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HOSPITALS, COUNTY—PROCEEDS FROM TAX LEVY UNDER §5705.22 R.C. CANNOT BE USED FOR ANY OTHER PURPOSE THAN SUPPORT OF SUCH HOSPITAL—SEC. 5, ART. XII, OHIO CONSTITUTION.

SYLLABUS:

Funds derived from a tax levied pursuant to Section 5705.22, Revised Code, for the support of county hospitals, may not, by reason of Section 5, Article XII, Ohio Constitution, be used for any purpose other than the support of such county hospitals, and any accumulated surplus of such tax revenues may not be transferred by a board of county hospital trustees to a board of county commissioners to be placed in the general fund of the county and used for current expenses of the county.

Columbus, Ohio, January 6, 1958

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

Your request for my opinion reads:

“May the trustees of a county hospital transfer surplus funds accumulated from an operating levy to the County Commissioners to be placed in the general fund of the County?

“The only income to the hospital has been from the operating levy and from charges made to patients. To date the hospital has

operated from its charges to patients and has touched its tax revenues to only a small extent.”

I have been informed that this surplus is comprised of proceeds of a tax levied under authority of Section 5705.22, Revised Code. It is, then, my opinion that the basis question in your inquiry may be phrased as follows: May funds derived from an operating tax levied pursuant to Section 5705.22, Revised Code, for the purpose of supporting a county hospital be diverted to the general purposes of the county for which moneys in the general fund may be expended?

Section 5705.22, Revised Code, reads:

“The board of county commissioners of any county, at any time prior to the fifteenth day of September in any year, after providing the normal and customary percentages of the total general fund appropriations for the support of county hospitals, by vote of two thirds of all members of said board, may declare by resolution that the amount of taxes which may be raised within (the) ten-mill limitation will be insufficient to provide an adequate amount for the support of county hospitals, *and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose*, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

“Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, and shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code.

“If the majority of electors voting on a levy to supplement the general fund appropriations *for the support of county hospitals* vote in favor of the levy, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period *for the purpose stated in the resolution or at any less rate or for any of the said years.*” (Emphasis added)

It is at once apparent that any tax levied pursuant to this section of the Revised Code is levied for the sole purpose of supporting the county hospitals, and it was for such purpose only that the electors approved such levy. Thus, any proposed use of the proceeds of such tax for any other purpose falls directly within the following prohibition in Section 5, Article XII, Ohio Constitution:

“No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.”

In Opinion No. 772, Opinions of the Attorney General for 1957, p. 287, I had for consideration the proposal that funds accumulated from a tax levy lawfully imposed for the purpose of paying the expenses incurred in operating a joint township district hospital be used toward constructing an addition to the hospital. I said there, after referring to Section 5, Article XII, *supra* :

“Thus funds derived from a tax levy for operating expenses can be expended only for operating expenses. Section 5705.01, Revised Code, the definition section of the general tax levy law, defines ‘current operating expenses’ to exclude expenses for permanent improvements.”

The pertinent sections of Chapter 5705., Revised Code, make it clear that funds which are properly paid into the general fund of a county may be expended for the current expenses of such county. Thus, if the revenue derived from a tax levy imposed for the special purpose of supporting county hospitals were paid into the general fund, such revenues would certainly be subject to use in whole or in part in disregard of the specific constitutional prohibition.

It is to be noted also that the revenues from an operating tax levied pursuant to Section 5705.22, Revised Code, are not retained in a fund established by the subdivision in accordance with Section 5705.09, Revised Code, but are, upon collection, paid over to the board of county hospital trustees. Section 339.06, Revised Code, reads in part as follows :

“The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation. The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. Such banks or trust companies shall furnish security for every such deposit to the extent and in the manner provided in section 135.16 of the Revised Code, but no such deposit shall otherwise be subject to the provisions of sections 135.01 to 135.23, inclusive, of the Revised Code. The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees for the uses and purposes of such hospital, on a voucher signed by the administrator, pro-

vided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees. *All moneys appropriated by the board of county commissioners or from special levies by the board of county commissioners for the operation of the hospital, when collected shall be paid to the board of county hospital trustees on a warrant of the county auditor and approved by the board of county commissioners. * * ** (Emphasis added)

In the view which I take of the question you have presented, any expenditure of these tax revenues for a purpose other than the support of county hospitals would be unlawful, and it then becomes unnecessary to examine and discuss the provisions of Section 5705.14, Revised Code, relative to the transfer to the general fund of an unexpended balance in a special fund. In any event, these funds being derived from a special levy, the prohibition of transfer found in Section 5705.14 (D), Revised Code, would prevent such transfer until the "termination of the activity" involved, *i. e.*, until the hospital is no longer operated as such.

Your inquiry does not disclose whether this operating tax has been completely levied and collected. I would, however, invite your attention to the language in the final paragraph of Section 5705.22, Revised Code, which provides that such tax may be levied at a rate less than the approved rate and for any of the approved years.

It is, therefore, my opinion and you are advised that funds derived from a tax levied pursuant to Section 5705.22, Revised Code, for the support of county hospitals, may not, by reason of Section 5, Article XII, Ohio Constitution, be used for any purpose other than the support of such county hospitals, and any accumulated surplus of such tax revenues may not be transferred by a board of county hospital trustees to a board of county commissioners to be placed in the general fund of the county and used for current expenses of the county.

Respectfully,
WILLIAM SAXBE
Attorney General