

OPINION NO. 76-032**Syllabus:**

1. The proceeds of a tax levy, adopted by a community college district pursuant to R.C. 3354.12 for the payment of operating costs, may be used to support a sabbatical leave program.

2. When a tax levy is submitted to the voters pursuant to R.C. 3354.12 the ballot shall state the statutory purpose of the proposal, but need not state the specific anticipated use of the proceeds of the levy.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio

By: William J. Brown, Attorney General, May 6, 1976

I have before me your request for my opinion on the following questions:

1. Can the proceeds from a tax levy voted by a community college district be used for a sabbatical leave program?
2. If the use of tax funds were for a sabbatical or professional leave program would this language have to be specified in the tax proposal for the voters?
3. As per Section 3354.12, does the phrase ". . . and the payment of operating costs." refer to the operating costs of the buildings which have been constructed from the levy funds or can these funds be used for general operating costs of the institution?"

The tax levy to which you refer is authorized by R.C. 3354.12, which provide in pertinent part:

"Upon the request by resolution approved by the board of trustees of a community college district, and upon certification to the board of elections not less than sixty days prior to the

election, the boards of elections of the county or counties comprising such district shall place upon the ballot in their respective counties, at an election to be held on the first Tuesday after the first Monday in June, or the first Tuesday after the first Monday in November of any year, or at a special election on another day specified in such resolution, the question of levying a tax on all the taxable property in the community college district outside the ten-mill limitation, for a specified period of years or for a continuing period of time, to provide funds for any one or more of the following purposes: the acquisition of sites, the erection, furnishing, and equipment of buildings, the acquisition, construction, or improvement of any property which the board of trustees of a community college district is authorized to acquire, construct, or improve and which has an estimated life of usefulness of five years or more as certified by the fiscal officer, and the payment of operating costs. Not more than two special elections shall be held in any one calendar year. Levies for a continuing period of time adopted under this section may be reduced in accordance with section 5705.261 [5705.26.1] of the Revised Code.

". . . .

"The boards of trustees of a community college district shall establish a special fund for all revenue derived from any tax levied pursuant to this section.

". . . .

"All operating costs of such community college may be paid out of any gift or grant from the state, pursuant to division (K) of section 3354.09 of the Revised Code; out of student fees and tuition collected pursuant to division (G) of section 3354.09 of the Revised Code; or out of unencumbered funds from any other source of the community college income not prohibited by law."

In answering your last question first, R.C. 3354.12 provides that a community college district may have placed upon the ballot the question of a tax levy to provide funds for certain specified purposes. These purposes include the acquisition, construction or improvement of property which has an estimated life of usefulness of five years or more, and the payment of operating costs.

R.C. 3354.01(H) defines operating costs as:

". . . [A]ll expenses for all purposes of the community college district except expenditures for permanent improvements having an estimated life of usefulness of five years or more as certified by the fiscal officer of the community college district."
(Emphasis added.)

In view of this definition of operating costs contained in R.C. 3354.01(H), it is clear that the reference to operating costs in R.C. 3354.12 does not mean only the operating costs of the permanent improvements, but rather all expenses for all purposes of the community college district. See Roddy v. Andrix, 32 Ohio Op. 2d 349 (Madison C.P. 1964).

Thus, operating costs of a community college district, which include all expenses for all purposes except permanent improvements, may be paid from funds derived from a levy in accordance with R.C. 3354.12. In fact the main purpose of R.C. 3354.12 clearly appears to provide funds for the community college district to pay its expenses. The tax levy provided for is the key factor in the creation and operation of the community colleges. State subsidy assistance, on a biennial basis, does not occur until after the college is established and operation begins. It should be noted, however, that funds derived from a tax levy in accordance with R.C. 3354.12 shall be placed in a special fund established by the board of trustees of the community college district pursuant to the mandatory language in the statute. The statute also provides that all such operating costs may be paid out of any gift or grant, student fees and tuition, or unencumbered funds from any other source of the community college income not prohibited by law.

Since the funding of a sabbatical leave program is undertaken as an expense or operating cost of a community college, funds derived from R.C. 3354.12 could be used to support such a program in the absence of statutory prohibition. The next question is, therefore, whether such a prohibition exists. For the following reasons I believe that the General Assembly has not prohibited the use of taxes levied under R.C. 3354.12 to support sabbatical leave programs.

As you have noted in your letter, the General Assembly has, in its general appropriations acts for the current and the two preceding bienniums, included provisions against the funding of sabbatical leave programs. In the general appropriations act for the 1975-77 biennium (Am. Sub. H.B. No. 155) the following prohibition is set out at p. 126:

"After July 19, 1975, and until July 1, 1977, no part of an appropriation available to the board of trustees or the board of directors of a state-assisted technical college, community college, state university, and state-affiliated university shall be used to pay all or any part of the compensation of an administrative officer, faculty member, or staff employee who is on leave of absence or has been granted a sabbatical leave and who is not engaged in rendering direct instructional, administrative, or operational service for the immediate benefit of the state-assisted institution of higher education." (Emphasis added.)

It has been suggested that the term "appropriation," as used above, must be construed broadly to include tax levies and, therefore, to preclude the use of such funds to support a sabbatical leave program. This construction is based on an analysis of the language quoted above in contrast to the following language also contained in Am. Sub. H.B. No. 155

(appearing on p. 126, three paragraphs after the earlier quoted prohibition):

"No part of an appropriation made in this act including student instructional fees, rotary funds, local tax levies, restricted funds, or public funds, shall be available to the board of trustees of a state-assisted institution of higher education for use as travel advance moneys to any administrative officer, faculty member, or classified employee of said institution. . . ."

(Emphasis added.)

The argument is that the phrase "an appropriation available," as used in the first quoted paragraph, is necessarily broader than "an appropriation made in this act," as that phrase is used in the second quoted paragraph. Therefore, since the second paragraph prohibits the use of "an appropriation made in this act including . . . local tax levies" for travel expenses, it is suggested that the prohibition in the first paragraph likewise applies to the use of funds derived from such tax levies.

This is essentially the rationale I used in 1974 Op. Att'y Gen. No. 74-074, in which I concluded that similar provisions in the 1973-75 general appropriations act (Am. Sub. H.B. No. 86) operated to preclude the expenditure of student instructional fees to fund a sabbatical leave program. Absent specific language, defining the term "appropriation" or limiting the scope of the prohibition, such a construction is proper. See my discussion in Op. No. 74-074.

However, while Am. Sub. H.B. No. 86 did not contain a definition of "appropriation," which would have required a conclusion different from that in Op. No. 74-074, such a definition was included in Am. Sub. H.B. No. 155. Section 12 of that act reads in pertinent part as follows:

"(B) 'Appropriation' means a fixed amount of spending authority granted by the legislature to a state agency in an appropriation item or by specific language, describing the maximum amount of money available for a specified purpose and period of time conditioned upon the availability of supporting revenues.

"(C) 'Appropriation item' means one of the classes of appropriation. The classes of appropriation are personal service, maintenance, equipment, all purposes, special purposes, subsidy, rotary, and capital improvements. The three classes, personal service, maintenance, and equipment, may be combined into a general class called operating expenses."

By including the foregoing definition in the act, the General Assembly has limited the scope of the prohibition against expenditures for a sabbatical leave program to appropriations as that term is defined above in Section 12 of the act. That definition clearly does not encompass taxes levied by a community college district pursuant to R.C. 3354.12, since R.C.

3354.12 does not establish a fixed amount of spending authority. Therefore, while the specific language used in the prohibition against the payment of travel expenses provides the basis for a broader application of that restriction, there is no such basis in the case of the prohibition against using appropriations for sabbatical leave programs. I must conclude then that the General Assembly in enacting Am. Sub. H.B. No. 155 did not intend to preclude the use of tax levies under R.C. 3354.12 to support a sabbatical leave program.

You have noted in your request that income from such tax levies is included in the proposed budget which is submitted by the Board of Regents to the General Assembly. The amount of income from tax levies can then be considered in determining the amount of state subsidy to be appropriated. While this may, in practice, operate to restrict the use of tax levies to support sabbatical leave programs, it does not follow that the absolute restriction on the use of appropriations, which is found on p. 126 of Am. Sub. H.B. No. 155, applies to other funds available to a community college district.

Finally, my conclusion that tax levies under R.C. 3354.12 may be used to support a sabbatical leave program requires a consideration of your second question, namely whether language identifying this specific use must be included in the proposal presented to the voters. R.C. 3354.12, in authorizing the submission of the special tax levy to the voters of the district, provides that, upon the request by resolution of the board of trustees, the boards of elections of the counties comprising the district shall place on the ballot the question of levying the tax:

"[F]or a specified period of years or for a continuing period of time, to provide funds for any one or more of the following purposes: the acquisition of sites, the erection, furnishing, and equipment of buildings, the acquisition, construction, or improvement of any property which the board of trustees of a community college district is authorized to acquire, construct, or improve and which has an estimated life of usefulness of five years or more as certified by the fiscal officer, and the payment of operating costs. . . ." (Emphasis added.)

The proposal presented on the ballot must, therefore, identify the time period during which the levy would be effective and one of the purposes set out in the statute for which the levy may be used. As discussed above "the payment of operating costs" is a purpose broad enough in scope to include expenditures to support a sabbatical leave program. However, there is no requirement that the issue, as it appears on the ballot, must identify a more specific purpose than one of those enumerated in R.C. 3354.12. In the absence of such a requirement, the proposal presented to the voters need only state a purpose under the statute, regardless of the ultimate specific use of the funds. On this point see also 1965 Op. Att'y Gen. No. 65-187, 1960 Inf. Op. Att'y Gen. No. 229, and 1956 Op. Att'y Gen. No. 512, in which my predecessors reached a similar conclusion in the case of tax levies submitted pursuant to R.C. 5705.19.

It is, therefore, my opinion and you are so advised that:

1. The proceeds of a tax levy, adopted by a community college district pursuant to R.C. 3354.12 for the payment of operating costs, may be used to support a sabbatical leave program.

2. When a tax levy is submitted to the voters pursuant to R.C. 3354.12 the ballot shall state the statutory purpose of the proposal, but need not state the specific anticipated use of the proceeds of the levy.