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SURPLUS FUNDS FROM TAX LEVIED IN EXCESS OF TEN-MILL LIMITATION PRIOR TO JULY 28, 1959, CANNOT BE USED FOR SUPPORT OF TUBERCULOSIS CLINICS. SECS. 339.36, 339.39, 5705.20, R.C.

SYLLABUS:

Surplus funds arising from a tax levied in excess of the ten-mill limitation under authority of Section 5705.20, Revised Code, as it existed prior to July 28, 1959, cannot be used for the support of tuberculosis clinics established pursuant to Section 339.36 or Section 339.39 of the Revised Code, as authorized by the 1959 amendment of Section 5705.20, Revised Code.

Columbus, Ohio, October 28, 1959

Hon. Bernard T. McCann, Prosecuting Attorney
Jefferson County, Steubenville, Ohio

Dear Sir:

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

“I am attaching herewith a copy of amended house bill No. 146 which repeals existing section 5705.20 R.C. and re-enacts it with a change providing that the money raised through a tubercular levy may be used for the support of tuberculosis clinics pursuant to section 339.36 or 339.39 of the Revised Code.

“Jefferson County has a surplus in this fund from the present levy which has been in force for some years, and I have been requested to address your office for an opinion as to whether or not the funds which were acquired through a levy prior to the passage of the new act can be used for the purposes which are now named in the new act but were not included in the previous act.”

Section 5705.20, Revised Code, attached to your letter reads as follows:

“Sec. 5705.20. The board of county commissioners of any county, prior to the fifteenth day of September in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, *or for the support of tuberculosis clinics established pursuant to section 339.36 or section 339.39 of the Revised Code*, 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 tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to such section, *or for the support of tuberculosis clinics established pursuant to such sections*, 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, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

“Such resolution shall conform to section 5705.19 of the Revised Code and 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 tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, *or for the support of tuberculosis clinics established pursuant to section 339.36 or section 339.39 of the Revised Code*, vote in favor thereof, the board of said county may levy a tax within such county at the additional rate in excess of the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of said years.” (Italics added to denote new matter.)

The effect of the amendment of Section 5705.20, Revised Code, must be considered in the light of the Constitution of the State of Ohio. Section

5 of Article XII thereof says in part “* * * every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” The issue which was submitted to and approved by the electors under former Section 5705.20, Revised Code, was whether a tax should be levied in excess of the ten-mill limitation for “the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis to hospitals with which the board has contracted pursuant to Section 339.20 of the Revised Code.”

The use of funds arising under the voted levy for any other purposes, such as tuberculosis clinics, would come directly under the prohibition of Section 5 of Article XII of the Constitution. The objects of the levy made under former Section 5705.20, Revised Code, were not broad enough to include support of tuberculosis clinics that were not “distinctly” an object of the levy. It would, therefore, be unlawful to use such funds in support of tuberculosis clinics. The fact that the amended act now permits such use does not alter my views, for the Legislature is bound by the constitutional provisions the same as any other branch of government. It would be equally improper to attempt to transfer the surplus funds to the general fund and then to the use of tuberculosis clinics. A transfer of that kind would be an attempt by indirect means, to do that which the Constitution directly prohibits. Furthermore, in providing for the transfer of funds so far as is pertinent to your inquiry, Section 5705.14, Revised Code, says:

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

“* * *

“(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

“* * *

“Except in the case of transfer pursuant to divisions (E) and (F) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two thirds of the members.”

The pertinent portions of Section 5705.09, Revised Code, read:

“Each subdivision shall establish the following funds:

“* * *

“(D) A special fund for each special levy;

“* * * .”

These sections show that funds levied under former Section 5705.20, Revised Code, cannot be transferred even to the general fund so long as your tuberculosis hospital continues to operate.

In conclusion and in specific answer to your inquiry, it is my opinion that surplus funds arising from a tax levied in excess of the ten-mill limitation under authority of Section 5705.20, Revised Code, as it existed prior to July 28, 1959, cannot be used for the support of tuberculosis clinics established pursuant to Section 339.36 or Section 339.39 of the Revised Code, as authorized by the 1959 amendment of Section 5705.20, Revised Code.

Respectfully,

MARK McELROY

Attorney General