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SUBMISSION TO VOTERS BY BOARD OF EDUCATION OF A PROPOSED ADDITIONAL TAX LEVY FOR SCHOOL PURPOSES. §§5705.21, 3501.01, R.C.

SYLLABUS:

Submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to Section 5705.21, Revised Code, is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education.

Columbus, Ohio, July 7, 1960

Hon. Ted W. Brown, Secretary of State
State House, Columbus, Ohio

Dear Sir:

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

“Having had the question from one County Board of Elections and from several other sources I would like to request your opinion on whether or not a board of education which submitted a tax levy question to the electors on May 3, the day of the recent primary election, pursuant to the provisions of Revised Code Section 5705.21, may again submit such a question under this same section during the remainder of the calendar year of 1960.”

Section 5705.21, Revised Code, the statute to which you refer, reads in part as follows:

“At any time the board of education of any school district by a vote of two thirds of all its members may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for school district purposes, and that the question of such additional tax levy *shall be submitted to the electors of the school district on the first Tuesday after the first Monday in May or special election on another day to be specified in the resolution. No more than one such special election shall be held in any one calendar year.* Such resolution shall conform to section 5705.19 of the Revised Code, except that such levy may not be for a longer period than five years and such resolution shall specify the date of holding such special or primary election, which shall not be earlier than twenty-five days after the adoption and certification of such resolution nor later than one hundred twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided for in the notice of election. A copy of such resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code, and said section shall govern the arrangements for the submission of such question and other matters concerning such election, to

which said section refers, except that such election shall be held on the date specified in the resolution, provided that no special election shall be held during the ten days preceding or subsequent to Easter Sunday, Thanksgiving Day, or Christmas Day in any year. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. *If a majority of the electors voting on the question so submitted in an election held in even-numbered years on the first Tuesday after the first Monday in May and sixty per cent of those voting on the question at a special election held on any other day vote in favor of such levy*, the board of education of the school district may forthwith make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. After the approval of such levy vote and prior to the time when the first tax collection from such levy can be made, the board of education of the school district may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy throughout its life.

“* * *

(Emphasis added)

May 3, 1960 was the first Tuesday after the first Monday in May and was, therefore, a date prescribed by Section 5705.21, Revised Code, as a date on which a school tax levy could properly be submitted to the voters. The question remains, that having submitted such a question to the voters on the first Tuesday after the first Monday in May, may a school board submit the same question on some subsequent day in the same calendar year?

The statute provides that this question may be submitted on the first Tuesday after the first Monday in May, or at a “special election on another day,” such day to be selected by the board. The statute further provides that only one such special election shall be held in any one calendar year. While Section 5705.21, Revised Code, provides no definition of the term “special election,” this term is defined in Section 3501.01, Revised Code, which section reads, in part, as follows:

“As used in the sections of the Revised Code relating to elections:

“* * *

“(D) ‘Special election’ means any election other than the elections required to be regularly held on the day of a general or primary election, provided that a special election may also be held on the day of a general or primary election.”

There are two important elements in this definition which should be noted. A special election is one which is not *required* to be held regularly on the day of a general or primary election. A special election *may* be held, however, on the same day as any general or primary election. As this definition applies to all statutes relating to elections, including, therefore, Section 5705.21, Revised Code, it may be used as the key to solve the problem you present. As Section 5705.21 expressly provides that the school tax levy question may be submitted on the day of the primary election, i.e., the first Tuesday after the first Monday in May, or at any other day specified by the board, it follows that no specific day has been set aside as one on which this question is *required* to be submitted to the voters. It, therefore, falls within the definition of a special election supplied by Section 3501.01, Revised Code, since it is not required to be held on the day of a general or primary election. No problem is presented by this interpretation as Section 3501.01, Revised Code, specifically provides that a special election may be held on the date of a primary election. It may be seen, therefore, that the prohibition contained in Section 5705.21, Revised Code, against the holding of more than one special election in any one calendar year applies, regardless of whether such special election is held on the first Tuesday after the first Monday in May, or on any other date.

Added support is given to this interpretation by the provision in Section 5705.21, Revised Code, underlined above, which provides that the question is to be decided by a majority of the voters if submitted on a primary election in an even-numbered year but requires a sixty per cent plurality if submitted “at a special election held on any other day.” This means that if the question were submitted on a primary election in an odd-numbered year, this is expressly considered to be a “special election.”

It is, therefore, my opinion and you are accordingly advised, that submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to Section 5705.21, Revised Code, is a special election, only one of which may be held in any one calendar

year, whether it be on the first Tuesday after the first Monday in May, or on the other date selected by the board of education.

Respectfully,

MARK McELROY
Attorney General