".

Also, please assume that any budget submitted by the Board of Commissioners of the Sandusky County Park District to the Sandusky County Budget Commission would indicate a clear and demonstrable need for the funds to be levied under Section 1545.20 of the Revised Code.

The specific questions you ask are:

If upon the initial request of a county park district to a county budget commission for a tax levy under Section 1545.20 of the Ohio Revised Code the county budget commission finds such request to be proper, does a county budget commission have the mandatory duty to reduce the levies of other taxing districts where real estate is already being taxed at the "10 mill limitation" in other subdivisions?

If a county budget commission has such a mandatory duty, is the reduction in other tax levies to be accomplished on a proportionate basis or may the reduction in other tax levies be at the complete discretion of a county budget commission?

Park districts are established under R.C. Chapter 1545. As you note in your letter, R.C. 1545.20 provides for the levy of taxes to support a park district, stating in pertinent part:

A board of park commissioners may levy taxes upon all the taxable property within the park district in an amount not in excess of one half of one mill upon each dollar of the assessed value of the property in the district in any one year, subject to the combined maximum levy for all purposes otherwise provided by law. After the budget commission of the county in which said district is located certifies such levy, or such modification thereof as it deems advisable, to the county auditor, he shall place it upon the tax duplicate. (Emphasis added.)

Hence, it appears that the park levy is subject to the combined maximum levy and to approval by the budget commission.

The "combined maximum levy" referred to in R.C. 1545.20 is established in Ohio Const. art. XII, §2, which reads in part:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local

purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value.

This rule is restated in R.C. 5705.02 and is known as the "ten-mill limitation." Towne Properties Inc. v. City of Fairfield, 50 Ohio St. 2d 356 (1977). R.C. 5705.02 reads as follows:

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.

The duty of the budget commission with respect to tax levies is set forth in R.C. 5705.31, as follows:

The county auditor shall present to the county budget commission the annual tax budgets submitted to him under sections 5705.01 to 5705.47 of the Revised Code, together with an estimate prepared by such auditor, of the amount of any state levy, the rate of any school tax levy as previously determined, and such other information as the commission requests or the commissioner of tax equalization prescribes. The budget commission shall examine such budget and ascertain the total amount proposed to be raised in the county for the purposes of each subdivision and other taxing units therein.

The commission shall ascertain that the following levies have been properly authorized and if so authorized, shall approve them without modification:

- (A) All levies in excess of the ten-mill limitation;
- (B) All levies for debt charges not provided for by levies in excess of the ten-mill limitation, including levies necessary to pay notes issued for emergency purposes;
- (C) The levies prescribed by sections 741.09 and 741.40 of the Revised Code;
- (D) A minimum levy within the ten-mill limitation for the current expense and debt service of each subdivision or taxing unit, which shall equal two-thirds of the average levy for current expenses and debt service allotted within the fifteen-mill limitation to such subdivision or taxing unit during the last five years said fifteen-mill limitation was in effect unless such subdivision or taxing unit requests an amount requiring a lower rate. If the levies required in divisions (B) and (C) of this section for said division or taxing unit equal or exceed the entire minimum levy of said subdivision as fixed, the minimum levies of the other subdivisions or taxing units shall be reduced by the commission to provide for said levies and an operating levy for said subdivision. Such additional levy shall be deducted from the minimum levies of each of the other subdivisions or taxing units, but the operating levy for a school district shall not be reduced below a figure equivalent to forty-five per cent of the millage available within the ten-mill limitation after all the levies in divisions (B) and (C) of this section have been provided for;

(E) The levies prescribed by section 3709.29 of the Revised Code;

(F) Divisions (A), (B), (C), (D), and (E) of this section are mandatory and commissions shall be without discretion to reduce such minimum levies except as provided in such divisions.

If any debt charge is omitted from the budget, the commission shall include it therein. (Emphasis added.)

It is clear, then, that the budget commission's discretion to certify or not to certify a tax levy submitted to it is limited to those levies that are not mandated levies. State ex rel. Bd. of Educ. of East Liverpool City School District v. Columbiana County Budget Comm'n, 140 Ohio St. 65 (1942). Compare In re Transfer of Funds, Eastern Local School District, 85 Ohio L. Abs. 577 (C.P. Meigs County 1960).

Since there is no mandated minimum tax levy for the support of the park district, the budget commission, within the bounds of good faith and reasonableness, may exercise discretion in the certification of the park district levy. This is evident from the express language of R.C. 1545.20, supra, which states that any park levy is subject to the ten-mill limitation and empowers the budget commission to certify the park district levy "or such modification thereof as it deems advisable."

Furthermore, in State ex rel. Dayton v. Patterson, 93 Ohio St. 25, 34-35 (1915), the Court held that, aside from mandated taxes, the budget commission may exercise its discretion in modifying the tax levy requests, and need not limit itself to making proportionate reductions in other taxes:

[T]his court has indicated that in making a reduction the budget commissioners should have due regard to the proportions of the total amount that each taxing board or taxing officer is authorized to levy. Can it be said that in the present case such regard was not had? The aggregate of all taxes that may be levied for corporation purposes under Section 5644-3a, General Code, is 5 mills; for school purposes the same. When the adjustment and reduction were made in the present case the levy for corporation purposes was 3.621 mills; for school purposes 3.929 mills. As we have seen, the budget commissioners, when they examine the budgets, have before them a full and detailed statement of the financial condition of each taxing authority in the taxing district and the data upon which the needs and requirements of the taxing officers and boards are based. In the case at bar they deemed it advisable from the information at hand to reduce the estimate of the city of Dayton for corporation purposes and to leave undisturbed the estimate of the board of education. They had authority to do this.

However, in the situation your letter describes, some municipalities in the territory comprising the park district are currently taxed at the ten-mill constitutional maximum. Therefore, if the budget commission were to approve the park district levy, the property owners in these municipalities would be taxed in excess of ten mills, without their vote and in violation of both Ohio Const. art. XII,

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1 The ten-mill rule is not absolute. It has been held that despite the provisions discussed above, the legislative branch of a charter city may, by proper enactment and within the limitation of the charter authorizing such action, direct a tax levy for current expenses of the city in excess of the ten-mill limitation without a vote of the people. R.C. 5705.18. Sinclair v. City of Lakewood, 106 Ohio App. 354 (Cuyahoga County 1958), appeal dismissed, 168 Ohio St. 372 (1958). To facilitate discussion, I will assume that all cities in your county are bound by the ten-mill limitation and have not taken advantage of their ability to raise the limitation above ten mills.

§2, and R.C. 5705.02. This would be an obvious abuse of discretion on the part of the budget commission and an unlawful action. State ex rel. Dayton v. Patterson, supra, at 33-34.

Hence, within the municipalities currently at the ten-mill maximum, the park district tax may not be levied unless other taxes are reduced, so that the aggregate property tax does not exceed ten mills. Furthermore, R.C. 5705.31 provides that certain levies must be approved without modification. Therefore, so long as the minimum tax levies in aggregate equal the ten-mill limitation, there is no discretion to be exercised by the commission and these levies may not be reduced to accommodate the park district's tax levy within the ten-mill limitation. Cambridge City School Dist. v. Guernsey County Budget Comm'n, 11 Ohio App. 2d 77 (Guernsey County 1967), aff'd, 13 Ohio St. 2d 77 (1968).

I am aware that in 1956 Op. Atty Gen. No. 7421, p. 813, my predecessor opined that where the minimum tax levies exceed the ten-mill limitation, it is the duty of the budget commission to make proportionate reductions to bring the aggregate within the ten mills. I take no issue with this opinion, and note that that opinion addressed only the mandatory minimums of R.C. 5705.31. Therefore, notwithstanding this opinion, there remains with the budget commission discretion to modify or reduce levies to accommodate the park district levy where the mandated minimum levies would not be affected by the addition of the park district levy. In so doing, the budget commission may act in any reasonable manner and is not bound to make proportionate reductions.

In 1966 Op. Atty Gen. No. 66-139, my predecessor concluded:

The County Budget Commission is required to consider the request of a County Park District for a tax levy, under the provisions of Section 1545.20, Revised Code, and to certify such levy, or modification thereof as it deems advisable, to the County Auditor to be placed upon the tax duplicate.

However, I find nothing in that opinion which would suggest that the budget commission must approve the request of the park district for a tax levy when to do so would necessitate a reduction in other taxes to comply with the ten-mill limitation. So long as the mandatory minimum levies in R.C. 5705.31 are not involved, sufficient discretion is retained by the budget commission to determine which levies are to be certified and to determine the rates of taxation.

In certifying any tax levy, the budget commissioners are, of course, bound by Ohio Const. art. XII, §2, which provides that land and improvements thereon shall be taxed by uniform rule according to value. Therefore, if a park district tax is to be levied, it must be uniform throughout the park district. Accordingly, the budget commission could not levy the tax in part of the park district while not levying the tax in municipalities already at the ten-mill limitation. See 1960 Op. Atty Gen. No. 1373, p. 356, for a discussion of this principle as applied to the consolidation of school districts.

Finally, nothing in this opinion should in any way be construed to limit the right of the voters under R.C. 1545.21 to approve a park district tax in excess of the ten-mill aggregate limitation.

In light of the foregoing, it is my opinion, and you are advised, that:

1. Subject to the mandated minimum taxes under R.C. 5705.31 and the ten-mill limitation, the county budget commission, in certifying a tax levy, may modify or reduce any levy so long as each tax levy applies uniformly throughout the taxing district within the terms of Ohio Const. art. XII, §2.

2. Levies in excess of the minimum specified in R.C. 5705.31 may be reduced or modified in any reasonable manner at the discretion of the budget commission.

3. In determining whether a park district levy should be certified, the budget commission may take into account the fact that to certify the park levy would necessitate a reduction in other levies, and may decline to certify the levy for that reason.