

2780

THE BOARD OF COUNTY COMMISSIONERS MAY NOT PLACE A TAX LEVY UPON THE BALLOT IN EXCESS OF SIXTY-FIVE ONE HUNDREDTHS OF A MILL. THE BOARD OF COUNTY COMMISSIONERS MAY NOT PLACE A LEVY UPON THE BALLOT FOR THE COMBINED PURPOSES OF CHILD WELFARE SERVICES AND THE MENTALLY RETARDED PROGRAM—§§5705.24 R.C., §5705.9, R.C. INFORMAL OP. NO. 512, 1956.

SYLLABUS:

1. The board of county commissioners may not, under Section 5705.24, Revised Code, place a tax levy upon the ballot in excess of sixty-five one hundredths of a mill for child welfare services.
2. Under Section 5705.19, Revised Code, the board of county commissioners may not place a tax levy upon the ballot for the combined purposes of child welfare services and the mentally retarded program.

Columbus, Ohio, January 23, 1962

Hon. Earl W. Allison, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Several years ago Franklin County, Ohio adopted a tax levy outside the ten (10) Mill limitation by a vote of the people in the amount of sixty-five hundredths (.65) of a Mill for child welfare services. This tax levy now appears to be inadequate to finance the Franklin County child welfare program. Because of the provisions of Section 5705.24 of the Revised Code, I have advised the County Commissioners that they cannot increase the amount of this levy. However, the Commissioners have learned that a sister county adopted a tax levy for child welfare services and children's home in the amount of one and twenty-five hundredths (1.25) Mills despite the provisions of Section 5705.24 of the Revised Code.

"The last session of the General Assembly has placed upon the Child Welfare Board the additional burden of the mentally retarded program, as enacted in Amended Substitute House Bill 778 (Sections 5127.01 to 5127.04, inclusive, of the Revised Code) without providing a source of funds for carrying out such program other than the enactment of Paragraph (L) in Section 5705.19 of the Revised Code. The County Commissioners of Franklin County have, therefore, asked me to request your opinion on the following specific questions:

"(1) May the county commissioners place upon the ballot a tax levy in excess of sixty-five hundredths (.65) of a Mill for child welfare services and the children's home in view of Section 5705.24 of the Revised Code?

"(2) Is a board of county commissioners authorized to place upon the ballot a tax levy for the combined purposes of child welfare services and the mentally retarded program in view of the 'single purpose provision' contained in Section 5705.19 of the Revised Code?

"(3) If the answer to the preceding question is in the affirmative, would such a levy be limited to the sixty-five hundredths (.65) of a Mill limitation contained in Section 5705.24 of the Revised Code?

"Because any such tax levy which might be permissible is contemplated by the primary election in May, it is necessary to file the resolution prior to February 7, 1962. It is, therefore, urgent that we have your opinion a few days prior to that date if at all possible."

Section 5705.24, Revised Code, after providing that the board of county commissioners 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 child welfare services and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement the general fund appropriations for such purpose, states:

“* * * but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

“Such resolution shall conform to the requirements of section 5705.19 of the Revised Code and be certified and be submitted in the manner provided for in section 5705.25 of the Revised Code.”

One of the requirements of Section 5705.19, *supra*, is that such resolution shall be confined to a single purpose, and Section 5705.25, *supra*, provides that the board of elections shall submit the proposal to the electors of the subdivision at the succeeding November election.

The board of county commissioners, therefore, cannot place a proposed tax levy under Section 5705.24, *supra*, on the ballot in the May primary; cannot place such a tax levy on the ballot for more than one purpose; and cannot place such a tax levy on the ballot in excess of sixty-five one hundredths of a mill.

Under the provisions of Section 5705.191, Revised Code, however, the board of county commissioners could place a tax levy on the ballot in the May primary for any of the purposes stated in Section 5705.19, Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more purposes, such as welfare. One of the purposes stated in Section 5705.19, *supra*, is found in division (L) of that section reading as follows:

“For the maintenance and operation of schools, training centers, or workshops for mentally retarded persons.”

There is no limitation in Sections 5705.19 or 5705.191, *supra*, upon the amount of such a levy. The resolution for such a levy must, however, be confined to a single purpose.

Thus, under the provisions of Sections 5705.19 and 5705.191, *supra*, the board of county commissioners could place a tax levy on the ballot in the May primary either for the specific purpose of maintaining and operating schools for mentally retarded persons, or for the purpose of supplementing the general fund to meet certain current expenses. A proposed tax levy to supplement the general fund to meet current expenses,

however, cannot be "earmarked" for any special purpose nor be identified for a special purpose on the ballot on which the issue of such levy is submitted to the electors. See Opinion No. 5585, Opinions of the Attorney General for 1955, page 339; Opinion No. 1123, Opinions of the Attorney General for 1957, page 508. In this regard, one of my predecessors in an informal opinion (No. 512 issued January 19, 1956) stated as follows:

"To designate this additional levy for a special use would therefore possibly be misleading to the electors and clearly not within the statement of purpose required by Section 5705.19, Revised Code."

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

1. The board of county commissioners may not, under Section 5705.24, Revised Code, place a tax levy upon the ballot in excess of sixty-five one hundredths of a mill for child welfare services.

2. Under Section 5705.19, Revised Code, the board of county commissioners may not place a tax levy upon the ballot for the combined purposes of child welfare services and the mentally retarded program.

Respectfully,

MARK McELROY

Attorney General