

OPINION NO. 82-036**Syllabus:**

A board of county commissioners may not rescind a voter approved levy.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: William J. Brown, Attorney General, May 28, 1982

I have before me your request for my opinion concerning the authority of a board of county commissioners to rescind a voter approved levy. You have stated that the board proposes to unilaterally pass a resolution to rescind the levy, thereby terminating it such that additional taxes for the voted purpose may not be levied without subsequent vote of the electorate.

It is virtually axiomatic under Ohio law that a board of county commissioners as a creature of statute has only those powers expressly conferred by statute or necessarily implied therefrom. See, e.g., State ex rel. Clarke v. Cook, 103 Ohio St.

465, 134 N.E. 655 (1921); 1979 Op. Att'y Gen. No. 79-026; 1975 Op. Att'y Gen. No. 75-070. It is clear that as the taxing authority of a county the board of county commissioners is authorized to propose that tax levies for certain purposes be placed on the ballot for voter approval. You indicated that the specific levies which your commissioners wish to rescind were submitted for voter approval pursuant to R.C. 5705.19, R.C. 5705.191, R.C. 5705.20 or R.C. 5705.24. I am not aware of any express authorization for rescinding these or similar levies once the voters have approved them. Since the powers granted in R.C. 5705.26 and other provisions of R.C. Chapter 5705 are so specific, if the General Assembly had intended to include the power to rescind a voter approved levy it would have done so with equal precision. See State ex rel. Crabbe v. Felton, 112 Ohio St 519, 148 N.E. 230 (1925). While it might be argued that the express grants of authority in the statutes set forth above necessarily imply the authority to remove a voter approved levy from the tax duplicate, I am not persuaded that such implication is, in fact, necessary since the General Assembly has given taxing authorities the discretion not to levy voter approved taxes if they so choose. See R.C. 5705.07 and 5705.26.

You have also asked if the power of referendum constitutionally reserved by the people applies in this situation. Based on conversations between your office and a member of my staff, I understand that you are concerned with a possible constitutional conflict only if it appears that a board of county commissioners otherwise may rescind a voter approved levy by mere resolution of that body. Since I have concluded that the commissioners are not authorized to rescind the levy by mere resolution, it is not necessary to consider whether such action by the board would be unconstitutional.

Based on the foregoing, it is my opinion and you are hereby advised, that a board of county commissioners may not rescind a voter approved levy.