

Note from the Attorney General's Office:

1985 Op. Att'y Gen. No. 85-017 was overruled by
2014 Op. Att'y Gen. No. 2014-015.

OPINION NO. 85-017

Syllabus:

1. For purposes of R.C. 5705.23, the taxing authority of a city school district library is the board of education of the school district by which the library has been established and is controlled.
2. R.C. 5705.23 requires the board of library trustees of a city school district to certify its resolution providing for the submission of the question of an additional tax levy in excess of the ten-mill limitation to the board of education of the school district by which the library has been established and is controlled. The board of library trustees is not required to certify such resolution to the board of education of every school district which has territory lying within the library district.
3. Pursuant to R.C. 5705.23, the board of library trustees of a city school district library whose boundaries have been defined by the State Library Board in accordance with R.C. 3375.01 to include territory lying in more than one school district may by resolution provide for its taxing authority to submit the question of an additional tax levy in excess of the ten-mill limitation to all electors residing within the boundaries of the library district; the board of library trustees has no authority to cause its taxing authority to submit such question only to the electors residing within the boundaries of the city school district.

To: Robert D. Horowitz, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 14, 1985

I have before me your predecessor's request for an opinion in response to several questions concerning the submission of a tax levy for a city school district library pursuant to R.C. 5705.23. Based upon your predecessor's letter, it is my understanding that the board of trustees of a school district library requested that the State Library Board define the boundaries of the library district. Pursuant to R.C. 3375.01(G), the State Library Board, by resolution, determined that the city school district as well as two villages which lie in a local school district are within the boundaries of the library district.

The letter of request indicates that the board of library trustees of the school district library is considering submission of a tax levy pursuant to R.C. 5705.23, which provides, in pertinent part:

The board of library trustees of any county, municipal corporation, school district, or township 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 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, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the first Tuesday

after the first Monday in May or at an election on another day to be specified in the resolution. No more than two elections shall be held under authority of this section in any one calendar year. Such resolution shall conform to section 5705.19 of the Revised Code, except that the tax levy may be in effect for any specified number of years or for a continuing period of time, as set forth in the resolution, and the resolution shall specify the date of holding the election, which shall not be earlier than seventy-five days after the adoption and certification of the resolution to the taxing authority of the political subdivision to whose jurisdiction the board is subject, and which shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall not include a levy on the current tax list and duplicate unless the election is to be held at or prior to the first Tuesday after the first Monday in November of the current tax year. Upon receipt of the resolution, the taxing authority of the political subdivision to whose jurisdiction the board is subject shall adopt a resolution providing for the submission of such additional tax levy to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the date specified in the resolution of the board of library trustees. The resolution adopted by the taxing authority shall otherwise conform to the resolution certified to it by the board. The resolution of the taxing authority shall be certified to the board of elections of the proper county not less than seventy-five days before the date of such election. Such resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided in the notice of election. Section 5705.25 of the Revised Code shall govern the arrangements for the submission of such question and other matters concerning the election, to which that section refers, except that if the resolution so states, the question shall be submitted to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code and except that such election shall be held on the date specified in the resolution. 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 the subdivision or within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code at the additional rate in excess of the ten-mill limitation on the tax list, for the purpose stated in such resolutions. Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission. The proceeds of any library levy in excess of the ten-mill limitation shall be used for purposes of said board in accordance with the law applicable to said board. (Emphasis added.)

Thus, the board of library trustees may resolve that the question of an additional tax levy in excess of the ten-mill limitation shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject to the electors residing within the boundaries of the library district as defined by the State Library Board pursuant to R.C. 3375.01. R.C. 5705.23. The initial query posed by your predecessor is whether the board of trustees of a city school district library whose district boundaries include territory lying in more than one school district must submit a resolution concerning the levy of an additional tax in excess of the ten-mill limitation to the boards of education of each school district which has territory included within the library district. The term "subdivision," as used in R.C. Chapter 5705, is defined under R.C. 5705.01(A), to include a school district other than the county school district. Clearly the board of library trustees of a city school district library is subject to the jurisdiction of the school district by which the library has been established and is controlled. See R.C. 3375.14; R.C. 3375.15; 1959 Op. Att'y Gen. No. 119, p. 59, 61 ("[t]he library board is . . . an agency of the [school] district which appointed it"). See also R.C. 3375.34. R.C. 5705.01(C)

provides that the taxing authority of a school district is the board of education. Accordingly, R.C. 5705.23 requires that the resolution of the board of library trustees of a city school district library regarding an additional tax levy be submitted to the board of education of the district to whose control and jurisdiction the city school district board of library trustees is subject. Cf. R.C. 3375.17 (the board of education of the school district which created a school district library may, upon certification from the library trustees, levy a tax on the property of the school district, not to exceed one and one-half mills, for the maintenance and operation of the library).

In this instance, the city school district library is subject to the jurisdiction of the board of education of the city school district which established and controls the city school district library. Although the library district includes territory located in a local school district, the local school district has no authority to exert control or jurisdiction over the city school district library. Thus, R.C. 5705.23 does not require the board of library trustees to submit its resolution to the board of education of the local school district. R.C. 5705.23 requires that the board of library trustees submit its resolution only to the board of education of the city school district since such school district established and controls the city school district library.

Your predecessor has also asked whether the question of an additional tax, levied pursuant to R.C. 5705.23, may appear on the ballot within the entire district of a city school district library whose territory lies in more than one school district, when only one board of education must approve the pertinent resolution.

R.C. 5705.23 states, in relevant 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 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, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code. . . . Upon receipt of the resolution, the taxing authority of the political subdivision to whose jurisdiction the board is subject shall adopt a resolution providing for the submission of such additional tax levy to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code, on the date specified in the resolution of the board of library trustees. The resolution adopted by the taxing authority shall otherwise conform to the resolution certified to it by the board. . . . 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 the subdivision or within the boundaries of the library district as defined by the state library board pursuant to section 3375.01 of the Revised Code at the additional rate in excess of the ten-mill limitation on the tax list, for the purpose stated in such resolutions.

R.C. 5705.23 clearly provides that the board of education having jurisdiction over a city school district library whose district boundaries include territory lying in more than one school district must by resolution provide for the submission of the question of an additional tax levy for library purposes to the electors residing within the boundaries of the library district as defined by the State Library Board in accordance with R.C. 3375.01, upon receipt of the board of library trustees' resolution so providing. See *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) ("[i]n statutory construction. . . the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a construction other than [its]

ordinary usage"). Moreover, I believe that the board of library trustees may only adopt a resolution requiring the taxing authority to submit the question of an additional tax levy to the electors residing within the boundaries of the library district and may not adopt a resolution requiring the taxing authority to submit the question only to the electors residing within the boundaries of the city school district. 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.

I believe that this interpretation of R.C. 5705.23 is compelled by Ohio Const. art. XII, §2. See generally R.C. 1.47 ("[i]n enacting a statute, it is presumed that: (A) Compliance with the constitutions of the state and of the United States is intended"). 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. See Gigandet v. Brewer, 134 Ohio St. 86, 15 N.E.2d 964 (1938); 1982 Op. Att'y Gen. No. 82-063; 1979 Op. Att'y Gen. No. 79-063. R.C. 5705.23 defines the library district to be the district of the taxing authority.

Thus, in this instance I believe that the question of an additional tax levy must be submitted to the electors residing within the library district. The board of library trustees has no authority to cause its taxing authority to submit the question only to the electors residing within the school district.

The last question posed by your predecessor is, if the resolution for the submission of the tax levy is submitted to the board of education of the city school district, and voted upon solely within the boundaries of the school district, whether any of the funds derived from the tax levy may be used for library purposes within the villages which are located outside of the city school district, but within the boundaries of the library district. I believe that this question is implicitly answered in my response to the preceding question. In this instance the board of education must submit the question to the electors residing within the library district, which include those electors residing in the villages outside of the school district as well as those electors residing within the city school district.

It is therefore my opinion, and you are advised as follows:

1. For purposes of R.C. 5705.23, the taxing authority of a city school district library is the board of education of the school district by which the library has been established and is controlled.
2. R.C. 5705.23 requires the board of library trustees of a city school district to certify its resolution providing for the submission of the question of an additional tax levy in excess of the ten-mill limitation to the board of education of the school district by which the library has been established and is controlled. The board of library trustees is not required to certify such resolution to the board of education of every school district which has territory lying within the library district.
3. Pursuant to R.C. 5705.23, the board of library trustees of a city

school district library whose boundaries have been defined by the State Library Board in accordance with R.C. 3375.01 to include territory lying in more than one school district may by resolution provide for its taxing authority to submit the question of an additional tax levy in excess of the ten-mill limitation to all electors residing within the boundaries of the library district; the board of library trustees has no authority to cause its taxing authority to submit such question only to the electors residing within the boundaries of the city school district.