

2997

NO TRANSFER CAN BE MADE OF TAX LEVY MONEY RAISED FOR A SPECIAL TO A GENERAL FUND—SPECIAL LEVY PROCEEDS TO BE USED FOR THE PURPOSE OF CONSTRUCTION OF PERMANENT IMPROVEMENTS MUST HAVE PURPOSE SPECIFIED IN RESOLUTION—COUNTY COMMISSIONERS MAY CONSTRUCT BLDGS. NECESSARY FOR MENTAL HEALTH CLINICS FROM ANY MONIES IN GENERAL FUND, IF IT IS NECESSARY TO ISSUE BONDS IN EXCESS OF \$100,000.00 THE PROVISIONS OF 153.21, R.C. ARE FOLLOWED—§§5705.191, 5705.10, 5705.05, 5705.14, 5705.09, 5705.19, 339.65, 307.02, OPINION 1697 OAG 1960, OPINION 1909 OAG 1938, OPINION 1573, OAG 1952.

SYLLABUS:

1. Revenue derived from a special tax levy pursuant to Section 5705.191, Revised Code, may not be paid into the general fund to reimburse such fund, but must be credited, in accordance with Section 5705.10, Revised Code, to a special fund for the purpose for which such levy was made. No transfer can be made from a special fund to the general fund except as authorized in Section 5705.14, Revised Code.
2. In order to use the proceeds of a special levy under Section 5705.191, Revised Code, for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.
3. A board of county commissioners, pursuant to its duties under Section 339.65, Revised Code, may construct, pursuant to Section 307.02, Revised Code, whatever buildings are necessary for mental health clinics out of any available monies in the general fund, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$100,000.00, the provisions of Section 153.21, Revised Code, must be followed.

Columbus, Ohio, May 15, 1962

Hon. Donald D. Simmons, Prosecuting Attorney
Wood County, Bowling Green, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I recently had an inquiry from the Board of County Commissioners of Wood County, Ohio, regarding the appropriation of special levy funds and related matters pertaining to the newly established Wood County Mental Health Clinic.

"In the November 1960 General Election, the voters of Wood County favorably passed the following proposed tax levy for the following purpose as set forth on the ballot.

'An additional tax for the benefit of Wood County, Ohio, for the purpose of Health and Mental Health at a rate not exceeding three tenths (.3) mills for each one dollar of valuation, which amounts to three (3) cents for each one hundred dollars of valuation for five years 1960, 1961, 1962, 1963 and 1964.'

"This tax levy which was approved was governed by Revised Code Section 5705.191 and the Wood County Commissioners complied with that section so far as passing the necessary resolutions to permit the issue to be placed on the ballot.

"Revised Code Section 339.65 entitled Mental Health Clinics, states in part as follows: '...the Board of County Commissioners may contribute toward the maintenance and support and the providing of facilities for mental health clinics serving their counties and approved by the state department of mental hygiene and correction.'

"In 1956, the then Attorney General of Ohio ruled in Opinion No. 7001, page 624, that an expenditure for a county's contribution for the maintenance and support for mental health clinics is a health expenditure and if the funds for health purposes are insufficient, a levy may be made for the purpose of supplementing the general fund for the purpose of making an appropriation for health under the provisions of Section 5705.191 of the Revised Code. Your predecessor then pointed out that funds derived from such a levy may not be earmarked for any special health purposes but are available for appropriation by the county commissioners for all health expenditures.

"The proceeds from the .3 of a mill tax levy were distributed, .2 of a mill to mental health and .1 of a mill to TB hospitals, crippled children, charity drugs and professional services.

"The questions to be resolved by you are as follows:

"1. May the Board of County Commissioners expend general fund monies under Revised Code Section 339.65 for mental health purposes with the understanding that any reimbursement will be to the general fund from levied monies specifically collected, to-wit: the .2 of a mill for mental health purposes?

"2. May the monies from the special mental health levy be used for construction purposes to provide a building and facilities for a mental health clinic? (See 1960 OAG 1697)

"3. In the event that mental health funds collected under the special levy may be used for construction purposes, do the

county commissioners have the authority to handle these funds or are the funds administered by the mental health board?

"4. May funds from a mental health levy be accumulated from year to year and said accumulated funds expended for construction purposes?

"5. May the Wood County Commissioners expend general fund monies for construction of a mental health clinic?

"6. How should funds derived from the mental health special levy be handled by the Wood County Auditor and County Commissioners?

"Since the mental health board only meets once per month and the County Commissioners have submitted these questions for my consideration, I would respectfully ask that your opinion on the above question be rendered as soon as possible."

According to your request, the tax levy in question was governed by Section 5705.191, Revised Code, which reads in part as follows:

"The taxing authority of any subdivision other than the board of education of a school district, by a vote of two-thirds of all its members, may 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 subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the purposes in section 5705.19 of the Revised Code, *or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary or special election to be held at a time therein specified.*
* * *" (Emphasis added)

Since the tax levy in question is "to supplement the general fund," then may the revenue derived from such levy be paid into the general fund as it is collected to reimburse the general fund for health expenditures already made? At first impression, it would seem that such revenue should be paid into the general fund, but the tax levy in question is for a specific purpose, to-wit: health. In this regard, Section 5705.10, Revised Code, provides in 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 limi-

tation, 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.

“* * *

* * *

* * *

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

Thus, revenue from a general levy for current expense is paid into the general fund, but revenue from a special levy must be credited to a special fund. That the tax levy in question is not a general levy for current expense is obvious when the provisions of Section 5705.05, Revised Code, are considered. Said section reads in part as follows :

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax.* * *”

Revenues derived from a general levy may be expended for “current expenses of any kind.” Revenue derived from the levy in question, however, may be expended only for “health” purposes. Thus, revenues from this special levy must be paid into a special fund and not into the general fund.

Since monies collected pursuant to the special levy in question must be paid into a special fund, then, in order to reimburse the general fund, it would be necessary to transfer monies from the special fund to the general fund. Regarding the transfer of funds, your attention is directed to Section 5705.14, Revised Code, reading in part as follows :

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

“* * *

* * *

* * *

(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.”

Section 5705.09, Revised Code, referred to in Section 5705.14, *supra*, provides in part as follows:

“Each subdivision shall establish the following funds:

“(A) A general fund;

“* * *

* * *

* * *

“(D) A special fund for each special levy;

“* * *

* * *

* * *”

In answer to your first question, therefore, monies specifically collected pursuant to the tax levy in question may not be paid into the general fund, and may not be transferred to the general fund except as provided for in Section 5705.14, *supra*.

Assuming that the board of county commissioners wishes to expend general fund monies for mental health purposes, without waiting for monies to be collected from the special levy, because of some urgent need, and realizing that reimbursement of the general fund pursuant to the transfer provisions of Section 5705.14, *supra*, might be difficult and time consuming, let me point out that a fraction of the proceeds of the special levy may be borrowed prior to the time when the first tax collection from such levy can be made. In this regard, your attention is directed to Section 5705.191, Revised Code, which reads in pertinent part as follows:

“After the approval of such levy by vote and prior to the time when the first tax collection from such levy can be made, the taxing authority of the subdivision may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not more than fifty per cent of the total estimated proceeds of the levy throughout its life.

“Such notes shall be sold as provided in Chapter 133. of the Revised Code. * * *”

Coming now to your second question, Section 5705.191, *supra*, provides that the taxing authority may declare by resolution that, “ * * * it is necessary to levy a tax in excess of such limitation for any of the purposes in Section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of”. One of the purposes in Section 5705.19, Revised Code, is found in division (F), reading as follows:

“(F) For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue;”

The board of county commissioners in the instant case could have specified the purpose set forth in division (F), *supra*, or it could have specified that the tax was to supplement the general fund for a particular purpose. The board in its resolution chose the latter alternative.

Section 5705.191, *supra*, after providing for the adoption of a resolution, states:

“Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, * * *”

One of the requirements of Section 5705.19, *supra*, provides as follows:

“Such resolution shall be confined to a single purpose, * * *”

The single purpose of the tax levy in question is “health.” Is this purpose sufficiently broad to permit monies from the special levy to be used for construction of a mental health clinic?

This is a special levy under Section 5705.191, *supra*, and the resolution does not specify that the purpose is to construct or to acquire a permanent improvement. In this regard, paragraph two of the syllabus in Opinion No. 1697, Opinions of the Attorney General for 1960, page 617, provides as follows:

“2. In order to use the proceeds of a levy in excess of the ten-mill limitation under the provisions of Section 5705.19, Revised Code, for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.”

Although Opinion No. 1697, *supra*, refers only to a special levy under Section 5705.19, *supra*, the same rule would apply to a special levy under Section 5705.191, *supra*, since the requirements of Section 5705.19, *supra*, are incorporated by reference in Section 5705.191, *supra*.

In answer to your second question, therefore, it is my opinion that monies from the special health levy may not be used to construct facilities for a mental health clinic. In view of this answer, it will not be necessary to answer questions 3 or 4, so I shall turn now to question number 5.

Section 339.65, Revised Code, provides as follows:

"The board of county commissioners in any county, or the board of county commissioners of two or more counties acting jointly, may contribute towards the maintenance and support, and the providing of facilities, for mental health clinics serving their counties and approved by the state department of mental hygiene and correction.

"Such clinic or clinics shall be supervised by the division of mental hygiene in the state department of mental hygiene and correction, and shall be operated under such rules and regulations governing such clinics as may be adopted by the division of mental hygiene.

"The state division of mental hygiene in the department of mental hygiene and correction may from time to time allocate and distribute funds at its disposal for the establishment and operation of mental hygiene clinics, to such county or counties which may establish such a clinic or clinics, under such rules and regulations as the division may establish and determine, subject to the provisions of sections 119.01 to 119.13, inclusive, of the Revised Code."

(Emphasis added)

Section 307.02, Revised Code, authorizes a board of county commissioners to purchase or construct *necessary* buildings; it reads in part:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, and other necessary build-

ings, public stadiums, public auditorium, exhibition hall, zoological park, and related parking facilities, and sites therefor, * * *

* * *

* * *

* * *

(Emphasis added)

In Opinion No. 1909, Opinions of the Attorney General for 1938, page 299, the then attorney general stated at page 301 as follows:

“I direct your attention to the language ‘and other necessary buildings, and I am of the opinion that such language confers upon the county commissioners the right to construct and purchase whatever necessary buildings are needed to carry out and fulfill the duties imposed upon the county over which the county commissioners exercise a discretion and power. * * *”

In order to carry out its duties under Section 339.65, *supra*, it is my opinion that the board of county commissioners may construct, pursuant to Section 307.02, *supra*, whatever buildings are necessary for mental health clinics. Whether the board may construct such a clinic with general fund monies is the next question.

Paragraph 2 of Opinion No. 1573, Opinions of the Attorney General for 1952, page 487, reads as follows:

“County commissioners may construct a court house pursuant to Section 2433, General Code, out of *any available funds*, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$25,000.00, the provisions of Section 2333 must be followed.”

(Emphasis added)

Section 2433, General Code, is now Section 307.02, Revised Code, Section 2333, General Code, is now Section 153.21, Revised Code, except that the \$25,000.00 amount was raised to \$100,000.00 by an amendment in 1959. 128 Ohio Laws 742.

While my predecessor in Opinion No. 1573, *supra*, did not specify what he meant by “available funds,” we may assume that he meant any money in the general fund not otherwise appropriated or committed. In this regard, I note that Section 5705.05, *supra*, in referring to the “general operating fund,” provides that the taxing authority may include in a general levy “amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, *including the acquisition or construction of permanent improvements.*”

In answer to question 5, therefore, it is my opinion that the board of county commissioners may construct a mental health clinic out of any available monies in the general fund, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$100,000.00, the provisions of Section 153.21, Revised Code, must be followed.

In answer to question 6, you are advised that the county auditor and the board of county commissioners should handle funds derived from the special levy in question as they would funds from any other special levy. That is, the revenue should be paid into a special fund and thereafter used only for the purposes for which the fund was established.

It is my opinion, therefore, and you are accordingly advised:

1. Revenue derived from a special tax levy pursuant to Section 5705.191, Revised Code, may not be paid into the general fund to reimburse such fund, but must be credited, in accordance with Section 5705.10, Revised Code, to a special fund for the purpose for which such levy was made. No transfer can be made from a special fund to the general fund except as authorized in Section 5705.14, Revised Code.

2. In order to use the proceeds of a special levy under Section 5705.191, Revised Code, for the purpose of constructing a permanent improvement, such purpose must be specified in the resolution of necessity required by such section.

3. A board of county commissioners, pursuant to its duties under Section 339.65, Revised Code, may construct, pursuant to Section 307.02, Revised Code, whatever buildings are necessary for mental health clinics out of any available monies in the general fund, provided that if it is necessary to issue bonds for such purpose in an amount in excess of \$100,000.00, the provisions of Section 153.21, Revised Code, must be followed.

Respectfully,
MARK McELROY
Attorney General