

OPINION NO. 89-047**Syllabus:**

1. The tax levied to pay interest on and retire bonds issued by a joint vocational school district board of education pursuant to a vote of the electors may not, for any purpose, be levied at a rate higher than that needed to pay interest on and retire such bonds; it may not be levied at such a higher rate for the purpose of paying other debts, even if those debts are incurred for the same purpose for which the original bonds were issued.
2. Proceeds derived from a tax levied to pay interest on and retire bonds issued by a joint vocational school district board of education pursuant to a vote of the electors may not be expended for any purpose other than the payment of interest on and retirement of such bonds until such purpose is achieved.
3. If excess proceeds from a tax levied to pay interest on and retire bonds issued by a joint vocational school district board of

education pursuant to a vote of the electors remain in the bond retirement fund after the retirement of all such bonds, those proceeds may be expended for other proper purposes of the bond retirement fund.

4. Excess proceeds remaining in a bond retirement fund after the payment of all obligations for the payment of which such fund exists may be transferred to other funds in accordance with R.C. 5705.14.

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 20, 1989

I have before me your request for an opinion relating to the use of certain tax levy proceeds of a joint vocational school district. Representatives of your office and of the county auditor's office have informed my staff that, in the situation with which you are concerned, electors of a joint vocational school district approved the issuance of bonds in a specified amount for the purpose of acquiring real estate; constructing a new school building; acquiring furniture, furnishings, and equipment; and landscaping and site improvement. The ballot language proposing issuance of the bonds indicated that a tax would be levied outside the ten-mill limitation¹ for the purpose of paying the principal and interest of the bonds, stated a maximum number of years during which the bonds would run, and set forth the amount of the average annual levy. See R.C. 133.09; R.C. 133.13; R.C. 133.20; R.C. 133.21. The bonds were issued as authorized, the proceeds were expended for the intended purpose, and a tax has been levied annually to pay the costs of interest and principal of the bonds. At this time, an annual tax in an amount less than that set forth on the ballot would be sufficient to retire the bonds. It has been proposed that the levy be retained at a level in excess of the amount needed to retire the bonds and that the levy proceeds not required to pay interest and principal on the original bonds be used to pay the costs of borrowing money to repair the school building. The money for repairs would be borrowed without the approval of the voters. See R.C. 133.04; R.C. 133.24.

Your request asks whether the proposed procedure is permissible. You are not suggesting that the district failed to issue bonds in the full amount authorized by the initial resolution and ballot, or that any proceeds from the bond issuance remain available for expenditure. See generally R.C. 133.33 (a taxing authority may not issue bonds in an amount greater than authorized); 1980 Op. Att'y Gen. No. 80-070; 1979 Op. Att'y Gen. No. 79-012 (syllabus) ("[a]bsent a showing of bad faith or abuse of discretion, a board of education may expend surplus proceeds of a bond issue for the construction of a building that falls within the purpose of the bond issue, as stated in the board's resolution and on the ballot placed before electors of the district, but which was specifically excluded from the board's plans and specifications before such bond issue was placed on the ballot"); 1949 Op. Att'y Gen. No. 425, p. 164.

A joint vocational school district is established and governed pursuant to the provisions of R.C. 3311.16-.218 and is under the management and control of a joint vocational school district board of education. R.C. 3311.19. A joint vocational school district board of education has the same powers and duties for management and operation of its district as are granted to the board of education of a city school district. R.C. 3311.19(D)

R.C. 3311.20 expressly authorizes a joint vocational school district board of education to submit to the electors "the question of issuing bonds of such district for the purpose of paying the cost of purchasing a site or enlargement thereof, and for the erection and equipment of buildings, or for the purpose of enlarging, improving,

¹ Ohio Const. art. XII, §2 and R.C. 5705.02 establish the ten-mill limitation, providing, in general, that no tax in excess of ten mills may be levied on property without the approval of the voters.

or rebuilding thereof, and also the necessity of a levy of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and retire such bonds." See note 1, *supra*. R.C. 3311.20 provides that the proceedings for the election and for the issuance and sale of the bonds shall be as required of a board of education in R.C. 133.01-.65, with the exception that the bond issue under R.C. 3311.20 is not limited to a single purpose. Cf. R.C. 133.10 (limiting a resolution declaring the necessity of a bond issue under R.C. 133.09 to "only one purpose"). If the electors approve the question of issuing bonds, "the joint vocational school district board of education may proceed with the issuance of such bonds and the levy of a tax outside a ten-mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity." R.C. 3311.20. Taxes collected pursuant to such levy shall be deposited "to the credit of the bond retirement fund." R.C. 3311.20; see R.C. 5705.09 (requiring each subdivision to establish certain funds, including a bond retirement fund); R.C. 5705.10 ("[m]oney paid into any fund shall be used only for the purposes for which such fund is established"); R.C. 5705.14-.16 (governing the transfer of moneys from one fund of a subdivision to another fund).

R.C. Chapter 133 provides generally for the issuance of bonds by various political subdivisions, including all school districts except county school districts. See R.C. 133.01(A). A taxing authority proposing to submit a bond issue to the electors is required to pass a resolution "declaring the necessity of such bond issue, fixing the date the issue shall be submitted to the electors, and fixing the amount, purpose, and approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the [ten-mill] limitation...to pay the interest on and to retire said bonds." R.C. 133.09. The resolution required under R.C. 133.09 is limited to a single purpose. R.C. 133.10; cf. R.C. 3311.20 (creating an exception to the single-purpose requirement).

R.C. 133.18 authorizes the board of education of any school district to submit to the electors the question of issuing bonds for the purpose of acquiring or constructing a permanent improvement. The board "may declare by resolution the necessity of such bond issue and fix the amount, purpose, approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the [ten-mill] limitation...to pay the interest on and to retire said bonds." R.C. 133.18. Such resolution must, with certain exceptions, conform to the requirements of R.C. 133.09. R.C. 133.18; see also R.C. 133.24.

The ballot used for submission of a bond issue to the electors pursuant to R.C. 133.09 is required to set forth the purpose of the bond issue, the amount of bonds authorized to be issued, the maximum number of years required to retire the bonds, and the average annual levy—that is, the average number of mills of tax estimated by the county auditor as necessary to pay the principal and interest of the bonds. R.C. 133.09; R.C. 133.13. The average annual levy is determined as follows:

[T]he [county] auditor shall calculate and certify to the taxing authority the average annual levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, throughout the life of the bonds which will be required to pay the interest on and retire such bonds, assuming that they are all issued in one series and that the amount of the tax list of such subdivision remains throughout the life of said bonds the same as the amount of the tax list for the current year, and if this is not determined, the estimated amount submitted by the auditor to the county budget commission.

R.C. 133.09. See generally *Cross v. Board of Education*, 160 Ohio St. 77, 113 N.E.2d 241 (1953). If the proposition is approved by the voters, the taxing authority may proceed "with the issue of such bonds and the levy of a tax outside the ten-mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity." R.C. 133.13.

The statutory scheme for the issuance of bonds by a joint vocational school district thus clearly provides for designation of the maximum amount of bonds that may be issued and for an estimate of the tax that must be levied to pay the principal and interest of the bonds. See R.C. 133.09; R.C. 133.33. The taxing authority is

authorized to levy a tax that is sufficient to pay the interest on and retire the bonds. The voters' approval of the tax levy thus extends not to the specific millage appearing on the ballot, since that is an estimate of the average number of mills that must be levied, but to whatever millage is required, on a year-by-year basis, to pay the interest on and retire the bonds. See generally *Link v. Karb*, 89 Ohio St. 326, 104 N.E. 632 (1914) (syllabus, paragraph 3) ("[t]he amount necessary to be levied [to pay for the interest on and redemption of bonds] is to be determined by the taxing officials at the time the levy is made"). Since the tax is levied for the purpose of paying the principal and interest on the bonds, tax proceeds may be used only for that purpose. See Ohio Const. art. XII, §5 (every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); 1959 Op. Att'y Gen. No. 899, p. 610; 1958 Op. Att'y Gen. No. 1504, p. 7; 1957 Op. Att'y Gen. No. 772, p. 287. See generally R.C. 5705.14-16.

R.C. 133.14 provides for certification of the results of an election on a bond issue under R.C. 133.13 to the Tax Commissioner, the county auditor, and the fiscal officer of the taxing district. R.C. 133.14 states: "The necessary tax levy for the first year shall be extended on the tax lists after the next succeeding February settlement; in all other years, it shall be included in the annual tax budget that is certified to the county budget commission." The county budget commission is required to review annual tax budgets and to approve the levies contained therein. See R.C. 5705.31, 5705.32, 5705.34. No levy may be approved in an amount in excess of that required to meet the needs set forth in the budget of the taxing district. See R.C. 5705.341 (nothing in the Revised Code "shall permit...the levying of any rate of taxation...unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully advertised, adopted, and filed..."); *Village of South Russell v. Budget Commission*, 12 Ohio St. 3d 126, 132, 465 N.E.2d 876, 882 (1984) ("[t]he review of the budget commission of tax levies is one basically of whether there has been excessive taxation, i.e., will the tax generate more funds than shown to be needed within the budget of the district or subdivision, and whether the funds are budgeted for the appropriate purpose as voted by the electorate"); 1979 Op. Att'y Gen. No. 79-016 at 2-51 (the duty of the county budget commission is "to see that any tax levied will not generate more revenue than is necessary to meet the needs"); 1966 Op. Att'y Gen. No. 66-144; cf. *State ex rel. Fairfield County Board of Mental Retardation and Developmental Disabilities v. Fairfield County Budget Commission*, 10 Ohio St. 3d 123, 125, 461 N.E.2d 1297, 1299 (1984) ("voter approval of a levy properly placed upon the ballot pursuant to R.C. Chapter 5705 constitutes an approved budget as a matter of law..."). See generally R.C. 133.33; *In re Transfer of Funds*, 14 Ohio Op. 2d 209, 170 N.E.2d 94 (C.P. Meigs County 1960).

Upon approval of a bond issue under R.C. 133.09 and 133.13, a joint vocational school district board of education is, thus, authorized to levy annually such tax as is required to pay interest on and retire the bonds. There is no authority for the levy of a tax in excess of millage required for that purpose. The budgeting process set forth in R.C. Chapter 5705 provides assurance that no taxes will be levied in excess of the required amount.

It must, accordingly, be concluded that the procedure suggested in your letter is not permitted by law. The tax levied to pay interest on and retire bonds issued by the board of education of a joint vocational school district pursuant to a vote of the electors may not be levied at a rate higher than that needed to pay interest on and retire such bonds. It may not be levied at a higher rate for any purpose, including the purpose of paying other debts, even if those debts are incurred for the same purpose for which the original bonds were issued.²

It is important to distinguish the situation involved in your request from a situation that does not involve bonds, but rather consists of voter approval of a special levy with a specified maximum millage. Such a levy authorizes the levy of a

² For purposes of this opinion, it is not necessary to determine whether the repair of a school building comes within the purpose for which the joint vocational school district originally issued bonds.

tax at an amount not in excess of a particular rate, for specified years, to be used for a stated purpose. *See, e.g.*, R.C. 3311.21; R.C. 5705.21. The taxing authority is authorized to annually levy the tax at the rate specified in the resolution and ballot or at any lesser rate. *See, e.g.*, R.C. 3311.21; R.C. 5705.21. Proceeds from such a levy may be used for any expenditures that come within the stated purpose, even if particular expenditures exceed the projects originally undertaken. *See, e.g.*, R.C. 5705.09(D); R.C. 5705.10; 1971 Op. Att'y Gen. No. 71-033.

A situation involving a special levy with a specified maximum millage was considered in Op. No. 79-016. That opinion concerned a tax levied "at a rate not exceeding" a specified amount for a five-year period for the purpose of paying for the cost of construction of a workshop and classrooms for the mentally retarded. Op. No. 79-016 at 2-50. The tax levy generated more money than was necessary to pay for the original building, and the budget commission wished to reduce the levy so that it would generate only the amount needed to pay for that building. The mental health and retardation board desired, instead, to use the additional proceeds to construct an additional facility. My predecessor concluded that the proposed expenditure of the additional funds was permissible, assuming that the taxing authority in good faith determined that a need for such expenditure existed and that the project was consistent with the purpose of the special levy as originally passed by the voters. The levy was subject to approval of the county budget commission in its review of annual budgets under R.C. Chapter 5705. *See generally Village of South Russell v. Budget Commission*; 1986 Op. Att'y Gen. No. 86-021 at 2-113 n. 5.

When a special levy with a specified maximum millage is in existence, a tax may be levied up to such maximum millage for any use that comes within the purpose set forth in the ballot language proposing the levy. *See, e.g.*, R.C. 3311.21. In the instant case, however, the voters approved the issuance of bonds in a specified amount and, correspondingly, approved the levy of such tax as is necessary to pay interest on and retire those bonds. There is no authority to levy a tax for any use other than payment of interest and principal of the bonds, even if the use would serve the purpose for which the bonds were issued.

As discussed above, proceeds from the levy in question must be applied to the purpose for which the levy was passed—that is, payment of principal and interest of the bonds—until that purpose is achieved. *See, e.g.*, Ohio Const. art. XII, §5; *State ex rel. National City Bank v. Board of Education*, 52 Ohio St. 2d 81, 369 N.E.2d 1200 (1977); *In re Transfer of Funds*; 1930 Op. Att'y Gen. No. 2042, vol. II, p. 1015. It is, however, possible that excess proceeds from the tax (as properly levied for the purpose of paying principal and interest on the bonds) may remain in the bond retirement fund after the payment of all obligations that the levy was authorized to cover. In such case, it appears that the excess proceeds may be expended for other proper purposes of the bond retirement fund. *See, e.g.*, R.C. 133.33; R.C. 5705.10; R.C. 5705.14; *In re Transfer of Funds*; 1930 Op. No. 2042. If any proceeds remain in the bond retirement fund after all bonds of the joint vocational school district have been retired and any related obligations have been paid, those proceeds may be transferred to other funds of the district as provided in R.C. 5705.14. R.C. 5705.14 states that the unexpended balance in the bond retirement fund of a subdivision, "after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired," shall be transferred to the sinking fund, and if that transfer is impossible "by reason of the nonexistence of the fund to receive the transfer," may, with the approval of the court of common pleas, be transferred to another fund of the subdivision. *See generally* 1951 Op. Att'y Gen. No. 933, p. 796. The possibility that excess funds may ultimately be expended for purposes other than interest and principal of the original bonds does not, however, provide authority for the tax in question to be levied at a rate in excess of that needed to pay for interest on and retirement of the original bonds, nor does it exclude the joint vocational school district from the requirement of Ohio Const. art. XII, §11 that, whenever bonded indebtedness is incurred, provision must be made "for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity." *See generally* R.C. 5705.04(A), (D); *State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 285 N.E.2d 362 (1972); *City of Cincinnati v. Harris*, 91 Ohio St. 151, 110 N.E. 468 (1914); *Link v. Karb*.

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

1. The tax levied to pay interest on and retire bonds issued by a joint vocational school district board of education pursuant to a vote of the electors may not, for any purpose, be levied at a rate higher than that needed to pay interest on and retire such bonds; it may not be levied at such a higher rate for the purpose of paying other debts, even if those debts are incurred for the same purpose for which the original bonds were issued.
2. Proceeds derived from a tax levied to pay interest on and retire bonds issued by a joint vocational school district board of education pursuant to a vote of the electors may not be expended for any purpose other than the payment of interest on and retirement of such bonds until such purpose is achieved.
3. If excess proceeds from a tax levied to pay interest on and retire bonds issued by a joint vocational school district board of education pursuant to a vote of the electors remain in the bond retirement fund after the retirement of all such bonds, those proceeds may be expended for other proper purposes of the bond retirement fund.
4. Excess proceeds remaining in a bond retirement fund after the payment of all obligations for the payment of which such fund exists may be transferred to other funds in accordance with R.C. 5705.14.