

OPINION NO. 82-056**Syllabus:**

1. The provisions set forth in R.C. 5705.38 do not apply to public libraries and boards of public library trustees.
2. A board of public library trustees which derives funds from two or more subdivisions, and is, therefore, a district authority, is subject to the provisions of R.C. 5705.41.
3. Funds received by a board of public library trustees as a result of taxes levied pursuant to R.C. 5705.23 or R.C. 5707.04 are not funds derived from a subdivision within the meaning of R.C. 5705.01(I).

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 30, 1982

I have before me your request for an opinion which asks whether the provisions of R.C. 5705.38 and 5705.41, which do not specifically refer to public libraries or boards of public library trustees, are applicable to such entities.

R.C. Chapter 5705, which is generally applicable to subdivisions and certain other governmental units of the state, mandates a budget and appropriation process and imposes certain controls on tax levies and the expenditure of public funds. The first statute to which you refer, R.C. 5705.38, mandates annual appropriation measures by providing, in part, as follows:

On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificates of estimated resources or amendments thereof. (Emphasis added.)

According to its clear language, the statute applies to the "taxing authority" of a "subdivision" or "taxing unit." In order to determine whether public libraries or boards of public library trustees fall within the scope of this provision, it is necessary to ascertain the intent of the legislature from the language employed in the statute. Batchelor v. Newness, 145 Ohio St. 115, 120, 60 N.E.2d 685, 687 (1945).

The legislature has defined the pertinent terms in R.C. 5705.01. In R.C. 5705.01(A) the legislature has specifically enumerated those geographic areas or districts it intends to encompass by the term "subdivision." Public library districts are not included in this enumeration. Similarly, in R.C. 5705.01(C) the legislature has defined the term "taxing authority" by enumerating specific governing boards. Again, boards of public library trustees are not included. The legislature has defined the term "taxing unit" as "any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district." R.C. 5705.01(H). A board of library trustees does not have the authority to levy taxes or issue bonds. See R.C. 5705.23. It is not, therefore, a "taxing unit" for the purposes of R.C. Chapter 5705. "Where a legislative body incorporates in an enactment definitions of words and phrases used therein, such definitions will be controlling in making a determination of the legislative intent." Benuea v. City of Columbus, 170 Ohio St. 64, 162 N.E.2d 467, 468 (1959) (syllabus, paragraph 1). Rules of statutory construction proscribe expansion of the scope of these definitions which are clear expressions of legislative intent. See Wachendorf v. Shaver, 149 Ohio St. 231, 232, 78 N.E.2d 370, 372 (1948) (syllabus, paragraph 5). Thus, I must conclude that the legislature did not intend to subject public libraries or boards of public library trustees to the requirements set forth under R.C. 5705.38.

The second statute to which you refer, R.C. 5705.41, provides that no "subdivision" or "taxing unit" shall appropriate or expend money unless it complies with restrictions imposed thereunder. The final paragraph of the statute extends the restrictions applicable to a subdivision to the transactions of a "district authority." As discussed above, public libraries and boards of public library trustees are not included within the definition of "subdivision" or "taxing unit." R.C. 5705.01(A), (H). Thus, the restrictions set forth under R.C. 5705.41 are applicable to a public library or a board of public library trustees only if such an entity is a "district authority." R.C. 5705.01(I) defines this term by providing as follows:

"District authority" means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as the county school board, the trustees of district tuberculosis hospitals and district children's homes, the district board of health, a joint-county community mental health district's mental health board, detention home districts, a joint recreation district board of trustees, districts organized under section 2151.65 of the Revised Code, combined districts organized under sections 2151.34 and 2151.65 of the Revised Code, and other such boards. (Emphasis added.)

This language does not clearly express the extent of involvement which is necessary for a subdivision to be considered the source of funds received by a board of public library trustees. Each of the boards enumerated in this statute may derive funds from two or more subdivisions, yet all of these boards need not necessarily receive funds from more than one subdivision. If one interprets R.C. 5705.01(I) to mean that the examples cited are always district authorities, the initial phrase which defines the term will sometimes be ignored. However, longstanding rules of statutory construction proscribe disregard of statutory language. Carter v. City of Youngstown, 146 Ohio St. 203, 65 N.E.2d 63, (1946) (syllabus, paragraph 1). It is, therefore, necessary to seek an interpretation that reconciles the examples with the remainder of the statutory language. See State ex rel. Meyers v. Industrial Commission, 105 Ohio St. 103, 136 N.E. 896 (1922) (syllabus, paragraph 1). Accord, 1982 Op. Atty Gen. No. 82-015.

As stated above, the boards cited in the statute need not necessarily derive funds from two or more subdivisions. For example, a joint-county community mental health district's mental health board may derive funds from the proceeds of taxes levied by it throughout its district. R.C. 5705.01(A), 5705.19I. While the district is a single subdivision, it is composed of counties which are also separate subdivisions. R.C. 5705.01(A). The board of county commissioners of any county which is a component of such a district is also authorized to levy a tax within the county to provide for the county's contribution to the district. R.C. 5705.22I. It is the board of county commissioners, in its role as taxing authority for the county, that determines whether additional taxes are necessary to meet the requirements of its contribution to the district, and the level of taxes to be submitted to the electors of the county for approval. R.C. 5705.01(C), 5705.22I. The proceeds of such a tax are clearly funds derived from the subdivision. If a district's mental health board derived funds from two or more counties in this manner, it would meet the definition of a district authority.

Another example enumerated under R.C. 5705.01(I) is a joint recreation district board of trustees. Such a board may pay expenses from the proceeds of a tax that the board has submitted to electors, and that is levied throughout the district which is a single subdivision. R.C. 755.18, 5705.01(C), 5705.19(H). However, expenses may also be paid from funds appropriated by the various separate subdivisions which have joined to form the district. R.C. 755.18. Funds appropriated by a subdivision clearly are derived therefrom. If a board of trustees derives its funds from two or more subdivisions in this manner, the board would meet the definition of a district authority as set forth under R.C. 5705.01(I).

I have examined the sources of funding available to each of the other boards enumerated in R.C. 5705.01(I), and have found that, while there is considerable variety, the characteristic common to each of these boards is the possibility that such board may receive the proceeds of taxes levied by, or other appropriations from, two or more of the subdivisions enumerated in R.C. 5705.01(A). See R.C. 3317.11, R.C. 3709.28, R.C. 5153.37, R.C. 5705.19(N), R.C. 5705.20. Using the examples enumerated by the General Assembly to clarify its intent, I am able to conclude that a board constitutes a district authority only if it receives the proceeds of taxes levied by, or other appropriations from, two or more subdivisions. In order to determine whether a board of public library trustees derives its income or funds from two or more subdivisions, and must, therefore, be considered a district authority, one must ascertain the sources of public library funds.

It is my understanding that, apart from fees or other library charges and private gifts, virtually all funds received by boards of public library trustees are the proceeds of special taxes levied pursuant to R.C. 5705.23, or are proceeds of a tax which the General Assembly levies on intangible property pursuant to R.C. 5707.04 which provides in part, as follows:

Annual taxes are hereby levied on the kinds of intangible property, enumerated in this section, on the classified tax list in the office of the county auditor and the duplicate thereof in the office of the county treasurer at the following rates:

. . . .

The object and distribution of the taxes so levied shall be as provided in section 5707.05 of the Revised Code.

R.C. 5707.05 provides, in pertinent part, as follows:

At the first settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury as follows:

(A) To the state, one fourth of one per cent thereof, which, when paid into the state treasury in the manner provided by law, shall constitute a fund for the use of the tax commissioner in administering

the system of assessment of tangible and intangible personal property and shall not be used or appropriated for any other purpose;

(B) To each board of public library trustees in the county, which has qualified for participation in such fund,¹ fifty per cent of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount so distributed, together with the fees of the county auditor and county treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively;

(C) To each municipal corporation in the county. . .

(D) To the county. . .

(E) The residue in said undivided classified property tax fund, after making the deductions required by divisions (A), (B), (C), and (D) of this section, shall remain in the undivided classified property tax fund and shall be distributed as a part of said fund at the second settlement of undivided classified property taxes, as follows:

(1) To the state, one fourth of one per cent thereof. . .

(2) To each board of public library trustees in the county. . . .

The residue of the undivided classified property tax fund shall be distributed to any board of public library trustees, municipal corporation, the county, and any board of township park commissioners in the same manner and proportions as provided for in this section for distribution of the fund. (Emphasis added.)

These provisions clearly demonstrate that the state, not a subdivision, is the source of these tax proceeds which are distributed to boards of public library trustees. The levy from which these funds are derived is imposed by the General Assembly, not by a subdivision of the state. R.C. 5707.04. The state is entrusted with the administration of the tax assessment system for intangible personal property from which the proceeds distributed to public libraries are derived. R.C. 5707.05(A), (B), (E)(1), (E)(2). The relevant subdivision, the county, functions only to collect the tax at the local level and, through its budget commission, to adopt a budget which includes amounts requested by a board of public library trustees which has qualified for participation in the distribution of the classified property tax proceeds. R.C. 5705.28; 5705.32. The county treasurer distributes the classified property tax fund, in part, to qualified boards of public library trustees. R.C. 5707.05. This administrative involvement by the county does not, however, alter the nature of the funds as proceeds of a state-imposed tax. Therefore, while a board of public library trustees may be the recipient of funds derived from classified property tax proceeds collected in two or more counties, the funds are funds derived from the state, for which the counties have served only as collection agents.

A board of public library trustees may also receive funds from the proceeds of a special tax levied pursuant to R.C. 5705.23. That statute authorizes a board, by resolution, to require the taxing authority of the political subdivision to whose jurisdiction the board is subject to submit the question of such a levy "to the electors of the subdivision or, if the resolution so states, to the electors residing within the boundaries of the library district." It further provides that "the words 'electors of the subdivision' as used in. . .[R.C. 5705.23] means [sic] 'electors of the county library district'", and that the tax approved by such electors shall be levied only within the county library district. This statute is unique. Pursuant to this statute, a board of public library trustees cannot independently cause a tax levy to be submitted to the electors in its district; it must act through a separate taxing authority. Yet, the taxing authority's function is merely ministerial; the board may require the taxing authority to submit the question of the levy to the

¹R.C. 5705.28 sets forth the procedures by which "the board of trustees of any public library desiring to participate in the proceeds of the classified property taxes collected in the county" may qualify for such participation.

electors. Moreover, the tax is not necessarily levied throughout the entire subdivision; it is levied only within the library district. For these reasons, I do not believe that the involvement of the subdivision is sufficient to warrant the conclusion that funds derived from taxes levied pursuant to R.C. 5705.23 are funds derived from a subdivision. While the taxing authority of a subdivision must perform the administrative function of submitting the question to the electors, all discretionary decisions concerning the need for the tax, the level of the tax, and the timing and duration must be made by the board of public library trustees and the tax is levied only within its district. Thus, a board of public library trustees which derives funds from the proceeds of such a tax is not, in my opinion, a district authority, even if the proceeds paid to a board are the result of taxes levied in a library district which encompasses two or more subdivisions.

Apart from the two levies discussed above, there are several further levies which are potential sources of public library funds. Pursuant to R.C. 5705.06(B), the taxing authority of a subdivision may impose, without a vote of the people, "[a] levy for the library purposes of the subdivision. . . within the ten-mill limitation." R.C. 5705.19(D) authorizes the taxing authority of a subdivision, when taxes raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, to submit to electors the question of a tax levy in excess of the ten-mill limitation "[f]or a public library of, or supported by, a municipal corporation, township, school district, or county." Clearly, the statutory language authorizes each of these levies for library purposes of the subdivision. The proceeds of these levies are, therefore, funds of the subdivision.

Various sections of R.C. Chapter 3375 also authorize subdivisions to levy taxes for library purposes. R.C. 3375.07 and 3375.23, respectively, authorize a board of county commissioners to levy a tax annually, not to exceed one mill, for the purpose of maintaining a county free public library and to provide funds for operation of a county library. R.C. 3375.09 and R.C. 3375.18, respectively, authorize a board of township trustees or a board of education of a school district to levy a tax annually for the maintenance and operation of libraries. R.C. 3375.31 authorizes a board of county commissioners to levy a tax on property of a regional library district within the county for library operation. R.C. 3375.42 authorizes a board of county commissioners, a board of education of any school district, the legislative authority of any municipal corporation, or a board of township trustees, which has contracted with a free public library to provide library service for its inhabitants, to levy a tax, or make an appropriation from its general fund, to be expended by such a library in providing library service. Funds which a board of public library trustees receives from the proceeds of these levies or appropriations are clearly derived from the respective subdivisions.

As stated above, a district authority has been defined to include "any board of . . . trustees. . . controlling a district institution or activity that derives its income or funds from two or more subdivisions." R.C. 5705.01(I). Thus, a board of public library trustees which derives funds from two or more subdivisions as a result of such levies or appropriations falls within the literal definition of a district authority. The statutory language "should be held to mean what it has plainly expressed, and hence no room is left for construction." Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph 2).

Based upon the foregoing, it is my opinion, and you are advised, that:

1. The provisions set forth in R.C. 5705.38 do not apply to public libraries and boards of public library trustees.
2. A board of public library trustees which derives funds from two or more subdivisions, and is, therefore, a district authority, is subject to the provisions of R.C. 5705.41.
3. Funds received by a board of public library trustees as a result of taxes levied pursuant to R.C. 5705.23 or R.C. 5707.04 are not funds derived from a subdivision within the meaning of R.C. 5705.01(I).