

**OPINION NO. 82-013****Syllabus:**

A tax levy submitted for voter approval by a joint county mental health district pursuant to R.C. 5705.19(A) and 5705.25 may not be designated as a replacement levy.

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**To: Richard G. Ward, Ross County Prosecuting Attorney, Chillicothe, Ohio**  
**By: William J. Brown, Attorney General, March 18, 1982**

I have before me your request for my opinion concerning the following question:

May a joint-county mental health board cause a levy being proposed to all the counties of its district under authority granted in O.R.C. Section 5705.19(A) to be designated on the election ballot of one county as a "replacement" tax and cause the same levy to be designated as an "additional" tax on the election ballot of the other counties in its district?

Your letter of request states that the joint county mental health board would like to designate the tax to be submitted for voter approval in Ross County as a "replacement tax" because it would replace a county tax currently being levied, pursuant to R.C. 5905.221, for mental health purposes. You have stated that the

Ross County Commissioners do not need to, and do not wish to, collect the county levy previously voted on by the Ross County electorate.

Although your question asks whether one levy submitted for voter approval in several counties of a joint county mental health district may be designated as a different type of levy in different counties, it is necessary to first consider whether the correct designation for the Ross County tax is anticipated.

The form to be used for ballots submitted to the electorate of a subdivision pursuant to a resolution adopted as provided in R.C. 5705.19 is set forth in R.C. 5705.25 as follows:

The form of the ballots cast at such election shall be:

"An additional tax for the benefit of (name of subdivision)  
 .....for the purpose of (purpose stated in the resolution)  
 .....at a rate not exceeding.....mills for each one  
 dollar of valuation, which amounts to (rate expressed in dollars and  
 cents) .....for each one hundred dollars of valuation, for. . .  
 ..(life of indebtedness or number of years the levy is to run).  
 . . . . .

If the levy submitted is a proposal to renew, replace, increase, or decrease an existing levy, the form of the ballot specified in this section may be changed by substituting for the words "An additional" at the beginning of the form; the words "A renewal of a" in case of a proposal to renew an existing levy in the same amount; the words "A replacement of a" in the case of a proposal to replace an existing levy in the same amount; the words "A renewal of. . . . . mills and an increase of. . . . . mills to constitute a" or "A replacement of. . . . .mills and an increase of. . . . .mills, to constitute a" in the case of an increase; the words "A renewal of part of an existing levy, being a reduction of. . . . .mills, to constitute a" in the case of a decrease in the proposed levy; or the words "A replacement of part of an existing levy, being a reduction of. . . . .mills, to constitute a" in the case of a replacement of only a part of an existing levy.  
 (Emphasis added.)

The form of ballot to be used when a resolution adopted as provided in R.C. 5705.19 is submitted to the electorate requires that the term "additional" be placed before the word "tax" in the first line of the ballot. If the resolution proposes that an existing levy be renewed, replaced, increased or decreased the word "additional" may be changed to reflect such proposal. R.C. 5705.25 does not, however, describe the circumstances under which a taxing authority may submit a proposal to replace an existing levy. It does not, therefore, authorize any particular taxing authority to propose a replacement levy for any particular purpose; it merely prescribes the form to be used on the ballot in the event that a replacement levy is otherwise authorized.

The reference to a "replacement" levy was included in a recent amendment to R.C. 5705.25. Am. H.B. 810, 113th Gen. A. (1980) (eff. Feb. 28, 1980). I am not aware of any recognition of the possibility of such a levy in the Revised Code prior to the amendments contained in Am. H.B. 810. Aside from the use of the term "replacement" in the amendments to R.C. 5705.25, Am. H.B. 810 also included it in the amendments to R.C. 319.301 (concerning reductions in taxes) and 3311.21. R.C. 3311.21 permits boards of education of joint vocational school districts to propose tax levies and in the amendment concerning replacement levies states: "If a levy whose purpose is limited to any of the purposes of an existing levy is proposed to replace all or a portion of the existing levy, it shall be called a replacement levy and shall be so designated on the ballot." Thus, it appears that in enacting Am. H.B. 810 the General Assembly intended that replacement levies be used only by boards of education of joint vocational school districts proposing a levy pursuant to R.C. 3311.21.

The issue with respect to your situation is whether joint county mental health boards have been expressly authorized to submit proposals for replacement levies. The General Assembly has not expressly provided for the submission of replacement levies by joint county mental health boards either in R.C. 5705.19 or in the general enabling statutes for such boards. See R.C. Chapter 340.

Because, as the foregoing analysis indicates, the descriptive term "replacement" in R.C. 5705.25 would not be appropriate in the situation you have described, it is not necessary to consider the issue of whether one levy submitted for voter approval in the several counties which make up a joint county mental health district may be designated as a different type of levy in different counties.<sup>1</sup>

Based on the foregoing, it is my opinion, and you are hereby advised, that a tax levy submitted for voter approval by a joint county mental health district pursuant to R.C. 5705.19(A) and 5705.25 may not be designated as a replacement levy.

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<sup>1</sup>I note that a tax levied by a joint-county mental health board pursuant to R.C. 5705.19 may not be designated as a renewal, increase, or decrease of an existing tax levied pursuant to another section of the Revised Code. See 1969 Op. Att'y Gen. No. 69-113; 1968 Op. Att'y Gen. No. 88-051.