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MUNICIPAL UNIVERSITY — COUNTY TAXING DISTRICT — COUNTY COMMISSIONERS TAXING AUTHORITY—MUST SUBMIT TO ELECTORS QUESTION OF LEVYING A TAX TO PAY DISTRICT'S SHARE OF ANY AGREEMENT FOR MAINTENANCE OF MUNICIPAL UNIVERSITY—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO TAKE ACTION BEFORE EFFECTIVE DATE OF LAW, OCTOBER 13, 1953—AMENDED SUBSTITUTE HB 721, 100 GA.

## SYLLABUS:

In view of the fact that Amended Substitute House Bill No. 721, 100 General Assembly, which designates that part of a county lying outside of a municipality in which a municipal university is situated as a "county municipal university taxing district," designates the county commissioners as the "taxing authority" of such a district and authorizes such commissioners to submit to the electors of such district the question of levying a tax to pay the district's share of any agreement for the maintenance of a municipal university, will not become effective until October 13, 1953, the county commissioners are without authority to take any action as such "taxing authority" before the effective date of such law.

Columbus, Ohio, September 10, 1953

Hon. Harry Friberg, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

"Amended Substitute House Bill 721 permits county commissioners to participate financially in the operation of municipal activities. I do not have a complete copy of the bill as enacted, but I do know that the funds for this purpose are to be secured by levy outside the ten mill limitation to be approved by the people. The bill in question does not become effective until October 13, 1953.

"General Code Section 5625-15 (5705.19) requires any resolution for the submission to the voters of proposals for outside levies to be adopted 'prior to the fifteenth day of September in any year.'

"In view of the above, I would appreciate your opinion as to whether it is legally possible to submit a proposed levy to the voters of Lucas County in the November, 1953 election."

Amended Substitute House Bill No. 721, 100 General Assembly, enacted Sections 3349.23, 3349.24, 3349.25 and 3349.26, Revised Code, as follows :

Section 3349.23 :

“The board of county commissioners of any county in which a municipal university is situated may enter into an agreement with the board of directors of such municipal university for participation by such county in the development, maintenance, and operation of such municipal university.

Section 3349.24 :

“Any agreement authorized by section 3349.23 of the Revised Code may provide for the amounts of such participation by such county in the development, maintenance, and operation of such municipal university, and the rights and privileges to be enjoyed by the county and its inhabitants by virtue of such participation, to the end that all residents of said county shall be entitled to the educational advantages of said municipal university at the same rate of tuition, fees, and other charges as are provided for residents of the municipal corporation in which such university is situated.

Section 3349.25 :

“For the purpose of levying any tax which may be found necessary to meet fiscal obligations under any agreement authorized by section 3349.23 of the Revised Code, that portion of said county lying outside of the corporate limits of such municipality shall be a taxing district to be known as the county municipal university taxing district.

“The board of county commissioners of such county, which shall be the taxing authority, shall submit to the electors of said taxing district, in the manner provided by sections 5705.01 to 5705.26, inclusive, of the Revised Code, the question of authorizing the county commissioners to levy a tax for such purpose, within the constitutional ten mill limitation.

“In the event such issue is approved by the percentage of vote required in section 5705.26 of the Revised Code the board of county commissioners shall levy such tax upon all lands within such district, and they shall order from time to time the transfer to the board of directors of the municipal university, by warrant of the auditor, such sums of tax moneys collected as are necessary to meet county obligations under such contract.

“The board of county commissioners, as such taxing authority for the purposes of the agreement authorized by section 3349.23 of the Revised Code, may also submit to the electors of such taxing district in the manner provided for by sections 5705.01

to 5705.26, inclusive, of the Revised Code, a proposal to levy a tax outside the ten mill limitation at a specified rate and for a specified period, not to exceed five years.

Section 3349.26:

“Sections 3349.23 to 3349.25, inclusive, of the Revised Code shall not be construed to limit in any respect the powers of the municipality, or the council wherein such municipal university is located, to provide by tax levy or otherwise for the financial support of such municipal university.”

This bill was filed in the office of the Secretary of State on July 14, 1953 and, thus, under the provisions of Article II, Section 1c of the Ohio Constitution, can not go into effect until ninety days after such date, that is, on October 13, 1953.

While, assuming that no referendum petition is filed to such act within the period of ninety days authorized by this same section of the Constitution, such act will be in full force and effect on and after October 13, 1953 and, thus, will be in effect on November 3, 1953, the day of the general election this year, nevertheless, I am lead to the inescapable conclusion that the county commissioners are powerless to take any official action prior to the time the act becomes effective with regard to submitting any proposed tax levy to a vote of the electors on November 3, 1953.

Until such time as the act becomes effective, a “county municipal taxing district” does not exist and the board of county commissioners of Lucas County is not the “taxing authority” for such district. The county commissioners take action to submit the matter to the board of elections under Sections 5705.01 to 5705.26 of the Revised Code not as county commissioners, but by virtue of their special designation in the act as the “taxing authority” of the “county municipal university taxing district.”

Amended Substitute House Bill No. 721 specifically provides that the submission to the electors shall be “in the manner provided by Sections 5705.01 to 5705.26, inclusive of the Revised Code.” As you point out in your letter, Section 5705.19, Revised Code, Section 5625-15, General Code, requires that any resolution for the submission to the voters of proposals for outside levies be adopted “prior to the fifteenth day of September of any year.” It will be noted that Section 5705.25, Revised Code, Section 5625-16, General Code, provides that such resolution shall be certified by the taxing authority to the board of elections prior to the fifteenth day of September in any year.

In view of the specific requirements of Sections 5705.19 and 5705.25, Revised Code, as to the adoption of the resolution and its certification to the board of elections prior to the fifteenth day of September, it would appear quite clear that the board of county commissioners, at such time, would not be authorized to take such action.

It is true that Sections 5705.19 and 5705.25, Revised Code, deal specifically with tax levies outside of the ten mill limitation, whereas under the terms of Amended Substitute House Bill No. 721, in addition to the power given by the fourth paragraph of Section 3349.25, Revised Code, to the board of county commissioners to submit to the electors a proposal to levy a tax outside the ten mill limitation, the second paragraph of said section provides that such board, as the taxing authority "shall submit to the electors of said taxing district *in the manner provided by Sections 5705.01 to 5705.26, inclusive, of the Revised Code*, the question of authorizing the county commissioners to levy a tax for such purpose, within the constitutional ten mill limitation." (Emphasis added.) Since the only "manner" provided for the submission of any tax levy to the electors by Sections 5705.01 to 5705.26, inclusive, is that contained in Sections 5705.19 and 5705.25, which require the passage of a resolution by the taxing authority and a certification of the same to the board of elections prior to the fifteenth day of September, it must be concluded that the "manner" provided by these two sections is governing as to proposals within the ten mill limitation, as well as those outside the ten mill limitation, in so far as Amended Substitute House Bill No. 721 is concerned.

In conclusion, it is my opinion that in view of the fact that Amended Substitute House Bill No. 721, 100 General Assembly, which designates that part of a county lying outside of a municipality in which a municipal university is situated as a "county municipal university taxing district," designates the county commissioners as the "taxing authority" of such a district and authorizes such commissioners to submit to the electors of such district the question of levying a tax to pay the district's share of any agreement for the maintenance of a municipal university, will not become effective until October 13, 1953, the county commissioners are without authority to take any action as such "taxing authority" before the effective date of such law.

Respectfully,

C. WILLIAM O'NEILL

Attorney General