

**Note from the Attorney General's Office:**

1970 Op. Att'y Gen. No. 70-014 was limited by  
1985 Op. Att'y Gen. No. 85-023.

## OPINION NO. 70-014

**Syllabus:**

The General Assembly has not authorized an initiative petition procedure for the purpose of effecting a repeal of a county-wide permissive sales and use tax adopted by a board of county commissioners pursuant to Sections 5739.021 and 5741.021, Revised Code.

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**To: Robert J. Huffman, Miami County Pros. Atty., Troy, Ohio**  
**By: Paul W. Brown, Attorney General, February 10, 1970**

Your recent request for my opinion presents the following fact situation: In February, 1969, the Board of County Commissioners of Miami County adopted a county-wide sales and use tax; referendum petitions were circulated and filed but were determined by the Court of Common Pleas of Miami County, Ohio, to be invalid; appeal time on this decision has expired. Your question is whether or not the county-wide sales and use tax levied by the County Commissioners could, by initiative petition, effect a repeal of the original resolution of the County Commissioners.

Sections 5739.021 and 5741.021, Revised Code, are adopted pursuant to the procedure set forth in Section 5739.021, supra, which reads in pertinent part as follows:

"A resolution levying a sales tax pursuant to this section shall become effective on the first day of the month following the expiration of sixty days from the date of its adoption, subject to a referendum as provided in sections 305.31 to 305.41, inclusive, of the Revised Code."

Since statutory referendum is no longer available in your situation, your question is in essence whether or not the electors may do by statutory initiative petition that which they may not now do by statutory referendum.

A similar situation was presented to the Ohio Supreme Court in the case of The State, ex rel. Sharpe et al., v. Hitt, 155 Ohio St. 529 (1951). Therein the city council of Urbana had passed emergency legislation, therefore not subject to referendum, relative to parking meters. An initiative petition was presented which conflicted with or repealed the legislation previously passed by the municipal council. The Court stated in the syllabus:

"1. Under Section 1f, Article II of the Constitution of Ohio, both the initiative and referendum powers are reserved to the people of Ohio municipalities 'on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action.'

" \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*"

"3. The electors of a municipality may by the initiative enact a measure conflicting with or repealing legislation previously passed by the municipal council, so long as the subject matter of such initiative ordinance is within the powers of the municipality to control by legislative procedure."

Sections 731.28 to 731.41, inclusive, of the Revised Code, set forth the statutory initiative and referendum procedure for municipalities. These sections are applicable only to municipal ordinances.

Sections 305.31 through 305.41, inclusive, of the Revised Code, set forth a procedure for a referendum on any resolution adopted by a board of county commissioners pursuant to Sections 5739.021 or 5741.021, Revised Code.

The county which has not adopted a charter or alternative form of government is a wholly subordinate political division or instrumentality for serving the state, The State, ex rel. Ranz, v. City of Youngstown, et al., 140 Ohio St. 477 (1942), and therefore would always be subject to changes in state law brought about by state-wide initiative petition pursuant to Article II, Section 1 of the Constitution of Ohio. Thus, without specific statutory provisions by the General Assembly neither referendum nor initiative petition would be available to the electors of a county to challenge the actions of the county commissioners; see Dubyak v. Kovach, Mayor, et al., 164 Ohio St. 247 (1955). However, in the case of the permissive sales and use taxes the General Assembly did enact legislation for a referendum on a county basis but, the General Assembly did not enact legislation making initiative petition available on a county basis.

Therefore, it is my opinion and you are advised that the General Assembly has not authorized an initiative petition procedure for the purpose of effecting a repeal of a county-wide permissive sales and use tax adopted by a board of county commissioners pursuant to Sections 5739.021 and 5741.021, Revised Code.