

OPINION NO. 79-024**Syllabus:**

- 1) A levy for current operating expenses, passed under R.C. 5705.194, is a general levy for current expense. The proceeds of such levy may be paid into the school district's general fund, pursuant to R.C. 5705.10. 1963 Op. Att'y Gen. No. 154, p. 240, approved and followed.
- 2) The proceeds of a levy for current operating expenses, passed under R.C. 5705.194, may be used to pay salary increases for teachers and nonteaching employees.
- 3) A levy to satisfy emergency needs or to prevent school closings, passed under R.C. 5705.194, is a special levy. The proceeds of such levy must, pursuant to R.C. 5705.10, be paid into a special fund.
- 4) The proceeds of a levy to satisfy emergency needs or to prevent school closings, passed under R.C. 5705.194, may be used to pay salary increases for teachers and nonteaching employees only if the board of education has reason to believe, with due regard to the circumstances and interests of the district, that such increases constitute an emergency need or are necessary to prevent school closings.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, May 24, 1979

I have before me your request for my opinion concerning the management and use of tax proceeds collected pursuant to R.C. 5705.194. Your request was precipitated by the fact that numerous Ohio school districts have attempted to alleviate their present financial difficulties by passing an additional tax levy pursuant to R.C. 5705.194. The various purposes of these levies, as they have been presented to the voters on the ballot, have included "meeting current operating expenses," "satisfying emergency needs," and "preventing the schools within the district from closing." Your specific questions are as follows:

- 1) May the proceeds of a levy passed pursuant to Section 5705.194, Revised Code, with the purposes of (1) current operating expenses; (2) satisfying emergency needs; or (3) preventing schools within the district from closing, be placed in the General Fund of the school district or must this money be placed in a special fund?

- 2) Would increasing the teaching and/or nonteaching salary schedules be considered proper use of moneys received from a levy pursuant to Section 5705.194, Revised Code, with a purpose of (1) current operating expenses; (2) satisfying emergency needs; or (3) preventing the schools within the district from closing?

R.C. 5705.194, set forth in pertinent part below, authorizes a board of education to levy an additional tax in excess of the ten-mill limitation when such levy is necessary to provide for the emergency requirements of the school district or to prevent the closing of one or more schools within the district.

The board of education of any school district may at any time declare by resolution that the revenue which will be raised by all tax levies which the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the emergency requirements of the school district or to prevent temporary or permanent closing of one or more schools within the district, and that it is therefore necessary to levy an additional tax in excess of the ten-mill limitation. Such resolution shall be confined to a single purpose and shall specify the purpose thereof, the amount of money it is necessary to raise for that purpose for each year the millage is to be imposed, and the number of years in which the millage is to be in effect, which may include a levy upon the current year's tax list. The number of years may be any number not exceeding five

. . . Said resolution shall go into immediate effect upon its passage. . . . If a majority of the electors voting on the questions so submitted in an election vote in favor of such levy, the board of education of the school district may forthwith make the additional levy necessary to raise the amount specified in the resolution for the purpose stated in the resolution. . . .

With respect to your first question, I note that R.C. 5705.194 does not expressly provide for the allocation of the tax proceeds collected to a particular fund of the district, nor does the statute contain language that suggests a legislative intent to repeal or otherwise supersede the general statutory scheme, set forth in R.C. Chapter 5705, regulating the allocation of tax levy proceeds. For this reason, it is my opinion that the general statutes regulating the allocation of tax proceeds among the various funds of a taxing district must govern the resolution of the issue raised by your first question.

R.C. 5705.09 requires a taxing authority to establish certain funds. Among the funds required to be established are a general fund, a special fund for each special levy, a special bond fund for each bond issue, and a special fund for each class of revenues derived from a source other than the general property tax which the law requires to be used for a particular purpose. The allocation of revenue to these various funds is governed by R.C. 5705.10, which provides, in pertinent part, as follows:

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

. . . .

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a

particular purpose, shall be paid into a special fund for such purpose.

. . . .

Money paid into any fund shall be used only for the purposes for which such fund is established.

In order to resolve your first question it is, therefore, necessary to determine if a levy passed pursuant to R.C. 5705.194 for one of the purposes identified in your request is a general levy for current expense or a special levy. If it is the former, the proceeds of the levy may be placed in the general fund of the school district; if the latter, the proceeds must be placed in a special fund.

Initially, it should be noted that the term "special levy," as used in R.C. Chapter 5705, is not expressly defined by statute. Moreover, it appears that the only levies expressly classified as special levies in R.C. Chapter 5705 are those enumerated in R.C. 5705.06, which authorizes certain special levies without vote of the people. I do not, however, find the fact that R.C. 5705.06 uses the term "special levies," while other statutes which also authorize additional levies (such as R.C. 5705.194) do not, to be dispositive of the issue of what constitutes a special levy. The language used in R.C. 5705.06 does not require the conclusion that the levies authorized therein are intended to be an exclusive enumeration of all special levies. Moreover, R.C. 5705.04, which directs the manner in which a taxing authority must divide the taxes it levies, identifies as one category "[s]pecial levies . . . within the ten-mill limitation" and as another category "[o]ther special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation." If R.C. 5705.06, which is limited to levies within the ten-mill limitation, is construed as an exclusive enumeration of all special levies, the provision in R.C. 5705.04 for other special levies in excess of the ten-mill limitation would be meaningless. Thus, in my opinion the mere fact that the authorizing statute fails to label a particular levy as a special levy is inconclusive.

Several of my predecessors have reached a similar conclusion when asked to classify other additional levies authorized in R.C. Chapter 5705. 1963 Op. Att'y Gen. No. 154, p. 240 (a levy under R.C. 5705.191 for the purpose of supplementing the general fund for current expenses for child welfare services is a special levy); 1962 Op. Att'y Gen. No. 2997, p. 337 (a levy under R.C. 5705.191 to supplement the general fund for the purpose of health and mental health is a special levy); 1958 Op. Att'y Gen. No. 1504, p. 7 (a levy under R.C. 5705.22 for the support of county hospitals is a special levy). In each of these opinions my predecessors considered the statement of the purpose of the levy set forth in the taxing authority's resolution the proper basis for determining whether the levy in question was a special or general levy. The best illustration of this point is set forth in Opinion No. 154, supra, at 246-247 as follows:

It is apparent that the board of county commissioners sought to effect a levy under Section 5705.19, Revised Code, to increase the general fund but used the language (in substance) in the resolution, and thus the ballot, of Section 5705.191, Revised Code, viz. "to supplement the general fund for the purpose of making appropriations for * * * welfare." The declaration of purpose contained in the resolution is controlling.

. . . .

Upon consideration I am of the opinion that the levy under consideration is a special levy and that the proceeds thereof may only be used for the specific purpose of child welfare services. The language "for the purpose of supplementing the general fund for current expenses" and "to supplement the general fund for the purpose of making appropriations" found in the resolution and in Section 5705.191, Revised Code, respectively, can only be considered

as descriptive of the reason for or motivation of the levy. The more limiting language "welfare" as used in the statute and "child welfare services" as used in the resolution and ballot define the purpose. I am brought to this conclusion by the fact that the contrary one would largely destroy the efficiency of the singleness of purpose provision of Section 5705.19, Revised Code, (which is incorporated by reference in Section 5705.191, Revised Code) and of Section 5, Article XII, Constitution of Ohio. It would, for instance, enable a taxing authority to trade on the appeal of something like child welfare to raise funds for a totally unrelated object payable from the general fund as current expense.

My predecessor further concluded that, in order to accomplish its goal of raising revenue for the general fund, the taxing authority should have declared by resolution that the purpose of the levy was for current expenses or current operating expenses.

I concur with my predecessor's analysis and consider it equally applicable to issues arising under R.C. 5705.194. I shall assume for the purpose of responding to your first question that the taxing authorities in question did intend a levy for the purpose of raising revenue for the general fund. Those taxing authorities which declared the purpose of the levy to be for current operating expenses accomplished their goal. A levy pursuant to R.C. 5705.194 for current operating expenses is a general levy for current expense and the proceeds of such levy may, pursuant to R.C. 5705.10, be paid into the general fund. Those taxing authorities which merely paraphrased the language of R.C. 5705.194 as the declaration of purpose have, however, failed to distinguish between the motivation for the levy and its intended purpose. By declaring the purpose of the levy to be to satisfy emergency needs or to prevent school closings, the taxing authorities have restricted the purpose, and thereby the distribution and use, of the levy proceeds. Since the levy was not declared to be a levy for current expense, it is a special levy and the proceeds of such levy must, pursuant to R.C. 5705.10, be paid into a special fund. I realize that this conclusion may under certain circumstances cause serious practical problems for a school district that has failed to state the purpose of a levy with precision. I can only suggest, however, that if a school district finds compliance with the special fund requirements impossible or impractical, it may attempt to transfer the proceeds of the special levy to its general fund by following the procedures set forth in R.C. 5705.14 et seq.

Your second question seeks clarification of the proper use of moneys received from a levy under R.C. 5705.194. In particular, you ask whether increasing the teaching or nonteaching salary schedules may be considered a proper use of such moneys. Initially, it should be noted that, in order to be eligible to receive financial aid from the state pursuant to R.C. Chapter 3317, a board of education must pay its teachers and nonteaching employees a minimum salary as determined in R.C. 3317.13 or R.C. 3317.12, respectively. A board of education has, however, the authority to adopt salary schedules that exceed the state requirements. See R.C. 3319.08; R.C. 3319.081. Whether the proceeds of a levy under R.C. 5705.194 may be used to pay salary increases depends upon the purpose for which the levy was passed. Since a salary expense is a current operating expense, it is clear that the proceeds of a levy for current operating expenses may be used to pay salary increases. Where the purpose of the levy is to satisfy emergency needs or to prevent school closings, the answer is more difficult. The proceeds of such levies may be used to pay salary increases only if such increases constitute an emergency need or are necessary to prevent school closings. There are no specific guidelines for determining what is an emergency need or what is necessary to prevent school closings. This decision must be made by the board of education, which has primary authority and responsibility for the control and management of the schools. In making this decision, a board of education has a duty to exercise its authority and discretion in good faith and to use its best judgment with due regard to the circumstances and interests of the district at the time of its action. See, e.g., Brannon v. Board of Education, 99 Ohio St. 369 (1919); Bartlett v. Board of Education, 71 Ohio Law Abs. 140 (C. P. Montgomery Co. 1955).

Accordingly, in specific response to your questions, it is my opinion, and you are advised, that:

- 1) A levy for current operating expenses, passed under R.C. 5705.194, is a general levy for current expense. The proceeds of such levy may be paid into the school district's general fund, pursuant to R.C. 5705.10. 1963 Op. Att'y Gen. No. 154, p. 240, approved and followed.
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- 4) The proceeds of a levy to satisfy emergency needs or to prevent school closings, passed under R.C. 5705.194, may be used to pay salary increases for teachers and nonteaching employees only if the board of education has reason to believe, with due regard to the circumstances and interests of the district, that such increases constitute an emergency need or are necessary to prevent school closings.