

OPINION NO. 75-089**Syllabus:**

1. Pursuant to R.C. 340.01, the dissolution of a two county joint-county community mental health and retardation service district, by the withdrawal of one county, cannot take effect earlier than two years after the appropriate resolution is submitted, unless both counties agree to an earlier withdrawal.

2. A joint-county mental health and retardation service district is a subdivision within R.C. 5705.01(A), and the district's mental health and retardation board is a taxing authority within R.C. 5705.01(C). Therefore, pursuant to R.C. 5705.19 a joint-county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.

To: Ronald C. Parsons, Madison County Pros. Atty., London, Ohio

By: William J. Brown, Attorney General, December 18, 1975

I have before me your request for my opinion which reads as follows:

"I am writing to request a written opinion with reference to two particular aspects of a joint county mental health and retardation district.

"There is presently a proposal before the Madison County Commissioners for a joint county district with Franklin County. I am concerned as to two questions.

"First, what is the minimum time required to dissolve such a joint board? The statutory language seems to indicate two years, however

it also states that dissolution may be achieved by mutual agreement.

"Second, upon formation of the joint district, is the district a taxing authority capable of placing a levy before the public without the approval of the county commissioners?"

R.C. 340.01 provides that a community mental health and retardation service district shall be established in any county or combination of counties having a population of at least fifty thousand. Districts comprising more than one county are known as joint-county districts.

As to withdrawal from participation in a joint-county district, R.C. 340.01 states:

"Any county participating in a joint-county district may submit a resolution requesting withdrawal therefrom together with a plan for the equitable adjustment and division of the assets, property, debts, and obligations, if any, of the joint-county district to the community mental health and retardation board, to the boards of county commissioners of each county in the program, and to the director. No county participating in a joint-county community mental health and retardation service district may withdraw therefrom without the consent of the director nor earlier than two years after the submission of such resolution unless all of the participating counties agree to an earlier withdrawal. Any county withdrawing from a joint-county district shall continue to have levied against its tax list and duplicate any tax levied by the district during the period in which the county was a member of the district until such time as the levy expires or is renewed."

Thus, in order to withdraw from, or "dissolve", a joint-county district, the county requesting such withdrawal must submit the required resolution to the joint-county community mental health and retardation board, to the boards of county commissioners of each county in the program, and to the director of mental health and mental retardation. The withdrawal requires the consent of the director, and cannot take effect earlier than two years after the resolution is submitted. However, if all of the participating counties agree to an earlier withdrawal, the withdrawal may be effected in a time period of less than two years.

Your second question is concerned with whether a joint-county community health and retardation service district is a taxing authority, and, as such, whether it would ever be capable of placing a levy before the public without the approval of the county commissioners. The controlling authority on this question is Ohio's Uniform Tax Levy Law, R.C. Chapter 5705.

Under R.C. 5705.01(A), a joint-county mental health and retardation service district is a "subdivision". Under R.C. 5705.01(C), the "taxing authority" for the joint-county community

mental health and retardation service district is the district's mental health and retardation board, appointed pursuant to R.C. 340.02. These definitions under R.C. 5705.01 were changed, effective May 7, 1974, to include the joint-county mental health and retardation service district as a subdivision, and the board as its taxing authority. Thus, it appears that it was the intent of the legislature to specifically include these joint-county service districts and the corresponding boards within R.C. Chapter 5705, while excluding community mental health and retardation service districts that are not joint-county. Clearly, then, the mental health and retardation board of a joint-county community mental health and retardation service district is a taxing authority.

R.C. 5705.19 provides in part:

"The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of said body, may declare by resolution and certify such resolution to the board of elections not less than sixty days before the election upon which it will be voted, 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:

". . . ."

There follows a list of twenty-one purposes. Under this section the mental health and retardation board of a joint-county service district could, by a two-thirds vote of its members, have a levy presented to the public for a vote without the approval of the county commissioners, for a listed purpose.

R.C. 5705.221 provides:

"At any time the board of county commissioners of any county by a majority vote of the full membership 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 the necessary requirements of the county's community mental health and retardation service district established pursuant to Chapter 340. of the Revised Code, or the county's contribution to a joint-county district of which the county is a part and that it is necessary to levy a tax in excess of such limitation for mental health and retardation purposes.

"Such resolution shall conform to section 5705.19 of the Revised Code, except that the increased rate may be in effect for any number of years not exceeding ten, the resolution shall be certified and submitted in the manner provided in section 5705.25 of the Revised Code.

"If the majority of electors voting on a levy to supplement general fund appropriations

for the support of the comprehensive mental health and mental retardation program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the ten-mill limitation during the period, for the purpose stated in the resolution."

This section provides a method for presenting a levy to the public to raise funds for a county's community mental health and retardation service district, or for the county's contribution to a joint-county district of which the county is a part. In the absence of limiting or conflicting language, then R.C. 5705.221 provides the county commissioners with the opportunity to present to the public a levy which would be used to fund the county's contribution to a joint-county district, and has no effect on the authority of the mental health and retardation board of a joint-county district to place a levy before the public pursuant to R.C. 5705.19.

In specific answer to your questions it is my opinion, and you are so advised that:

1. Pursuant to R.C. 340.01, the dissolution of a two county joint-county community mental health and retardation service district, by the withdrawal of one county, cannot take effect earlier than two years after the appropriate resolution is submitted, unless both counties agree to an earlier withdrawal.

2. A joint-county mental health and retardation service district is a subdivision within R.C. 5705.01(A), and the district's mental health and retardation board is a taxing authority within R.C. 5705.01(C). Therefore, pursuant to R.C. 5705.19 a joint-county community mental health and retardation board is capable of placing a tax levy before the public without the approval of the county commissioners.