

April 3, 2014

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SYLLABUS:

2014-015

When the State Library Board alters the boundaries of the library district of a school district free public library, the board of education of a local school district that levies a tax for the school district free public library under R.C. 5705.23 upon taxable real property located within the school district may continue to levy the tax upon taxable real property that is located outside the library district as a result of the boundary alteration. (1985 Op. Att'y Gen. No. 85-017, overruled to the extent that it is inconsistent with this opinion.)



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OPINION NO. 2014-015

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Dear State Librarian Cain:

You have requested an opinion about the collection of tax revenue when the territorial boundaries of the library district of a school district free public library are altered.¹ You have explained that in certain situations the territorial boundaries of a local school district and the library district of a school district free public library may be identical. Additionally, a portion of the territory of a free public library maintained by an association library lies within the territory of the local school district.² This means that an area of the local school district is located within the territorial boundaries of the library district of the school district free public library and the free public library maintained by the association library.

You explain further that the board of education of the local school district levies a district-wide tax for the current expenses of the school district free public library under R.C. 5705.23. This tax levy applies to the taxable real property located in the area of the local school district that is

¹ General provisions governing the operation of a school district free public library by a board of library trustees are set forth in R.C. 3375.15-.18 and R.C. 3375.40.

² 2002 Op. Att’y Gen. No. 2002-016 at 2-93 explained the nature of an association library:

[A]ssociation libraries are libraries that originated, for the most part, under charters from associations such as reading clubs in the late nineteenth and early twentieth centuries. Library associations and the libraries they establish are not governmental entities. Rather, they are private entities. Library associations may be incorporated or unincorporated. They operate under relevant statutes and in accordance with their charters or articles of incorporation. *See, e.g.*, R.C. 1713.28; R.C. 5705.28(D); 1996 Op. Att’y Gen. No. 96-023; 1995 Op. Att’y Gen. No. 95-018; 1962 Op. Att’y Gen. No. 2956, p. 292; 1955 Op. Att’y Gen. No. 5670, p. 392.

included within the territorial boundaries of the free public library maintained by the association library.

A city that has territory in the local school district also levies a tax under R.C. 5705.19(D) to provide funding for the free public library maintained by the association library. Thus, both the local school district and city levy a tax on the taxable real property located in the area of the local school district that is within the territorial boundaries of the school district free public library and the free public library maintained by the association library.

Pursuant to R.C. 3375.01, the State Library Board may define, amend, and adjust the territorial boundaries of library districts to eliminate overlapping in relation to tax levies.³ *See generally* 2002 Op. Att’y Gen. No. 2002-016 at 2-95 (“[t]he State Library Board is given certain authority over the boundaries of library districts”). In particular, the State Library Board may do the following:

(H) Upon application of one or more boards of library trustees, or upon the state library board’s own initiative, and in accordance with [R.C. Chapter 119] define, amend, and adjust the boundaries of overlapping library districts to eliminate areas of overlap;

(I) Upon application of any private corporation or library association maintaining a free public library prior to September 4, 1947, and in accordance with [R.C. Chapter 119] define, amend, and adjust the boundaries of a library district for the private corporation or library association for the sole purpose of preventing or eliminating areas of overlap with other library districts in relation to tax levies described in [R.C. 5705.19, R.C. 5705.191, and R.C. 5705.21] that are or may be levied in support of the private corporation or library association[.]

R.C. 3375.01.

When the State Library Board exercises its power under R.C. 3375.01 to adjust the boundaries of the library district of a school district free public library, real property may be located outside the territory served by the school district free public library, but remain within the territorial boundaries of the local school district that levies a tax for the school district free public library under R.C. 5705.23. In light of the State Library Board’s authority to adjust the territorial boundaries of the library district of a school district free public library to eliminate overlapping in relation to tax levies,

³ In 2012, the authority of the State Library Board to define, amend, and adjust the territorial boundaries of library districts was expanded. Am. S.B. 321, 129th Gen. A. (2012) (eff. June 26, 2012, with certain sections eff. Jan. 1, 2013 (uncodified sections 4 and 5)). The State Library Board was also directed to take the following action: “on or before December 31, 2014, the State Library Board shall review the boundaries of all public library districts within Ohio and, in accordance with [R.C. Chapter 119], shall amend, define, and adjust the boundaries as necessary to eliminate areas of overlap.” *Id.* (section 3, uncodified).

you ask whether the board of education of a local school district that levies a tax for a school district free public library under R.C. 5705.23 may continue to levy the tax upon taxable real property that, as a result of the library district boundary alterations, is located outside the territory served by the school district free public library but remains a part of the local school district in which the board of education levies the tax.

You describe a situation in which electors residing within the territorial boundaries of a local school district approved a tax levy for a school district free public library under R.C. 5705.23 before January 1, 2013.⁴ At the time the tax levy question was submitted to the electors, the territorial boundaries of the local school district and the library district of the school district free public library were identical.⁵ In accordance with the language of the resolution adopted by the board of library trustees of the school district free public library, the board of education of the local school district submitted the tax levy question to the electors residing within the territorial boundaries of the local school district. See 1985 Op. Att’y Gen. No. 85-017 at 2-68 and 2-69.

To answer your question, we must examine, variously, relevant legislative amendments to R.C. 5705.23 that were effective prior to January 1, 2013, the authority of the State Library Board to

⁴ With the enactment of Am. S.B. 321, the General Assembly clarified when a tax levy under R.C. 5705.23 is to be submitted to the electors of a school district or a school library district. R.C. 5705.23 now provides, in part:

The board of library trustees of any ... school district ... by a vote of two-thirds of all its members may at any time 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 public library, that it is necessary to levy a tax in excess of such limitation for current expenses of the public library or for the construction of any specific permanent improvement or class of improvements which the board of library trustees is authorized to make or acquire and which could be included in a single issue of bonds, and that the question of such additional tax levy *shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision, or, in the case of a qualifying library levy, to the electors residing within the boundaries of the library district.* (Emphasis added.)

See generally R.C. 5705.01(N) (for purposes of R.C. Chapter 5705, a “qualifying library levy” is “(1) [a] levy for the support of a library association or private corporation that has an association library district with boundaries that are not identical to those of a subdivision” or “(2) [a] levy proposed under [R.C. 5705.23] for the support of the board of trustees of a public library that has a library district with boundaries that are not identical to those of a subdivision”).

⁵ You have informed us that the tax levy was submitted on May 4, 2010, to the electors residing in the local school district.

alter the boundaries of library districts, and the general principles of law governing the taxation of real property in Ohio. The language of R.C. 5705.23 pertaining to tax levies for library purposes originally was included in G.C. 5625-16 and provided as follows:⁶

The taxing authority of any county, municipality, school district or township, having a board of public library trustees, shall upon the receipt of a resolution adopted by said board requesting the submission of a special levy, for the use of said board, submit to the vote of the electors of the subdivision the special levy for library purposes which they are authorized to submit under [G.C. 5625-15 (now R.C. 5705.19)].

1931 Ohio Laws 843, 846 (Am. S.B. 337, filed July 16, 1931). When this language was made a part of G.C. 5625-16, the State Library Board did not have the authority to alter the boundaries of the library districts of school district free public libraries.⁷ Nor are we aware of any other governmental entity possessing such authority in 1931. For this reason, the boundaries of the library district of a school district free public library coincided with the boundaries of the local school district that levied a tax for the library under G.C. 5625-16.

Under the law governing the taxation of real property, as it existed in 1931, the board of education of a local school district could only levy a tax under G.C. 5625-16 upon the taxable real property located within the local school district. *See* 1927 Ohio Laws 391, 403 (H.B. 80, filed May 12, 1927) (enacting G.C. 5625-25 (now R.C. 5705.34), which required the county budget commission to certify to the taxing authority of a subdivision the estimated “rate of each tax necessary to be levied by [a] taxing authority *within* its subdivision” (emphasis added)). Thus, absent a statute to the contrary, if territory was added to a local school district (*e.g.*, by municipal annexation), the district’s board of education was required to levy the tax for library purposes upon the taxable real property added to the district. *See* 1928 Op. Att’y Gen. No. 2358, vol. III, p. 1745. If territory subsequently was located outside the local school district, the district’s board of education was not permitted to levy the tax upon the taxable real property of that territory.

In 1969 the General Assembly gave the State Library Board authority under R.C. 3375.01 to alter the territorial boundaries of the library districts of school district free public libraries:

The state library board is responsible for the state library of Ohio and a statewide program of development and coordination of library services, and its powers include the following:

⁶ When G.C. 5625-16 (now R.C. 5705.23) was originally enacted, it authorized tax levies for recreational purposes, rather than for library purposes. 1927 Ohio Laws 391, 398 (H.B. 80, filed May 12, 1927).

⁷ The State Library Board was established in 1921. *See* 1921 Ohio Laws 105, 123 (H.B. 249, filed Apr. 26, 1921) (enacting G.C. 154-51 (now R.C. 3375.01)).

- ...;
- (F) Upon consolidation of two or more school districts, to define and adjust the boundaries of the new public library district resulting from such consolidation and to resolve any disputes or questions pertaining to the organization and operation of the new library district;
 - (G) Upon application of two or more boards of library trustees to amend, define, and adjust the boundaries of the library districts making such application;
 - (H) Certify its actions relating to boundaries authorized in this section, to boards of election, taxing authorities, the boards of trustees of libraries affected and other appropriate bodies[.]

1969-1970 Ohio Laws, Part I, 773, 775 (Am. S.B. 262, eff. Nov. 25, 1969).

It is significant that the General Assembly authorized alteration of the territorial boundaries of the library districts of school district free public libraries in certain instances under R.C. 3375.01, but did not enact corresponding statutory language that voter-approved tax levies under R.C. 5705.23 (1) were not to be levied on the taxable real property located outside the library district of a school district free public library, or (2) were to be levied on the taxable real property that became a part of the library district of a school district free public library. Instead, it appears that, when Am. S.B. 262 was enacted, the General Assembly was aware that, prior to action by the State Library Board to alter the territorial boundaries of the library district of a school district free public library, the territorial boundaries of a school district free public library and its school district coincided, and that, after an alteration, the board of education of a school district that levied a tax under R.C. 5705.23 for a school district free public library was required by the real property taxation law to levy the tax upon all the taxable real property located within the school district. *See generally* Ohio Const. art. XII, § 2 (“[I]and and improvements thereon shall be taxed by uniform rule according to value”); *Meeks v. Papadopulos*, 62 Ohio St. 2d 187, 191-92, 404 N.E.2d 159 (1980) (“the General Assembly, in enacting a statute, is assumed to have been aware of other statutory provisions concerning the subject matter of the enactment even if they are found in separate sections of the Code”); 1985 Op. Att’y Gen. No. 85-017 at 2-69 (“Article XII, § 2 [of the Ohio Constitution] requires that a tax be levied uniformly throughout the district of a taxing authority. A taxing authority may not levy a tax in only part of a district”). Accordingly, after November 25, 1969, alteration of a library district’s territorial boundaries under R.C. 3375.01 did not affect a board of education’s exercise of its authority to levy a tax for the school district free public library under R.C. 5705.23 upon all the taxable real property located within the school district even though the boundaries of the school district and library district were no longer identical.

In 1975 the General Assembly amended R.C. 5705.23 to clarify the mandate that a taxing authority of a school district submit on behalf of a school district free public library a tax levy for library purposes to the electors residing within the territorial boundaries of the school district. As amended, R.C. 5705.23 stated, in pertinent part:

The board of library trustees of any ... school district ... public library by a vote of two-thirds of all its members may at any time 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 public library, that it is necessary to levy a tax in excess of such limitation for current expenses of such public library or for the construction of any specific permanent improvement or class of improvements which said board of library trustees is authorized to make or acquire and which could be included in a single issue of bonds, and that the question of such additional tax levy shall be submitted by the taxing authority of the political subdivision to the jurisdiction of which the board is subject to the electors of such subdivision.... If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the taxing authority may forthwith make the necessary levy within such subdivision at the additional rate in excess of the ten-mill limitation on the tax list, for the purpose stated in such resolutions.

1975-1976 Ohio Laws, Part I 646, 654-55 (Am. S.B. 257, eff. Nov. 28, 1975).

It is presumed that the General Assembly was aware of prior legislation about school district free public libraries and the laws governing the taxation of real property. *See Meeks v. Papadopulos*, 62 Ohio St. 2d at 191-92. Yet, the General Assembly did not limit the authority of a board of education of a school district to levy a tax for a school district free public library under R.C. 5705.23 upon all the taxable real property located within the school district when the boundaries of the school district and library district are no longer identical because of an alteration made to the territorial boundaries of the library district by the State Library Board.

The General Assembly amended R.C. 5705.23 again in 1980, *see* 1979-1980 Ohio Laws, Part II, 3774, 3785-86 (Am. Sub. H.B. 847, eff. Aug. 22, 1980), to authorize submission of a library tax levy to electors residing within the boundaries of the library district or to electors residing within the subdivision of the taxing authority. The statute, as thus amended, left the choice of submission to the board of library trustees and to the taxing authority of the political subdivision to whose jurisdiction the library trustees were subject. In 1985 the Attorney General examined this aspect of amended R.C. 5705.23 and came to the conclusion that when the boundaries of a school district and the library district of a school district free public library are not identical, the board of education of the school district must submit the tax levy question to the electors residing within the territorial boundaries of the library district, rather than to the electors residing within the territorial boundaries of the local school district. On this point the opinion stated as follows:

Although R.C. 5705.23 may appear to grant the board of library trustees a choice as to whether to cause the question of an additional tax levy to be submitted to either the electors of the library district or the electors of the school district, I believe that R.C. 5705.23 must be read to mean that if the boundaries of a school district and a library district are coterminous, then the question is to be submitted to the electors residing within the school district. If, however, the boundaries of a library district have, pursuant to R.C. 3375.01, been extended to include territory lying outside of the school district, as in this case, the question must be submitted to the electors of the

library district, and may not be submitted only to the electors of the school district. The board of library trustees has no discretion as to whether it will cause the question to be submitted to the electors of the school district or of the library district. Rather, it is required to cause the question to be submitted to one or the other district, depending upon the boundaries of the particular library district.

1985 Op. Att’y Gen. No. 85-017 at 2-69.

We cannot endorse 1985 Op. Att’y Gen. No. 85-017’s assertion that, after the enactment of Am. Sub. H.B. 847, when the boundaries of a school district and school district free public library are not identical, the board of education of the school district must submit the tax levy question to the electors residing within the territorial boundaries of the library district only. The language of R.C. 5705.23 does not mandate this conclusion. The use of the word “or” in R.C. 5705.23 indicates that a board of library trustees has the option of having the board of education of the school district to whose jurisdiction the board of trustees is subject submit the levy to the electors residing in the school district or having the board of education submit the levy to the electors residing within the library district. *See generally Merriam-Webster’s Collegiate Dictionary* 872 (11th ed. 2005) (“or” is “used as a function word to indicate an alternative”). *See generally also* R.C. 1.42 (words in a statute are to “be read in context and construed according to the rules of grammar and common usage”).

That the word “or” is to be given its common, ordinary meaning in R.C. 5705.23 is supported by the fact that Am. Sub. H.B. 847 added to R.C. 5705.23 the language, “if the resolution so states,” to preface a board of library trustees’ authority to submit the levy to the electors residing within the library district. The use of this language means that a board of library trustees has discretion whether to insert in the resolution language levying the tax upon the taxable real property of the library district, rather than the school district. Also, that the General Assembly was aware that boards of education of school districts were submitting levies under R.C. 5705.23 for library districts to residents residing within the territorial boundaries of the school district since 1931 and did not expressly limit this authority when amending R.C. 5705.23 prior to 1985, strengthens the case for concluding that a board of library trustees has the option of having the board of education of the school district to whose jurisdiction the board of trustees is subject submit the levy to the electors residing in the school district or having the board of education submit the levy to the electors residing within the library district.⁸

The Legislative Service Commission’s summary of Am. Sub. H.B. 847 provides additional evidence in support of a legislative intent that the word “or,” as used in R.C. 5705.23, be accorded its plain meaning and that the General Assembly did not intend to abrogate the powers bestowed upon a board of library trustees by R.C. 5705.23, as it existed prior to the enactment of Am. Sub. H.B. 847. The summary states:

⁸ R.C. 5705.23, as amended by Am. S.B. 321 in 2012, *see* note 3, *supra*, clearly declares that, if the boundaries of a library district are not identical to the boundaries of a school district proposing a tax levy, the tax levy must be submitted to the electors residing within the territory of the library district.

Tax levies. The Uniform Tax Levy Law allows a board of library trustees of a county, municipal corporation, school district, or township public library to declare by a resolution adopted by a two-thirds vote that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient for the necessary operating or capital requirements of the public library. *The act permits a resolution adopted by any of these boards of library trustees to require that the question of an additional tax levy be submitted either to the electors of the subdivision, as was provided under former law, or to the electors residing within the boundaries of a library district defined by the State Library Board.* If a library board adopts a resolution specifying the latter, the taxing authority of the political subdivision to which the library board submits the resolution is required to adopt a resolution providing for the submission of the additional tax levy to the electors within the designated library district. (Emphasis added.)

Ohio Legislative Service Commission Summary of Enactments, August 1979-December 1980, 464-65 (January 1981).

The language of R.C. 5705.23, as amended by Am. Sub. H.B. 847, and the Ohio Legislative Service Commission's analysis of Am. Sub. H.B. 847, support the proposition that, when the territorial boundaries of a school district and school district and library district are not identical, a board of library trustees has the option of having the board of education submit the levy to the electors residing in the school district or having the board of education submit the levy to the electors residing within the library district. Consequently, we overrule 1985 Op. Att'y Gen. No. 85-017 to the extent that it concluded otherwise.⁹

⁹ 1985 Op. Att'y Gen. No. 85-017 cited Article XII, § 2 of the Ohio Constitution to support the opinion's conclusion that a tax levy question under R.C. 5705.23 must be submitted to the electors residing within a library district when the boundaries of that district and the school district proposing the tax levy are not identical:

I believe that this interpretation of R.C. 5705.23 is compelled by Ohio Const. art. XII, § 2. Ohio Const. art. XII, § 2 states in part: "Land and improvements thereon shall be taxed by uniform rule according to value...." Article XII, § 2 requires that a tax be levied uniformly throughout the district of a taxing authority. A taxing authority may not levy a tax in only part of a district. R.C. 5705.23 defines the library district to be the district of the taxing authority.

1985 Op. Att'y Gen. No. 85-017 at 2-69 (citations omitted).

There is no violation of Article XII, § 2 of the Ohio Constitution when the board of education of a school district submits a tax levy under R.C. 5705.23 to the electors residing within the territory of the school district when the boundaries of the school district and library district are not identical. In

When a school district submits a tax levy question under R.C. 5705.23 to the electors residing within the school district, the school district must adhere to the laws governing the taxation of real property. These laws require a board of education to levy a tax for the benefit of a school district free public library upon all taxable property within the school district when the board submits the tax levy question to the electors residing within the school district. *See* R.C. 5705.26; R.C. 5705.34; 2005 Op. Att’y Gen. No. 2005-043 (syllabus, paragraph 6); 2005 Op. Att’y Gen. No. 2005-024 at 2-250. Further, absent a statute to the contrary, if territory is added to the school district, the district’s board of education is required to levy the tax upon the taxable real property added to the district. *See* 1995 Op. Att’y Gen. No. 95-010; 1989 Op. Att’y Gen. No. 89-021 at 2-99; 1982 Op. Att’y Gen. No. 82-063. If territory is no longer a part of the school district, the district’s board of education is not permitted to levy the tax upon the taxable real property of that territory. *See* 2005 Op. Att’y Gen. No. 2005-043 at 2-475.

In the situation you describe, the territory in question remains within the school district. Action by the State Library Board altering the boundaries of the library district has left that same territory outside the boundaries of the library district. As the territory remains within the school district, the board of education may levy the tax upon taxable real property in the territory. Accordingly, the board of education of a local school district that levies a tax for a school district free public library under R.C. 5705.23 upon taxable real property located within the school district may continue to levy the tax upon taxable real property that is located outside the library district of the school district free public library.

In conclusion, it is my opinion, and you are hereby advised that when the State Library Board alters the boundaries of the library district of a school district free public library, the board of education of a local school district that levies a tax for the school district free public library under R.C. 5705.23 upon taxable real property located within the school district may continue to levy the tax upon taxable real property that is located outside the library district as a result of the boundary alteration. (1985 Op. Att’y Gen. No. 85-017, overruled to the extent that it is inconsistent with this opinion.)

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

such a situation, the board of education is uniformly levying the tax within the school district, as required by Article XII, § 2 of the Ohio Constitution.