

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2657 was modified by
1963 Op. Att'y Gen. No. 63-718.

2657

IF BOARD OF EDUCATION SUBMITS QUESTION OF ADDITIONAL TAX LEVY TO ELECTORS OF SCHOOL DISTRICT AND RESOLUTION STATES THAT SUCH LEVY IS TO BE PLACED ON TAX DUPLICATE FOR CURRENT YEAR, THEN IF A FAVORABLE VOTE IS RECEIVED, IT MUST BE EXTENDED ON CURRENT TAX DUPLICATE FOR COLLECTION, AND AFTER FIRST OF YEAR, TAX LEVY SHALL BE INCLUDED IN ANNUAL TAX BUDGET CERTIFIED TO COUNTY BUDGET COMMISSION. §§ 5907.19, 5705.21, 5705.25, R.C.

SYLLABUS:

If a board of education of a school district pursuant to Section 5705.21, Revised Code, resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors of such school district, and the resolution of the board in accordance with Section 5705.19, Revised Code, specifies that such additional tax levy is to be placed upon the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection pursuant to Section 5705.25, Revised Code, and after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

Columbus, Ohio, November 29, 1961

Hon. E. Raymond Morehart, Prosecuting Attorney
Fairfield County, Lancaster, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Education of the Pickerington Local School District wishes to hold a special election on the day of the general election this year, to vote on a special levy under Section 5705.21 of the Revised Code of Ohio.

“Assuming such levy passes, can it be put on the tax duplicate for the current year, or must it wait until after being submitted to the county budget commission which meets in August, 1962, thereby causing a year’s delay in collecting the proceeds of the levy?

“I am in doubt, because Section 5705.21, as amended effective September 7, 1961, provides:

'* * * the board of education of the school district may forthwith make the necessary levy within such school district at the additional rate, * * * for the purpose stated in the resolution.'

"However, the next sentence says:

'Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission.'

"Does this latter sentence mean that the levy voted under R. C. 5705.21 cannot be put on the tax duplicate and collected in 1962, but must wait until after the budget meeting in August, 1962, so that collection cannot start until 1963?"

Section 5705.21, Revised Code, provides 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 fifty-five 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.* * * * (Emphasis added)

Section 5705.19, Revised Code, provides in part as follows:

“Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect, *which may or may not include a levy upon the duplicate of the current year.* * * *” (Emphasis added)

Section 5705.25, Revised Code, provides as follows:

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“A levy voted in excess of the ten-mill limitation under this section shall be certified to the board of tax appeals. In the first year of such levy, it shall be extended on the tax lists after the February settlement next succeeding such election. *If such additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection.* After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.” (Emphasis added)

Under the provisions of Section 5705.25, *supra*, to which Section 5705.21, *supra*, refers, if the resolution specifies that the tax levy is to be placed upon the tax duplicate for the current year, then it must be extended on the current tax duplicate for collection. See Opinion No. 1009, Opinions of the Attorney General for 1949, page 650; modified in Opinion No. 2145, Opinions of the Attorney General for 1961, issued on April 24, 1961.

Since you have informed me in response to my inquiry for additional information that the resolution of the board of education in the instant case specified that the levy is to be placed upon the tax duplicate for the current year, I conclude that the levy, if it receives a favorable vote, should be extended on the current (1961) tax duplicate for collection, and, after the

first year (i.e. in 1962), the levy should be included in the annual tax budget that is certified to the county budget commission, which in this case would be the next annual tax budget.

It is my opinion, therefore, and you are accordingly advised that if a board of education of a school district pursuant to Section 5705.21, Revised Code, resolves to submit the question of an additional tax levy for school district purposes to a vote of the electors of such school district, and the resolution of the board in accordance with Section 5705.19, Revised Code, specifies that such additional tax levy is to be placed upon the tax duplicate for the current year, then the levy, if it receives a favorable vote, must be extended on the current tax duplicate for collection pursuant to Section 5705.25, Revised Code, and after the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

Respectfully,
MARK McELROY
Attorney General