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TOWNSHIP LEVY IN EXCESS OF TEN MILL LIMITATION—  
MUST BE SUBMITTED TO ELECTORS OF TOWNSHIP  
WITHIN AND OUTSIDE VILLAGE LOCATED WHOLLY  
WITHIN BOUNDARIES OF SAID TOWNSHIP.

SYLLABUS:

A proposed township levy in excess of the ten mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township.

Columbus, Ohio, October 22, 1959

Hon. Roy J. Gilliland, Prosecuting Attorney  
Jackson County, Jackson, Ohio

Dear Sir:

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

“The Village of Coalton is located in and surrounded by Coal Township. The Village Council of Coalton, Ohio, maintains its own streets, alleys and roads and the Township Trustees maintain their independent system of roads and highways outside of the municipal corporation. All qualified voters of Coal Township, including qualified voters residing in the Village of Coalton, Ohio, have the privilege of voting for candidates for the office of Township Trustee. At the present time, as a matter of fact, all three Township Trustees are residents of the municipal corporation of Coalton.

“Pursuant to the provisions of Ohio Revised Code Section No. 5705.19, within the time prescribed by the statute, the Board of Township Trustees declared by Resolution that the amount of taxes which would be raised within the 10 mill limitation would be insufficient to provide for the necessary requirements of the subdivision and that it was necessary to levy a tax in excess of such limitation for the purpose of road and highway construction, maintenance and repair. The Resolution so passed was duly certified by the Township Clerk to the Clerk of the County Board of Elections.

“The question which the Board of Election has as to who shall be allowed to vote upon the issue on the ballot concerning the additional millage levy outside of the 10 mill limitation. Is the legal procedure that the issue on the ballot be limited to Coal Township qualified voters outside of the municipality of Coalton or should all of the qualified voters in Coal Township including qualified voters in the Village of Coalton all be allowed to vote upon the issue at the General Election? Does the portion of Ohio Revised Code Section No. 5705.25 which reads, ‘Such Board shall make the necessary arrangements for the submission of such question to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers,’ mean that the issue hereinbefore mentioned should be submitted to the qualified electors of the entire township, including the qualified electors in the Village of Coalton, when the electors in the Village of Coalton have little or no interest in the Township road system outside of their corporation?”

A township is a territorial and political subdivision of a state, established exclusively for public purposes, and connected with the administration of local government. 39 Ohio Jurisprudence, Section 4, page 272. For the purpose of election procedure, a township is defined in Section 3501.01 (N), Revised Code, as a political subdivision. Once established, a township continues to exist and function as such until either its boundaries become identical with the boundaries of a municipal corporation, at which time Section 703.22, Revised Code, transfers its functions to the municipal corporation or under authority of Sections 503.07, 503.08 and 503.09, Revised Code, one or more townships are created out of territory of an existing township so that the original township is entirely supplanted by new townships. Section 503.07, Revised Code, provides:

“If the limits of a municipal corporation do not comprise the whole of the township in which it is situated, or if by change of the limits of such corporation include territory lying in more than

one township, and the legislative authority of such municipal corporation, by a vote of the majority of the members of such legislative authority, petitions the board of county commissioners for a change of township lines in order to make them identical, in whole or in part, with the limits of the municipal corporation, or to erect a new township out of the portion of such township included within the limits of such municipal corporation, the board, on presentation of such petition, with the proceedings of the legislative authority authenticated, at a regular or adjourned session, may change the boundaries of the township or erect such new township."

Thus, if the council of the village of Coalton by a vote of a majority of its members, had petitioned the board of county commissioners to erect a new township out of the portion of Coal Township included within the limits of the village of Coalton, only the electors of the original Coal Township living outside the corporate limits of the village of Coalton would be eligible to vote on the issue. Your statement of facts shows that this change has not been made. For example, all three trustees are residents of the corporation. I must therefore conclude that the village is still a part of Coal Township.

As far back as the case of *State, ex rel. Halsey v. Ward*, 17 Ohio St., 544, it was held as shown in the first branch of the syllabus:

"1. On the organization of a city of the second class divided into wards, the boundaries of which city are not coterminous with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate."

Since the village of Coalton lies entirely within Coal Township, but does not cover the entire township, it must be concluded that Coal Township continues to exist and that all electors residing within its boundaries are privileged to vote at its township elections.

Section 5705.01 (C), Revised Code, says that the taxing authority in the case of a township means the board of township trustees. You state that the board of township trustees of Coal Township, pursuant to the provisions of Section 5705.19, Revised Code, has declared by resolution 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 township and that it is necessary to levy a tax in excess of such limi-

tation for the purpose of road and highway construction, maintenance and repair, which in paragraph (G) of such section is referred to as "general construction, reconstruction, resurfacing and repair of roads and bridges in \* \* \* townships;"

Section 5705.25, Revised Code, requires certification of the above resolution to the board of elections. It then provides that "said board shall submit the proposal to the electors of the subdivision at the succeeding November election." As previously stated, the subdivision is Coal Township which includes within its boundaries Coalton village. The electors of the subdivision or township are electors residing within the township both within and outside of the village.

The fact that electors living within the village of Coalton have little or no interest in the township road system outside of their corporation is immaterial. As a matter of fact, their interest may be greater than first thought when it is realized that ingress and egress to and from the village may be over township roads. In any event, they are township electors whose property will be subject to the levy, if made.

In view of the foregoing, it is my opinion that a proposed township levy in excess of the ten mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township.

Respectfully,

MARK McELROY

Attorney General