

**OPINION NO. 2007-016****Syllabus:**

1. The proceeds of a tax levy approved in 2003 by the electorate of Butler County under R.C. 5705.24 for the purpose of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children” for a period of five years may be used by the county department of job and family services for services to abused, neglected, and dependent children for the remainder of the five-year period if that department is designated by the Butler County Board of Commissioners under R.C. 307.981 to serve as the county’s public children services agency.
2. For purposes of R.C. 5705.192, a levy proposed by the Butler County Commissioners for children services is for the same purpose stated in the 2003 levy for children services, even though the Butler County Department of Job and Family Services will now provide the county’s children services; such levy may be designated as a “replacement” levy, so long as the levy proposal otherwise

conforms to the requirements of R.C. 5705.192 for a replacement levy.

3. The Butler County Commissioners may designate as a "renewal" levy a proposed renewal of its 2003 levy for the purpose of children services, even though Butler County now intends to provide such services through the Butler County Department of Job and Family Services, so long as the levy question is "submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year," R.C. 5705.25, and the resolution and ballot language clearly explain the purpose of the children services levy.

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**To: Robin N. Piper, Butler County Prosecuting Attorney, Hamilton, Ohio**  
**By: Marc Dann, Attorney General, June 19, 2007**

We have received your request for an opinion of the Attorney General concerning the use of the proceeds of a property tax levied under R.C. 5705.24. As explained in your opinion request, the electors of Butler County in 1988 approved, as set forth on the ballot, "[a]n additional tax for the benefit of Butler County, Ohio, for the purpose of FUNDING THE BUTLER COUNTY CHILDREN SERVICES BOARD FOR THE PROVISION OF SERVICES TO ABUSED CHILDREN, NEGLECTED CHILDREN, AND DEPENDENT CHILDREN." This levy was renewed for five year terms, in 1994 and in 1999. At the general election in 2003, the electorate of Butler County approved, as set forth on the ballot, "[a] replacement of a tax for the benefit of Butler County, Ohio, for the purpose of FUNDING THE BUTLER COUNTY CHILDREN SERVICES BOARD FOR SERVICES TO ABUSED, NEGLECTED, AND DEPENDENT CHILDREN" for a period of five years.

The Butler County Commissioners now intend to replace the Butler County Children Services Board with the Butler County Department of Job and Family Services as the county's public children services agency. You, therefore, ask:

1. Although R.C. 5153.35 requires the board of county commissioners to levy taxes and make appropriations to "enable the public children services agency to perform its functions and duties," the ballot language for the existing children services levy specifically states that its purpose is for "funding the Butler County Children Services Board." If the designation of the public children services agency is changed by the board of county commissioners from the Children Services Board to the county department of job and family services, does R.C. 5153.35 authorize the use of revenues from the existing levy (through 2008) for the provision of children services by the county department of job and family services?
2. If the designation of the public children services agency is changed

to the county department of job and family services, could a levy for children services, to commence at the end of the term of the existing levy, be in the form of a replacement or a renewal levy?

### **County's Duty to Provide and Fund Children Services**

We begin with a brief discussion of the duties imposed by statute upon each county to provide and fund children services. According to R.C. 5153.02, each county must have a public children services agency (PCSA). *See generally* R.C. 5153.01(A) (“[a]s used in the Revised Code, ‘public children services agency’ means an entity specified in [R.C. 5153.02] that has assumed the powers and duties of the children services function prescribed by this chapter for a county”). A children services board, a county department of job and family services, or any private or governmental agency within the state designated by the county commissioners under R.C. 307.981<sup>1</sup> may serve as a PCSA. R.C. 5153.02. As further provided in R.C. 307.981, a board of county commissioners may change its designation of the entity to serve as the county’s PCSA. *See generally* note one, *supra*.

<sup>1</sup> R.C. 307.981 states, in pertinent part:

(B) To the extent permitted by federal law, including, when applicable, subpart F of 5 C.F.R. part 900, and subject to any limitations established by the Revised Code, including division (H) of this section, a board of county commissioners may designate any private or government entity within this state to serve as any of the following:

- (1) A child support enforcement agency;
- (2) A county department of job and family services;
- (3) A *public children services agency*;
- (4) A county department of job and family services and one other of those county family services agencies;
- (5) All three of those county family services agencies.

(C) To the extent permitted by federal law, including, when applicable, subpart F of 5 C.F.R. part 900, and subject to any limitations of the Revised Code, including division (H) of this section, a board of county commissioners *may change the designation it makes under division (B)* of this section by designating another private or government entity.

(D) If a designation under division (B) or (C) of this section constitutes a change from the designation in a fiscal agreement between the director of job and family services and the board, the director may require that the director and board amend the fiscal agreement and that the board provide the director written assurances that the newly designated private or government entity will meet or exceed all requirements of the family services duties the entity is to assume.

R.C. 5153.35 imposes upon each county a duty to fund children services, in pertinent part, as follows:

The boards of county commissioners *shall* levy taxes and make appropriations sufficient to enable the public children services agency to perform its functions and duties under this chapter. *If the board of county commissioners levies a tax for children services and the children services functions are transferred from a county children services board to the department of job and family services, or from the department of job and family services to a county children services board, the levy shall continue in effect for the period for which it was approved by the electors for the use by the public children services agency that provides children services pursuant to the transfer.* (Emphasis added.)

R.C. 5153.35 thus requires a board of county commissioners to levy taxes and make appropriations in a sum sufficient for its PCSA to perform the powers and duties

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(E) Not less than sixty days before a board of county commissioners designates an entity under division (B) or (C) of this section, the board shall notify the director of job and family services and publish notice in a newspaper of general circulation in the county of the board's intention to make the designation and reasons for the designation.

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(H) If a county children services board appointed under [R.C. 5153.03] serves as a public children services agency for a county, the board of county commissioners may not redesignate the public children services agency unless the board of county commissioners does all of the following:

(1) Notifies the county children services board of its intent to redesignate the public children services agency. In its notification, the board of county commissioners shall provide the county children services board a written explanation of the administrative, fiscal, or performance considerations causing the board of county commissioners to seek to redesignate the public children services agency.

(2) Provides the county children services board an opportunity to comment on the proposed redesignation before the redesignation occurs;

(3) If the county children services board, not more than sixty days after receiving the notice under division (H)(1) of this section, notifies the board of county commissioners that the county children services board has voted to oppose the redesignation, votes unanimously to proceed with the redesignation. (Emphasis added.)

imposed upon the PCSA by R.C. Chapter 5153.<sup>2</sup> 1997 Op. Att’y Gen. No. 97-001 at 2-2 (“R.C. 5153.35 thus imposes upon the county commissioners a duty to levy taxes and make appropriations sufficient to enable the children services board to perform its functions”). See generally *Dep’t of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (“when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*,” unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage).

R.C. 5153.35 expressly addresses the disposition of the proceeds of a tax levied for children services should a board of county commissioners transfer the county’s children services functions from a children services board to the county’s department of job and family services, *i.e.*, the levy continues for the period for which it was approved and the proceeds shall be used by the county’s department of job and family services for the provision of children services.

#### **Use of Proceeds of Tax Levied under R.C. 5705.24**

You have explained that the electors of Butler County in 2003 approved a levy under R.C. 5705.24 for the purpose, as stated on the ballot, of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children.”<sup>3</sup> You indicate that your concern about the permissible uses of

<sup>2</sup> R.C. 5153.15 vests in a single agency of county government, either a children services board or a county department of job and family services, all the powers and duties set forth in R.C. 5153.16-.19 “with respect to the care of children, needing or likely to need public care or services.”

<sup>3</sup> R.C. 5705.24 authorizes a board of county commissioners to propose a tax levy, in part, as follows:

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentage of the total general fund appropriations for the *support of children services and the care and placement of children*, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose. Taxes collected from a levy imposed under this section *may be expended for any operating or capital improvement expenditure* necessary for the support of children services and the care and placement of children.

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If the majority of the electors voting on a levy to supplement general fund appropriations for the support of children services and the care

the proceeds of this levy arises from a portion of 1987 Op. Att'y Gen. No. 87-096, which concluded in syllabus, paragraph three, that:

The funds generated by a children services levy, the purpose of which was to provide sufficient funds for the support of children and the care and placement of abused and neglected children, may, pursuant to R.C. 5705.24 and R.C. 5153.35, be used by a subsequently established county children services board even though children services had been provided by the county department of human services [now county department of job and family services] at the time the levy was passed.

You specifically question the application to your situation of the following statement in 1987 Op. Att'y Gen. No. 87-096 at 2-639: "As there is no limitation in either the resolution or the ballot language requiring that those services be performed only by the county department of human services, I see no reason why levy funds cannot be devoted to the support of children services even though a different agency is designated during the life of the levy to deliver those services within the particular county." This statement prompts your question whether the ballot language approved by the electorate of Butler County in 2003 restricts the use of the proceeds of such levy for the provision of children services to use only by the Butler County Children Services Board, or whether the proceeds of such levy may be used by the county's department of job and family services once the latter is designated by the county commissioners under R.C. 307.981 to provide children services. For the reasons that follow, we believe that the proceeds of the tax levy you describe may be used by the county's department of job and family services once it is designated under R.C. 307.981 to serve as the county's PCSA for the provision of children services.

#### **Restrictions on the Use of Proceeds of A Special Levy under R.C. 5705.24**

The operation of R.C. 5705.24 and the limitations on the use of the proceeds of such a tax were explained in 2005 Op. Att'y Gen. No. 2005-044 at 2-478 to 2-479, in pertinent part, as follows:

R.C. 5705.24 authorizes a board of county commissioners, after providing the normal and customary general fund appropriations for the support of children services and the care and placement of children, to submit to the voters the issue of levying a tax in excess of the 10-mill limitation to supplement funding for these purposes. *See* Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.07. A levy imposed under R.C. 5705.24 is a special levy, and taxes collected from *a levy imposed under R.C. 5705.24 may be expended for no purposes other than those set forth in the statute* - namely, "any operating or capital improvement expenditure necessary for the support of children services and the care and place-

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and placement of children vote in favor thereof, the board may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of the said years. (Emphasis added.)

ment of children.” R.C. 5705.24; *see* Ohio Const. art. XII, § 5 (“[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”); R.C. 5705.04; R.C. 5705.09(D); R.C. 5705.10; 1990 Op. Att’y Gen. No. 90-069 at 2-289 to 2-290; *see also* 2000 Op. Att’y Gen. No. 2000-048 at 2-296 to 2-297; 1997 Op. Att’y Gen. No. 97-030 at 2-176 (“[i]t is ... fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted”).

The procedure by which a levy under R.C. 5705.24 is adopted requires a resolution by the board of county commissioners and the submission of a ballot issue to the voters. R.C. 5705.24; R.C. 5705.25. Levy proceeds may be expended only as provided in the resolution and ballot language. (Emphasis added; footnote omitted.)

In note one at 2-479, 2005 Op. Att’y Gen. No. 2005-044 addressed the possibility of limiting the use of the proceeds of a tax levied under R.C. 5705.24, as follows:

*The resolution and ballot language cannot expand the purposes for which tax revenues may be expended beyond the purposes established by the language of R.C. 5705.24, but may restrict the purposes for which tax revenues may be expended to specified purposes that come within the purposes authorized by R.C. 5705.24. See 1990 Op. Att’y Gen. No. 90-069 at 2-289 to 2-292; see also 2000 Op. Att’y Gen. No. 2000-048 at 2-296. (Emphasis added.)*

Although 2005 Op. Att’y Gen. No. 2005-044 indicates, and 1987 Op. Att’y Gen. No. 87-097 suggests, that a levy under R.C. 5705.24 may be limited to a purpose narrower than the purpose stated in R.C. 5705.24, *i.e.*, “for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children,” we do not believe that the language of the levy approved by the Butler County electors in 2003 has effected such a limitation.<sup>4</sup>

As previously discussed, R.C. 5153.35, as amended by 1999-2000 Ohio Laws, Part II, 4177, 5042 (H.B. 471, *eff.*, in part, July 1, 2000), states, in pertinent part:

The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the public children services agency to perform its functions and duties under this chapter. *If the board of county commissioners levies a tax for children services and the children services functions are transferred from a county children services board to the department of job and family services, or from the department of job and family services to a county children services board, the levy shall continue*

<sup>4</sup> We assume, for purposes of discussion, that there is no conflict between the resolution and the ballot language of the 2003 Butler County children services levy.

in effect for the period for which it was approved by the electors *for the use by the public children services agency that provides children services pursuant to the transfer.* (Emphasis added.)

Because R.C. 5705.24 and R.C. 5153.35 relate to the provision and funding of children services, they are to be read together. *See generally State ex rel. Herman v. Klopffleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995) (“[a]ll statutes relating to the same general subject matter must be read *in pari materia*, and in construing these statutes *in pari materia*, this court must give them a reasonable construction so as to give proper force and effect to each and all of the statute”). Thus, when the Butler County electorate approved the children services levy under R.C. 5705.24 in 2003, the authority to levy such tax was subject to the condition set forth in R.C. 5153.35 that expressly authorizes the proceeds of a levy for children services to be used by a county department of job and family services should the county commissioners transfer the county’s children services functions from a children services board to that department. *See* 1987 Op. Att’y Gen. No. 87-096 (syllabus, paragraph three).

In answer to your first question, we conclude that the proceeds of a tax levy approved in 2003 by the electorate of Butler County under R.C. 5705.24 for the purpose of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children” for a period of five years may be used by the county department of job and family services for services to abused, neglected, and dependent children for the remainder of the five-year period if that department is designated by the Butler County Board of Commissioners under R.C. 307.981 to serve as the county’s public children services agency.

### **Replacement and Renewal Levies**

Your second question asks: “If the designation of the public children services agency is changed to the county department of job and family services, could a levy for children services, to commence at the end of the term of the existing levy, be in the form of a replacement or a renewal levy?” In answering this question, we begin by noting that, the words “additional,” “renewal,” and “replacement” are used throughout R.C. Chapter 5705 to describe different types of levies.<sup>5</sup> These words are not, however, defined by statute for purposes of R.C. Chapter 5705.

<sup>5</sup> For example, R.C. 5705.03(B)(1) states, in pertinent part:

When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an *additional* levy or a *renewal* or a *replace-*



With respect to a replacement levy, R.C. 5705.192(B) describes certain characteristics of such a levy, in part, as follows:

A taxing authority may propose to *replace* an *existing levy* that the taxing authority is authorized to levy, *regardless of the section of the Revised Code under which the authority is granted*, except a school district emergency levy proposed pursuant to sections 5705.194 to 5705.197 of the Revised Code. The taxing authority may propose to replace the existing levy in its entirety at the rate at which it is authorized to be levied; may propose to replace a portion of the existing levy at a lesser rate; or may propose to replace the existing levy in its entirety and increase the rate at which it is levied. If the taxing authority proposes to replace an existing levy, the proposed levy shall be called a replacement levy and shall be so designated on the ballot. Except as otherwise provided in this division, a replacement levy shall be *limited to the purpose of the existing levy*, and shall appear separately on the ballot from, and shall not be conjoined with, the renewal of any other existing levy. In the case of an existing school district levy imposed under section 5705.21 of the Revised Code for the purpose specified in division (F) of section 5705.19 of the Revised Code, the replacement for that existing levy may be for the same purpose or for the purpose of general permanent improvements as defined in section 5705.21 of the Revised Code.

The resolution proposing a replacement levy shall specify the purpose of the levy; its proposed rate expressed in mills; whether the proposed rate is the same as the rate of the existing levy, a reduction, or an increase; the extent of any reduction or increase expressed in mills; the first calendar year in which the levy will be due; and the term of the levy, expressed in years or, if applicable, that it will be levied for a continuing period of time. (Emphasis added.)

Thus, a replacement levy may, with one exception, take the place of an existing levy, regardless of which statute authorized the original levy. A replacement levy may replace all or a portion of an existing levy, at the same rate as, or at a higher or lower rate than, the levy being replaced. With one exception not relevant here, the purpose of a replacement levy is limited to the purpose of the levy it is replacing. R.C. 5705.192 further provides that:

The sections of the Revised Code governing the maximum rate and term of the existing levy, the contents of the resolution that proposed the levy, the adoption of the resolution, the arrangements for the submission of the question of the levy, and notice of the election also govern the respective provisions of the proposal to replace the existing levy, except as provided in division (B)(1) or (2) of this section....

R.C. 5705.192(D) authorizes the replacement of two existing levies by one replacement levy.

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*ment* of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax. (Emphasis added.)

Your particular concern appears to be whether the proposed levy you describe is for the same purpose as the levy it is to replace, as required by R.C. 5705.192(B), in light of the specific wording of the 2003 levy naming the Butler County Children Services Board as the entity to be funded by that levy for the provision of children services in Butler County and in light of the county's plan to have the county department of job and family services assume those children services functions.

As discussed in answer to your first question, R.C. 5153.35 contemplates the transfer of children services responsibilities between a children services board and a county department of job and family services, and expressly authorizes, in the event that such responsibilities are transferred from one entity to the other during the life of a levy for children services, the use of the proceeds of such levy for the remainder of the levy period by the entity to which the county's children services are transferred. We conclude, therefore, that, for purposes of R.C. 5705.192, a levy for children services is for the same purpose stated in the 2003 levy for children services, even though the Butler County Department of Job and Family Services, rather than the Butler County Children Services Board, will now provide the county's children services.<sup>6</sup>

In answer to the first portion of your second question, we conclude that, for purposes of R.C. 5705.192, a levy proposed by the Butler County Commissioners for children services is for the same purpose stated in the 2003 levy for children services, even though the Butler County Department of Job and Family Services will now provide the county's children services, and may be designated as a "replacement" levy, so long as such proposal otherwise conforms to the requirements of R.C. 5705.192 for a replacement levy.<sup>7</sup>

Part of your second question is whether the Butler County Commissioners

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<sup>6</sup> We note, however, that if the county commissioners do not intend to have the Butler County Children Services Board provide children services for the county, the resolution and ballot language would be clearer and less likely to mislead the electors if it no longer stated that the proceeds of the levy would be used to fund the Butler County Children Services Board. *See generally, e.g., Bratton v. Couch*, 2006-Ohio-6799; 2006 Ohio App. Lexis 6713, ¶ 36 (Morgan County 2006) (in determining whether ballot language contains misinformation, the 5th District Court of Appeals found the test to be "whether the voters were misled" by a mistake in the ballot language, based upon "the degree of the error, the nature of the calculation and the closeness of the vote," (quoting *State ex rel. Bd. of Educ. v. Allen*, 102 Ohio App. 315, 317, 143 N.E.2d 159 (1955))); *State ex rel. Thomas v. Conkle*, No. CA 308, 1978 Ohio App. Lexis 9767 at \*6 (Holmes County March 30, 1978) (enjoining the collection of a tax that was labeled on the ballot as a "renewal," rather than an "additional" tax, because such language was "an error not of only form but such as to materially and substantially mislead the voters as to the effect of the levy").

<sup>7</sup> The board of county commissioners must, of course, comply with any procedural requirements applicable to such a levy. *See generally, e.g., R.C.*

may designate as a “renewal levy” a levy under R.C. 5705.24 for the support of children services to commence at the end of the levy that was approved in 2003. The Ohio Revised Code provides little guidance as to the meaning of the term “renewal levy,” as used in R.C. Chapter 5705. R.C. 5705.25 does, however, prescribe the form of the ballot to be used for the approval of a renewal levy, in part, as follows:

(A) .... Except as otherwise provided in this division, a resolution to *renew* an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is *submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year....*

(B) The form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

“An additional tax for the benefit of (name of subdivision or public library) ..... for the purpose of (purpose stated in the resolution) ..... at a rate not exceeding ..... mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) ..... for each one hundred dollars of valuation, for ..... (life of indebtedness or number of years the levy is to run).

....

(C) ....

....

*If the levy submitted is a proposal to renew, increase, or decrease an existing levy, the form of the ballot specified in division (B) of this section may be changed by substituting for the words “An additional” at the beginning of the form, the words “A renewal of a” in case of a proposal to renew an existing levy in the same amount; the words “A renewal of ..... mills and an increase of ..... mills to constitute a” in the case of an increase; or the words “A renewal of part of an existing levy, being a reduction of ..... mills, to constitute a” in the case of a decrease in the proposed levy.*

If the levy submitted is a proposal to renew two or more existing

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5705.192(B) (stating, in part, “[i]f the taxing authority proposes to replace an existing levy, the proposed levy shall be called a replacement levy and shall be so designated on the ballot”); R.C. 5705.192(C) (form of ballot); R.C. 5705.192(E) (stating, in part, “[t]his section does not authorize a tax to be levied in any year after the year in which revenue is not needed for the purpose for which the tax is levied”); R.C. 5705.24 (stating, in part, that a levy thereunder shall “be submitted in the manner provided in [R.C. 5705.25], except that it may be placed on the ballot in any such election”).

levies imposed under section 5705.21 of the Revised Code, the form of the ballot specified in division (B) of this section shall be modified by substituting for the words “an additional tax” the words “a renewal of ... (insert the number of levies to be renewed) existing taxes.”

The question covered by such resolution shall be submitted as a separate proposition but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election. (Emphasis added.)

R.C. 5705.25(A) refers to a proposed renewal of “an existing levy.” As explained in division (C) of that statute, a proposed renewal of an existing levy may be at the same rate as the existing levy; at a higher rate, indicated by designating the proposal as a renewal and an increase; or, at a lower rate, indicated by designating the proposal as a renewal and a reduction in the millage. In addition, a levy may be submitted for voter approval that renews two or more existing levies. Because the renewal levy may be at the same or a different rate than the existing levy it is supposed to renew and because a renewal levy may renew two or more existing levies, we must ascertain the meaning of the term “existing levy,” as used in R.C. 5705.25, in order to determine whether the levy you describe may be designated a “renewal levy.”<sup>8</sup>

Because the General Assembly has not defined the word “renewal,” as used in R.C. 5705.25, we must look to the common meaning of that word. *See generally* R.C. 1.42 (a word in a statute, unless it has acquired a technical or special meaning, is to be understood according to its common meaning). As defined, in part, in *Merriam-Webster's Collegiate Dictionary* 1054 (11th ed. 2005), the verb “renew” means “to restore to existence ... to begin again ... to grant or obtain an extension of or on.” Thus, a renewal levy is one that begins again or extends an existing levy.

In the situation you describe, the existing levy is for the purpose of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children” for a period of five years. As discussed above, we believe that the stated purpose of this levy extends to services for abused, neglected, and dependent children provided by the Butler County Department of Job and Family Services in the event that the Butler County Commissioners designate that department under R.C. 307.981 to provide such services. Thus, although Butler County does not intend to continue to provide children services as described above through the Butler County Children Services Board, a levy for children services to be provided by the Butler County Department of Job and Family Services would be for the same purpose as the former levy, and, therefore, may be designated a “renewal levy,” so long as the levy question is “submitted at the general election held during

<sup>8</sup> R.C. 5705.25 states, in part: “For purposes of this section, a levy shall be considered to be an ‘existing levy’ through the year following the last year it can be placed on that tax list and duplicate.” R.C. 5705.25 does not otherwise define what constitutes an “existing levy” for purposes of that statute.

the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year,” R.C. 5705.25. *See generally McNamara v. Kinney*, 70 Ohio St. 2d 63, 434 N.E.2d 1098 (1982) (finding that a levy that was designated an “additional” levy on the ballot, but that was for the same purpose as an existing levy, was properly designated as an “additional levy,” as determined by the taxing authority, but could, in the alternative, be designated a “renewal levy,” so long as the ballot language is not misleading to the voters).

In answer to the second part of your second question, we conclude that the Butler County Commissioners may designate as a “renewal” levy a proposed renewal of its 2003 levy for the purpose of children services, even though Butler County now intends to provide such services through the Butler County Department of Job and Family Services, so long as the levy question is “submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year,” R.C. 5705.25, and the resolution and ballot language clearly explain the purpose of the children services levy, *see generally* notes six and seven, *supra*.

### Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. The proceeds of a tax levy approved in 2003 by the electorate of Butler County under R.C. 5705.24 for the purpose of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children” for a period of five years may be used by the county department of job and family services for services to abused, neglected, and dependent children for the remainder of the five-year period if that department is designated by the Butler County Board of Commissioners under R.C. 307.981 to serve as the county’s public children services agency.
2. For purposes of R.C. 5705.192, a levy proposed by the Butler County Commissioners for children services is for the same purpose stated in the 2003 levy for children services, even though the Butler County Department of Job and Family Services will now provide the county’s children services; such levy may be designated as a “replacement” levy, so long as the levy proposal otherwise conforms to the requirements of R.C. 5705.192 for a replacement levy.
3. The Butler County Commissioners may designate as a “renewal” levy a proposed renewal of its 2003 levy for the purpose of children services, even though Butler County now intends to provide such services through the Butler County Department of Job and Family Services, so long as the levy question is “submitted at the general election held during the last year the tax to be renewed or replaced

may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year," R.C. 5705.25, and the resolution and ballot language clearly explain the purpose of the children services levy.