

Note from the Attorney General's Office:

1978 Op. Att'y Gen. No. 78-014 was overruled by
1979 Op. Att'y Gen. No. 79-072.

OPINION NO. 78-014

Syllabus:

Levy funds raised pursuant to a fire levy under R.C. 5705.19 (I) may not be used for the purpose of purchasing ambulance equipment or for providing ambulance or emergency medical service. Funds for such purposes must be raised under a separate levy pursuant to R.C. 5705.19 (U), (1969 Op. Att'y Gen. No. 69-123 overruled.)

To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, April 13, 1978

I have before me your request for my opinion regarding a tax levy for ambulance service. Specifically, you have raised the following question:

Can monies collected as part of a fire levy pursuant to Ohio Revised Code Section 5705.19 (I) be used to purchase ambulance equipment and/or ambulance service in view of the fact that in 1974 the General Assembly added subparagraph (U) to section 5705.19 which now permits a taxing authority to levy a tax in excess of the ten mill limitation for the purpose of "providing ambulance service, emergency medical service, or both?"

The relevant portions of R.C. 5705.19 are as follows:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds . . . may declare by resolution to the board of elections . . . that the amount of taxes . . . 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:

. . .

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the

establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time, or volunteer firemen or fire fighting companies to operate the same;

. . .

(U) For providing ambulance service, emergency medical service, or both.

Such resolution shall be confined to a single purpose and except as hereafter provided, and shall specify the amount of increase in rate which it is necessary to levy . . . (Emphasis added.)

As you indicate in your request, my predecessor, in 1969 Op. Att'y Gen. No. 69-123, determined that a board of township trustees could expend funds raised under an R.C. 5705.19 (I) levy for the purpose of "furnishing ambulance service to its citizens." Subparagraph (U) was enacted by the General Assembly after that opinion. Therefore, the issue presented is whether the enactment of subparagraph (U) now requires a separate levy for ambulance service.

Ohio law clearly requires a new levy for ambulance service be passed. As indicated, subparagraph (U) is newly enacted. It allows a tax levy for ambulance service. Ohio authority has consistently found that each of the various subparagraphs of R.C. 5705.19 constitutes a "single purpose" and therefore the funds raised under a levy passed pursuant to one subparagraph, may not be used for purpose set forth in a different subparagraph.

The following examples illustrate the point. In 1967 Op. Att'y Gen. No. 67-107 my predecessor considered the question of whether funds raised "for general construction, reconstruction, resurfacing, and repair of roads and bridges in counties or townships," pursuant to R.C. 5705.19 (G) could be used to finance a sewer and storm drain master plan. The opinion concluded that such a use of levy funds was not permissible, relying largely upon subparagraph (M) which allows a levy "for regional planning." My predecessor reasoned that:

Subsections (G) and (M) of Section 5705.19, Revised Code, are separate purposes. The master plan for the purpose contemplated would require a levy pursuant to Section 5705.19 (M) . . .

The case of Roddy v. Andrix, 32 Ohio Ops.2d 349 (Madison Co. Common Pleas, 1964) reached the same result. In that case, taxpayers brought an action to enjoin the expenditure of certain levy funds. The levy in question had been approved under R.C. 5705.19 (L) "for the purpose of the maintenance and operation of schools for retarded children." The county commissioners had plans for using the funds for the purpose of real estate for such a school. The court found in favor of the taxpayers. Relying upon R.C. 5705.19 (F), which provides that a taxing authority may authorize a levy "for the construction or acquisition of any specific permanent improvement or class of improvements . . .," the court made the following observation:

The words "single purpose" are plain and unambiguous. The several purposes are set out in subsections (A) through (L) are single purposes. Roddy, at 350.

Application of this test to your request necessitates a negative answer. A levy for fire apparatus and payment of firemen is authorized by R.C. 5705.19 (I). A levy for ambulance service is authorized by R.C. 5705.19 (H). Each is a separate purpose, and funds raised under a levy for one may not be used for the other.

One further point deserves discussion. In 1969 Op. Att'y Gen. No. 69-038 my predecessor determined that a township which maintained a fire department could

operate an ambulance through the fire department. R.C. 5705.19 (U) in no way affects that authority. It does, however, require a separation of funds since the proceeds of a fire levy under R.C. 5705.19 (I) can no longer be used to provide ambulance service. While such a situation could entail accounting problems for the township, there is little doubt that levys under R.C. 5705.19 (I) and (U) can not be simply thrown together into one "fire department" fund. And, of course, there is no prohibition on using "inside" levy proceeds for that portion of the township fire department's budget which represents ambulance service.

Accordingly, it is my opinion, and you are so advised that:

Levy funds raised pursuant to a fire levy under R.C. 5705.19(I) may not be used for the purpose of purchasing ambulance equipment or for providing ambulance or emergency medical service. Funds for such purposes must be raised under a separate levy pursuant to R.C. 5705.19(U). (1969 Op. Att'y Gen. No. 69-123 overruled.)