

154

SYLLABUS:

1. A levy under Section 5705.19 or Section 5705.191, Revised Code, to raise revenue for the general fund of a subdivision must be declared by resolution to be a levy "for current expenses" or "current operating expenses" of the subdivision.

2. A levy under Section 5705.191, Revised Code, for "the purpose of supplementing the General Fund for current expenses * * * for the purpose of making an appropriation for Child Welfare Services" is a special levy and all revenue derived therefrom shall be credited to a special fund for the purpose for which the levy was made.

3. The proceeds of a levy under Section 5705.191, Revised Code, for "the purpose of supplementing the General Fund for current expenses * * * for the purpose of making an appropriation for Child Welfare Services" may only be expended for services for children, viz. assistance, maintenance, etc., and may not be used for the construction of permanent improvements.

Columbus, Ohio, April 18, 1963

Hon. John S. Ballard
Prosecuting Attorney
Summit County
Akron, Ohio

Dear Sir:

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

"Our Child Welfare Board has requested an opinion of whether funds from the levy passed in 1960, copy of

resolution and of ballot enclosed, may be used for new construction of buildings as well as for operating expenses. The Child Welfare Board submits a budget to the Board of County Commissioners which budget contemplates the entire proceeds of the levy, and then the County Commissioners appropriate these funds to the Child Welfare Board.

“We have believed that since the levy was directed for services, rather than for buildings, funds from the levy itself could not be directly diverted to building programs; but if funds were returned to the County general fund, which would create a surplus in the general fund, then any surpluses in the general fund could be devoted for building purposes.

“We attach for your information copy of ballot form, copy of resolution No. 631-60, and other memoranda for such value as they have. We also direct your attention to Opinion 3532, dated January 9, 1963.”

The creation of a county child welfare board is the subject of Section 5153.07, Revised Code. Section 5153.15, Revised Code, provides:

“The powers and duties enumerated in sections 5153.16 to 5153.19, inclusive, of the Revised Code, with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency or county government, namely, a county department of welfare or a county child welfare board.”

In addition to other duties, Section 5153.161, Revised Code, provides:

“The county child welfare board, subject to the rules, regulations, and standards of the commission of mental hygiene shall:

(A) Administer and supervise the provisions of sections 5127.01 to 5127.05, inclusive, of the Revised Code, and exercise such powers and duties as prescribed by the commission:

(B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other times as may be requested;

(C) Employ such personnel and provide such facilities and equipment as are necessary;

(D) Provide such funds as are necessary for the operation of training centers and workshops.

“Any county child welfare board may enter into a contract with another such board of another county to provide the training center and workshop facilities authorized in sections 5127.01 to 5127.05, inclusive, of the Revised Code, upon such terms as may be agreeable.”

Your question requires a consideration of Sections 5705.19 and 5705.191, Revised Code, and related sections. Section 5705.19, Revised Code, provides:

“The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare 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 subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

(A) For current expenses of the subdivision;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, a municipal corporation, township, school district, or county, under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of roads and bridges in counties or townships;

(H) For recreational purposes, provided the total levy for such purposes authorized by vote of the people shall not exceed five tenths of a mill;

(I) For the purpose of providing and maintaining fire apparatus, appliances, buildings or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph or the payment of permanent, part-time or volunteer firemen or fire fighting companies to operate the same;

(J) For the purpose of providing and maintaining motor vehicles, communications and other equipment, used directly in the operation of a police department, or the payment of salaries of permanent police personnel;

(K) For the maintenance and operation of a county home;

(L) For the maintenance and operation of schools, training centers, or workshops for mentally retarded persons.

“Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except that when the additional rate is for the payment of debt charges the increased rate shall be for the life of the indebtedness and except when the additional rate is for the purpose of providing current operating revenues for a school district, as required in Chapter 3317. of the Revised Code the increased rate may be for any number of years not exceeding ten.

“Whenever the board of education of a city, exempted village, or local school district declares it necessary to levy a tax pursuant to the provisions of section 5705.192 (5705.19.2) of the Revised Code, such tax may be in effect for an indefinite period of time, or if a definite number of years is specified, such number of years shall not exceed ten.

“Such resolution shall go into immediate effect upon its passage, and on publication of the same shall be necessary, other than that provided for in the notice of election.”

Section 5705.191, Revised Code, reads in part as follows:

“The taxing authority of any subdivision, other than the board of education of a school district, by a vote of two-thirds of all its members, 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 an adequate amount 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 purposes in section 5705.19 of the Revised Code, or to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals, and that the question of such additional tax levy shall be submitted to the electors of the subdivision at a general, primary or special election to be held at a time therein specified. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, excepting that such levy may not be for a longer period than five years, and such resolution shall specify the date of holding such election, which shall not be earlier than ninety days after the adoption and certification of such resolution nor later than one hundred and twenty days thereafter. Said resolution shall go into immediate effect upon its passage and no publication of the same shall be necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5705.25 of the Revised Code, and the provisions of said section shall govern the arrangements for the submission of such question and other matters with respect to such election, to which said section 5705.25 of the Revised Code refers, excepting that such election shall be held on the date specified in the resolution, provided, only one special election for the submission of such question may be held in any one calendar year and may not be held during the thirty days immediately preceding or following a primary or general election. Provided, that a special election may be held upon the same day a primary election is held. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks.

“If a majority of the electors voting on the question in an election held on the first Tuesday after the first Monday in November or in even numbered years on the first Tuesday after the first Monday in May or fifty-five per cent of those voting on the question at a special election held on any other day vote in favor thereof, the taxing authority of the subdivision may make the necessary levy within such subdivision at the additional rate or at any lesser rate outside the ten-mill limitation on the tax list and duplicate for the purpose stated in the resolution.

Such tax levy shall be included in the next annual tax budget that is certified to the county budget commission."

Section 5705.19, Revised Code, authorizes a tax levy outside the ten-mill limitation, when approved by the electors voting on the question at a general election, for the purposes enumerated therein. Significantly one purpose is "(A) For current expenses of the subdivision." Section 5705.191, Revised Code, permits a tax levy outside the ten-mill limitation for any of the purposes in Section 5705.19 and for other stated purposes when approved by a majority of the electors voting on the issue at a primary or general election and fifty-five per cent of the electors voting on the issue at a special election.

The declaration of the resolution of the board of county commissioners in this case is:

"* * * * * * * * * * * * * * *"

"WHEREAS, section 5705.19 of the Revised Code of Ohio, provides for a method of levying additional taxes for current expenses of Summit County; and

"WHEREAS, the Board of Commissioners determined that if the proposed requirement for Child Welfare Services (Children's home and Foster Care of Children) are removed from the funds raised by present levies, through the process of making a special levy intended to be used for Child Welfare services only; the result of this removal of the sums formerly appropriated for Child Welfare services will permit increases in the sums necessary for the operating of the Juvenile Court and for the Detention Home; and

"* * * * * * * * * * * * * * *"

"THEREFORE BE IT RESOLVED by this Board of County Commissioners that:

Section 1—The amount of taxes which may be raised within the 10 mill limitation will be insufficient to provide for the necessary requirements of Summit County and that it is necessary to levy a tax in excess of such limitations for the purpose of supplementing the General Fund for current expenses of Summit County for the purpose of making an appropriation for Child Welfare Services. (Children's Home and Foster Care of Children).

"* * * * * * * * * * * * * * *"

The sample ballot you have supplied me proposes a levy for:

“An additional tax for the benefit of Summit County for the purpose of CURRENT EXPENSES OF THE SUBDIVISION TO PROVIDE FOR THE CHILDREN’S HOME AND CHILD WELFARE SERVICES.”

It is apparent that the board of county commissioners sought to effect a levy under Section 5705.19, Revised Code, to increase the general fund but used the language (in substance) in the resolution, and thus the ballot, of Section 5705.191, Revised Code, viz. “to supplement the general fund for the purpose of making appropriations for * * * welfare.” The declaration of purpose contained in the resolution is controlling.

The initial question is whether the levy is a special levy for child welfare services or a levy for current expenses of the county. If the former, the revenues are not paid into the general fund and can only, without statutory transfer, be used for child welfare services. To the extent material Section 5705.10, Revised Code, provides:

“All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

“* * *

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“All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

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* * *

“Money paid into any fund shall be used only for the purposes for which such fund is established.”

Upon consideration I am of the opinion that the levy under consideration is a special levy and that the proceeds thereof may only be used for the specific purpose of child welfare services. The language “for the purpose of supplementing the general fund for current expenses” and “to supplement the general fund for the purpose of making appropriations” found in the resolution and in Section 5705.191, Revised Code, respectively, can only be considered as descriptive of the reason for or motivation of the levy.

The more limiting language "welfare" as used in the statute and "child welfare services" as used in the resolution and ballot define the purpose. I am brought to this conclusion by the fact that the contrary one would largely destroy the efficiency of the singleness of purpose provision of Section 5705.19, Revised Code, (which is incorporated by reference in Section 5705.191, Revised Code) and of Section 5, Article XII, Constitution of Ohio. It would, for instance, enable a taxing authority to trade on the appeal of something like child welfare to raise funds for a totally unrelated object payable from the general fund as current expense.

It is apparent, too, that the legislature intended the expression "to supplement the general fund for the purpose of making appropriations for one or more of the following purposes" in Section 5705.191, Revised Code, to be more (less definitively) than a restatement of the language "current expenses" in Section 5705.19, Revised Code, or it could and presumably would have stopped with an incorporation of the purpose of Section 5705.19, Revised Code.

While any general comparison of the reach of Sections 5705.19 and 5705.191, Revised Code, may seem to be largely academic, it must be borne in mind that a levy under the former requires a vote of the majority of electors voting on the issue at a general election while a levy under Section 5705.191, Revised Code, may be submitted to the electors at a general, primary or special election (in this last instance approval of fifty-five per cent of those voting is necessary.)

In my opinion a levy under Section 5705.19 or Section 5705.191, Revised Code, to raise revenues for the general fund of a subdivision must be declared by resolution to be a levy "for current expenses" or "current operating expenses" of the subdivision.

The nearly identical question was before my predecessor in office in Opinion No. 2997, Opinions of the Attorney General for 1962, in which it was held that a levy for the purpose of health and mental health under Section 5705.191, Revised Code, was a special levy and that:

"Revenue derived from a special tax levy pursuant to Section 5705.191, Revised Code, may not be paid into the general fund to reimburse such fund, but must be credited, in accordance with Section 5705.10, Revised Code,

to a special fund for the purpose for which such levy was made. No transfer can be made from a special fund to the general fund except as authorized in Section 5705.14, Revised Code."

See also Opinion No. 1504, Opinions of the Attorney General for 1958, in which it was held that a levy under authority of Section 5705.22, Revised Code, which is comparable in language to Section 5705.191, Revised Code, was a special levy for the purpose stated and could not be placed in the general fund of the county and used for current expenses of the county.

There remains, of course, the question whether funds for the purpose of child welfare services can be expended for building purposes. I think not. Even if the building contemplated is to house children or agencies to service children. "Services" in the context in which used carries the idea of assistance or maintenance and not the construction of permanent improvements. This narrower construction is required by the singleness of purpose provisions of statute and constitution.

Lastly, you have called my attention to Opinion No. 3532, Opinions of the Attorney General for 1963. That Opinion, as stated therein, was based entirely on the legislative amendment to Section 339.06, Revised Code, to allow expenditures from the hospital operating fund (from whatever source) for purchases of equipment and construction of improvements. Such a legislative expression is conclusive on this office.

Accordingly it is my opinion and you are advised:

1. A levy under Section 5705.19 or Section 5705.191, Revised Code, to raise revenue for the general fund of a subdivision must be declared by resolution to be a levy "for current expenses" or "current operating expenses" of the subdivision.

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Code, for "the purpose of supplementing the General Fund for current expenses * * * for the purpose of making an appropriation for Child Welfare Services" may only be expended for services for children, viz. assistance, maintenance, etc., and may not be used for the construction of permanent improvements.

Respectfully,
WILLIAM B. SAXBE
Attorney General