

OPINION NO. 84-065**Syllabus:**

Pursuant to R.C. 5705.19, a board of county commissioners may, in its resolution to levy a tax in excess of the ten-mill limitation for programs and services for the mentally retarded and developmentally disabled, provide for the increased tax rate to be for a specific number of years, not exceeding five, or for the increased tax rate to be for a continuing or indefinite period of time. A board of county commissioners has no authority to provide that such an increase be for a definite number of years exceeding five years.

To: Lee E. Fry, Darke County Prosecuting Attorney, Greenville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 16, 1984

I am in receipt of your request for my opinion whether "a tax levy for the purposes of use of a county board of mental retardation and developmental disabilities as authorized by section 5705.19(L) of the Revised Code [may] be placed on the tax duplicate for a period of ten years."

R.C. 5705.19 empowers a board of county commissioners to pass a resolution to place before the voters the question of whether a tax levy in excess of the ten-mill limitation shall be passed for one of the purposes specified in that section. R.C. 5705.19 reads in part:

This section does not apply to school districts.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that 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 that limitation for any of the following purposes:

. . . .

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code. Money received from levies enacted or renewed under division (L) of former section 5705.19 of the Revised Code prior to October 25, 1967, shall be appropriated to the use of the county board of mental retardation and developmemetal disabilities established under section 5126.02 of the Revised Code. Revenue from a tax levy passed or renewed under such division or this division after October 25, 1965, shall not be expended until the budget for the operation of programs and services pursuant to Chapter 5126. of the Revised Code for that calendar year has been submitted to and approved by the board of county commissioners. Funds derived from a tax levy passed or renewed after October 25, 1967, which are not budgeted for operating purposes may be dispensed by the county board of mental retardation and developmental disabilities after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving facilities for programs and services pursuant to Chapter 5126. of the Revised Code.

. . . .

The resolution shall be confined to the purpose or purposes described in one division of this section, for which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such

revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose thereof, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

. . . .

(3) When the additional rate is for any of the following purposes, the increased rate may be for a continuing period of time:

(a) for the maintenance and operation of programs and services pursuant to Chapter 5126. of the Revised Code;

(b) for the purposes set forth in divisions (I), (J), and (U) of this section;

(c) for the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose set forth in division (D) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

A levy for the purposes set forth in division (I), (J), or (U) of this section, or for maintenance and operation of programs and services pursuant to Chapter 5126. of the Revised Code may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for the purposes set forth in divisions (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

. . . .

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election. (Emphasis added.)

See R.C. Chapter 5126 (providing for services and programs for the mentally retarded and developmentally disabled); R.C. 5705.01(A) (a county is a subdivision for purposes of R.C. Chapter 5705); R.C. 5705.01(C) (a board of county commissioners is a taxing authority for purposes of R.C. Chapter 5705); R.C. 5705.07 ("[t]he taxing authority of any subdivision may make tax levies authorized in excess of the ten-mill limitation by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate"). Since a board of county commissioners is authorized to pass a resolution providing for a vote upon a tax levy in excess of the ten-mill limitation for purposes of mental retardation and developmental disabilities programs and services provided pursuant to R.C. Chapter 5126 to be in effect for a continuing period of time, you question whether the board "is necessarily impliedly authorized to limit such levy to any lesser period of time."

It is a fundamental rule of statutory construction that parts of a statute as well as different statutes that are part of the same scheme should be construed so as to render the statute or statutes a consistent and harmonious whole, and a construction which destroys this harmony should be avoided. See Humphrys v. Winous Co., 165 Ohio St. 45, 133 N.E.2d 780 (1956); Gough Lumber Co. v. Crawford, 124 Ohio St. 46, 176 N.E. 677 (1931). I believe that an examination of R.C. 5705.19 and other provisions of R.C. Chapter 5705, the Uniform Tax Levy Law, reveals a legislative intent that the fact that an increased tax levy may run for a continuing period of time does not mean that the levy may run for any definite period of time.

R.C. 5705.19 sets forth the general rule that the commissioners' resolution must state the number of years during which the tax increase shall be in effect and states that such number "may be any number not exceeding five," except in certain instances. One exception to this general rule is that where the additional rate is

for the maintenance and operation of programs and services pursuant to R.C. Chapter 5126, "the increased rate may be for a continuing period of time." Cf. R.C. 5705.21 (providing that a board of education may by resolution submit the question of a tax in excess of the ten-mill limitation and such resolution shall state the number of years during which the increase shall be in effect; "[t]he number of years may be any number not exceeding five or, if the levy is for current expenses of the district, for a continuing period of time"). Another exception to the general rule is that when the increase is for the purpose set forth in R.C. 5705.19(D) (public libraries), "the tax levy may be for any specified number of years or for a continuing period of time." The General Assembly's use of different language in prescribing the various exceptions to the general rule set forth in R.C. 5705.19 indicates that the General Assembly is cognizant of, and has provided for, the distinction between a tax increase for a specific, definite period of time and for an indefinite period of time. By using different terminology with regard to the duration of a tax increase, the General Assembly has demonstrated its intent that when a tax levy is for a continuing period of time, it is not to be for a specified number of years, but for an indefinite period of time. This assertion is supported by R.C. 5705.25, which provides that the notice of election and ballot for a tax increase must state the number of years during which the increase will be in effect, but "[i]f the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot shall so state instead of setting forth a specified number of years for the levy" (emphasis added). If the General Assembly had intended that a county could provide for a tax levy in excess of the ten-mill limitation for programs and services for the mentally retarded and developmentally disabled to be for any definite number of years, the legislature would have so stated, as it did with regard to public libraries.

My conclusion is supported by an examination of the history of R.C. 5705.19. Prior to the enactment of 1975-1976 Ohio Laws, Part I, 929 (Am. S.B. 434, eff. Jan. 17, 1977), R.C. 5705.19 provided that an increased tax rate could be for any number of years "not exceeding five," or if the increased tax rate were for the maintenance and operation of schools, training centers, workshops and residential facilities for the mentally retarded the increase could be "for any number of years not exceeding ten." Am. S.B. 434 deleted this latter language and provided that an increased rate for such services and programs for the mentally retarded could be "for a continuing period of time." Again, the General Assembly has indicated an intent that an increased tax rate for programs and services for the mentally retarded may be for a specified number of years, not to exceed five years, and that if the increase is not to be for such definite period of time, it may be for a continuing, or indefinite period of time, but for no other specific number of years. See Malone v. Industrial Commission, 140 Ohio St. 292, 299, 43 N.E.2d 266, 270 (1942) (when a statute is amended, "it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof").

In conclusion, a board of county commissioners may, in its resolution to levy a tax in excess of the ten-mill limitation for programs and services for the mentally retarded and developmentally disabled, provide for the increased tax rate to be for a specific number of years, not exceeding five, or for the increased tax rate to be for a continuing or indefinite period of time. A board of county commissioners has no authority to provide that such an increase be for a definite number of years in excess of five years. I note, however, that R.C. 5705.19 provides that a tax levied pursuant to that statute for the maintenance and operation of programs and services for the mentally retarded and developmentally disabled may be reduced pursuant to R.C. 5705.261 (whereby the tax rate is reduced pursuant to a vote of the electorate) or R.C. 5705.31 (whereby the tax rate is reduced by the county budget commission). In addition, I note that even though a tax levy in excess of the ten-mill limitation is approved by the voters, the county commissioners have the discretion not to levy the tax during any given year if they so choose or to levy the tax at a rate lower than that approved by the voters. R.C. 5705.07; R.C. 5705.26. See 1982 Op. Att'y Gen. No. 82-036.

In conclusion, it is my opinion, and you are advised, that pursuant to R.C. 5705.19, a board of county commissioners may, in its resolution to levy a tax in

excess of the ten-mill limitation for programs and services for the mentally retarded and developmentally disabled, provide for the increased tax rate to be for a specific number of years, not exceeding five, or for the increased tax rate to be for a continuing or indefinite period of time. A board of county commissioners has no authority to provide that such an increase be for a definite number of years exceeding five years.