

## OPINION NO. 67-088

**Syllabus:**

The proceeds of a tax levied pursuant to the authorization contained in Section 5705.24, Revised Code, cannot legally be appropriated to or expended by a county board of mental retardation created under Section 5126.01, Revised Code.

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**To: John J. Malik, Jr., Belmont County Pros. Atty., St. Clairsville, Ohio**  
**By: William B. Saxbe, Attorney General, September 15, 1967**

Your request for my opinion reads in part as follows:

"A proposed tax levy which was before the voters in this county and passed at the 1965 election reads as follows:

"'for care and services for children in the County Children's Home and for children otherwise in the care of said County Child Welfare Board. . .'

"We would like an opinion from your office as to whether or not the language on the ballot which states as set forth above is sufficient to allow the proceeds from this tax levy to be expended under the provisions of S. B. No. 169 which provides for a county board of mental retardation."

Accompanying your letter of request, you submitted a copy of the ballot and a copy of the certificate of the result of the election and, subsequently, a copy of the resolution of necessity for the levy of the tax in question. An examination of these documents discloses that the statutory authorization for the levy is found in Section 5705.24, Revised Code, which pertains to the levy of taxes outside the ten-mill limitation for the support of child welfare services and child placement to supplement the general fund appropriations for that purpose.

Before proceeding to answer your specific question, it must be observed that the predecessor to Section 5705.24, Revised Code, Section 5625-15 (d), General Code, was first enacted in Amended Senate Bill No. 235 (124 v 374), effective in 1951. In this same legislative session, laws were enacted to authorize the commissioner of mental hygiene, with the approval of the director of mental hygiene, to establish county or district training centers for the purpose of providing special training for mentally deficient youths. See divisions 7a through 7e of Section 1890 of the General Code, now Sections 5127.01 through 5127.04, inclusive, of the Revised Code. The administration and supervision of these provisions relating to the training of mentally deficient persons was with the state.

Then, in 1961, by the enactment of Amended House Bill No. 228 (129 v 1209) and Amended Substitute House Bill No. 778 (129 v 1614), the taxing authority of a subdivision was authorized, by the addition of division (L) to Section 5705.19, Revised Code, to levy taxes for the maintenance and operation of training centers for the mentally retarded and the administration and supervision of Sections 5127.01 through 5127.04, inclusive, of the Revised Code, was vested in the county child welfare boards by the enactment of Section 5153.161 ~~5153.16.17~~, Revised Code, supplementing the powers and duties vested in the county child welfare boards by Section 5153.16, Revised Code.

The duty of administering and supervising Sections 5127.01 through 5127.04, inclusive, of the Revised Code, remained vested in the county child welfare boards until the enactment of Amended Senate Bill No. 169 (132 v S 169), effective October 25, 1967, to which you refer in your letter of request. By reason of the enactment of this bill, the legislature created, in each county, a county board of mental retardation (Section 5126.01, Revised Code) in which the administration and supervision of Sections 5127.01 through 5127.04, inclusive, Revised Code, is vested (Section 5126.03 (A), Revised Code). At the same time, Section 2 of the Amended Senate Bill repealed Section 5153.161 ~~5153.16.17~~, Revised Code, which had vested the aforesaid administrative and supervisory duties in the county child welfare boards.

Furthermore, the Amended Senate Bill provided for the amendment of Section 5705.19, Revised Code, to read in pertinent part as follows:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide 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 following purposes:

"\* \* \* \* \*

"(L) For the maintenance and operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons. Money received from levies enacted or renewed prior to the effective date of this section shall be appropriated to the use of the county board of mental retardation established under section 5126.01 of the Revised Code. Revenue from a tax levy passed or renewed after October 25, 1965 shall not be expended until the budget for the operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons for that calendar year has been submitted to and approved by the board of county commissioners. Thereafter, surplus funds from the tax levy not used for op-

erating purposes may be dispensed by the \* \* \*  
county board of mental retardation after approval  
by the board of county commissioners for the re-  
placement of necessary equipment, or for acquiring,  
constructing, or improving schools, training  
centers, workshops, clinics, and residential fa-  
cilities for the mentally retarded."

(Underscoring indicates amendments)

It is clear that the legislature provided that the proceeds of taxes levied under division (L) of Section 5705.19, Revised Code, for mental health can be appropriated to and expended by the newly created county boards of mental retardation. It is equally clear that the county child welfare boards still exist and have vital functions to perform. See Section 5153.16, Revised Code. The legislature, by the enactment of this bill, did not affect the levies previously made under Section 5705.24, Revised Code, for the purpose of supplementing the general fund appropriations for the support of child welfare services and child placement.

Therefore, considering the amendments to and repeal of the sections of the Revised Code and the enactment of new sections of the Revised Code by Amended Senate Bill No. 169, the Opinion No. 2511, Opinions of the Attorney General for 1961, page 573, and the fact that the training of mentally deficient persons was formerly only one of the numerous functions of the county child welfare boards, it is my opinion and you are hereby advised that the proceeds of a tax levied pursuant to the authorization contained in Section 5705.24, Revised Code, cannot legally be appropriated to or expended by a county board of mental retardation created under Section 5126.01, Revised Code.