

OPINION NO. 90-030**Syllabus:**

The proceeds of a special tax levy for permanent improvements, to wit, "renovating, remodeling, improving, furnishing and equipping buildings for school purposes and improving their sites," must be credited to a special fund which may be used for the stated purpose of the levy only and not for the construction of new classrooms for the education of handicapped students under a joint building agreement pursuant to R.C. 3313.92.

To: Peter R. Selbel, Defiance County Prosecuting Attorney, Defiance, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 12, 1990

I have before me your request for my opinion on the following question:¹

May the board of education of a local school district use the proceeds of a special levy for permanent improvements, to wit, "renovating, remodeling, improving, furnishing and equipping buildings for school purposes and improving their sites," to fund the board's share of the construction of new classrooms for the education of handicapped students under a joint school building project pursuant to R.C. 3313.92?

You have informed me that the board of education of a local school district in your county entered into an agreement in November 1989 with the boards of education of three other school districts to construct four classrooms on one school site located in one of the other districts for the education of handicapped children from all four districts. The classrooms will be owned by the district in which they are located. The board of education of the local school district in question wants to use the proceeds of a permanent improvement special tax levy which was approved by the electors of the district in May 1984 to fund its share under the joint school building project agreement. The stated purpose of the levy, which is in excess of the ten-mill limitation,² was "renovating, remodeling, improving, furnishing and equipping buildings for school purposes and improving their sites."

¹ With your concurrence, I have rephrased your question for purposes of analysis.

² The "ten-mill limitation" limits the aggregate amount of annual taxes on any taxable property in any taxing unit to ten mills on each dollar of tax

Joint school building projects are authorized by R.C. 3313.92, which provides, in part:

(A) The boards of education of any two or more school districts may, subject to the approval of the superintendent of public instruction, enter into agreements for the joint or cooperative construction, acquisition, or improvement of any building, structure, or facility benefiting the parties thereto, including, without limitation, schools and classrooms for the purpose of Chapter 3323. of the Revised Code³....

R.C. 3313.92 also provides the methods by which a board of education may fund its share of costs under the agreement:

For the purpose of paying or contributing its share under an agreement made under this section, a board of education may:

(1) Appropriate any moneys from its general fund, and from any other funds not otherwise restricted by law, including funds for permanent improvements of such board of education where the contribution is to be made toward the cost of permanent improvements under the agreement;

(2) Issue bonds, and notes in anticipation thereof, under Chapter 133. and section 3311.20 of the Revised Code for any permanent improvement, as defined in section 133.01 of the Revised Code, to be provided under such agreement;

(3) Levy taxes, and issue notes in anticipation thereof, under Chapters 3311. and 5705. of the Revised Code pertaining to such board of education, provided that the purpose of such levy may include the provision of funds for either or both permanent improvements and current operating expenses required as the share of such board of education under such agreement;

(4) Contribute real and personal property for use under such agreement without necessity for competitive bidding on disposition of such property.

R.C. 3313.92(D). In the question now before me, the board of education wants to use the proceeds of a special tax levy to fund its share of costs under the joint school building project agreement. Thus, the authority to issue bonds, levy taxes,⁴ or contribute real and personal property is not pertinent to the question at hand. Therefore, my inquiry focuses on whether the proceeds of the special tax levy are properly part of the general fund or "any other funds not otherwise restricted by law." R.C. 3313.92(D)(1).

In order to determine the appropriate fund for the proceeds of a levy, it is necessary to ascertain the statutory basis for the levy. 1986 Op. Att'y Gen. No. 86-103. R.C. 5705.21 provides the authority under which a board of education may levy taxes in excess of the ten-mill limitation:

valuation in the absence of a specific authorization to levy in excess thereof. R.C. 5705.02.

³ Chapter 3323 of the Revised Code concerns the education of handicapped children.

⁴ R.C. 3313.92(D) permits a board of education to levy taxes "for the purpose of paying or contributing its share under an agreement made under this section...." Since the levy in question was approved by voters in 1984 and the joint school building agreement was executed in November 1989, the levy clearly was not for the purpose of funding the board's share under the agreement and, therefore, this provision does not apply.

(A) At any time the board of education of any...local...school district by a vote of two-thirds of all its members may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code, and that the question of such additional tax levy shall be submitted to the electors of the school district....

Such resolution shall be confined to a single purpose....

R.C. 5705.21(A). Of the purposes specified in divisions (A), (D), (F), (H) and (DD) of R.C. 5705.19, only division (F) appears to be relevant to your question.⁵ Division (F) authorizes a levy in excess of the ten-mill limitation "[f]or the construction or acquisition of a specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue." See R.C. 5705.01(A) (defining "subdivision" to include local school districts) and R.C. 5705.01(C) (defining "taxing authority"; in the case of a local school district, the taxing authority is the board of education). Pursuant to R.C. 133.18, a bond issue may relate to only one purpose. R.C. 133.18(A). "One purpose," with respect to permanent improvements in general, means "any one permanent improvement or group or category of permanent improvements...for or devoted to the same general purpose, function or use...." R.C. 133.01(Z). In the case of a school district, "one purpose" includes "any number of facilities and buildings for school district purposes, and related facilities." R.C. 133.01(Z)(4). Thus, R.C. 5705.21 authorizes a levy in excess of the ten-mill limitation for a class of improvements which relates to "any number of facilities and buildings for school district purposes...." R.C. 133.01(Z)(4); R.C. 5705.21; R.C. 5705.19(F). The special levy in question concerns expenditures for school buildings which are, by definition, for the same general purpose. Thus, the special levy is authorized by R.C. 5705.21.

Having determined the statutory basis for the levy, I can now determine which fund of the school district is properly credited with the proceeds of such levy. R.C. 5705.09 directs each subdivision to establish particular funds for the deposit of money. A special fund must be established for each special levy. R.C. 5705.09(D). R.C. 5705.10 provides that "[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made."⁶ Therefore, the proceeds of the special levy must be credited to a special fund for the purpose of "renovating, remodeling, improving, furnishing and equipping buildings for school purposes and for improving their sites."

Thus, whether the board of education may use the proceeds of the levy to fund its share of the joint school building project depends upon whether the purpose of the levy (and thus the fund) is coextensive with the purpose of the joint school building project. Although both concern school buildings, I find that the resolution and the joint building project represent two separate objectives. The purpose stated in the resolution was the general improvement and maintenance of school buildings and their sites, owned by the school district. The joint school building project contemplates the construction of new classrooms to be located in and owned by another school district and to be used for the limited purpose of educating

⁵ Division (A) of R.C. 5705.19 concerns a levy for current expenses; division (D) authorizes a levy for a public library; division (H) is for recreational purposes; and division (DD) is for a community center as provided for in R.C. 755.16.

⁶ This statutory provision is in accord with art. XII, §5 of the Ohio Constitution which provides that "every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." (Emphasis added.)

handicapped students. Money spent pursuant to the resolution will benefit only the school district in question; money spent pursuant to the joint school building project, however, will confer a benefit upon three other school districts as well as the school district in question. Clearly, the purpose underlying R.C. 5705.09 and R.C. 5705.10 is to assure that public funds are spent in accordance with the wishes of the electors. It is not reasonable to assume that an elector who chooses to vote in favor of a levy for the general improvement and maintenance of school buildings owned by the district necessarily would be in favor of a levy for the construction of classrooms to be located in and owned by another school district for the benefit of four school districts. Thus, it would not be proper to apply the proceeds of the special levy to the joint school building project.⁷

Although the special levy fund may not be used for any purpose but that stated in the resolution, there are limited circumstances in which transfers may be made from one fund to another, thus enabling the board of education to use the proceeds of a special levy to fund another purpose. For example, R.C. 5705.14 provides in part as follows:

(B) The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.

In addition, a subdivision may make transfers pursuant to R.C. 5705.15 and R.C. 5705.16.⁸ Whether the transfer of monies from one fund to another can be accomplished, however, is dependent upon many facts which must be determined at a local level. Because it would be inappropriate for me to make such a factual determination, *see* 1983 Op. Att'y Gen. No. 83-057, I do not offer an opinion as to whether the board may transfer the proceeds of the special levy to another fund which may be used for the joint school building project.

Accordingly, it is my opinion, and you are hereby advised, that the proceeds of a special tax levy for permanent improvements, to wit, "renovating, remodeling, improving, furnishing and equipping buildings for school purposes and improving their sites," must be credited to a special fund which may be used for the stated purpose of the levy only and not for the construction of new classrooms for the education of handicapped students under a joint building agreement pursuant to R.C. 3313.92.

⁷ The question which you have asked is limited to a determination of whether the proceeds of a particular special improvements levy may be used for a purpose which was not expressly included in the language of the resolution. I, therefore, do not need to address and do not offer an opinion as to whether it would be appropriate to join in a single resolution the two separate objectives in question.

⁸ R.C. 5705.15 and R.C. 5705.16 provide for transfers from one fund to another that are not covered by R.C. 5705.14 with the exception of transfers from funds for "proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose." R.C. 5705.15. Transfers under these sections require a resolution passed by a majority of the members of the taxing authority of the political subdivision and the approval of both the tax commissioner and the court of common pleas.