

OPINION NO. 66-096**Syllabus:**

A local school district board of education may submit two separate levies in excess of the ten mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, Section 5705.21, Revised Code.

To: John F. Marchal, Darke County Pros. Atty., Greenville, Ohio
By: William B. Saxbe, Attorney General, May 20, 1966

Your request for my opinion is as follows:

"A local Board of Education of Darke County, Ohio, seeks to submit two Resolutions for levies in excess of the ten mill limitation at the Primary Election to be held on May 3, 1966. One

Resolution would renew a current levy of 7.3 mills and would be for a period of five years. The second levy would constitute a new levy of 3.7 mills, also for a period of five years.

"Since both of the Resolutions are to be submitted to the electorate at a Primary Election, they must be submitted under the provisions of Section 5705.21 of the Ohio Revised Code. The last part of Opinion #718 issued by your Office on December 9, 1963, indicates that a local school district may not separate two levies which are being submitted for the same purpose, for the same period of time and under the same Section, Section 5705.21, and that if a renewal and an increase is desired, they must be submitted as one question to the voters of the school district under Section 5705.21. However, the particular question submitted to you in Opinion #718, referred to above, was not a question of whether it is possible to separate two levies.

"I, therefore, ask your opinion as to whether a local school district may submit, at a Primary Election, two separate levies in excess of the ten mill limitation, one of which would be a renewal of a current levy and one which would be a new levy where said levies are for the same purpose and submitted under the same Section, namely, Section 5705.21."

You correctly observed that the question you propound was not before me in Opinion No. 718, Opinions of the Attorney General for 1963. All reference in that opinion to the question of whether it is possible to separate two levies was nondirectory comment.

Section 5705.21, Revised Code, is as follows:

"At any time the board of education of any 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 school district, that it is necessary to levy a tax in excess of such limitation for school district purposes, and that the question of such additional tax levy shall be submitted to the electors of the school district on the first Tuesday after the first Monday in May or special election on another day to be specified in the resolution. No more than one such special election shall be held in any one calendar year. Such resolution shall conform to section 5705.19 of the Revised Code, except that such levy may not be for a longer period than five years and such resolution shall specify the date of holding such special or primary election, which shall not be earlier than twenty-five days after the

adoption and certification of such resolution nor later than one hundred 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 passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code, and said section shall govern the arrangements for the submission of such question and other matters concerning such election, to which said section refers, except that such election shall be held on the date specified in the resolution, provided that no special election shall be held during the ten days preceding or subsequent to Easter Sunday, Thanksgiving Day, or Christmas Day in any year. 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 so submitted in an election held in even-numbered years on the first Tuesday after the first Monday in May and fifty-five per cent of those voting on the question at a special election held on any other day vote in favor of such levy, the board of education of the school district may forthwith make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, 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. After the approval of such levy vote and prior to the time when the first tax collection from such levy can be made, the board of education of the school district may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding fifty per cent of the total estimated proceeds of the levy throughout its life.

"Such notes shall be sold as provided in sections 133.01 to 133.65, inclusive, of the Revised Code. If such anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year of the life of the levy; and if such notes are issued, the amount necessary to pay the interest and principal as they mature shall be deemed appropriated for such purposes from such levy, and appropriations from such levy by the board of education of the school district shall be limited each year to the balance available in excess of such amount."

Section 5705.21, Revised Code, provides the means by which the board of education of a school district may submit the question of levying additional taxes, in excess of the ten mill limitation, to the electorate in a special election.

Section 3501.01 (D), Revised Code, contains the only statutory definition of special election in the Revised Code, which is as follows:

"As used in the sections of the Revised Code relating to elections:

" * * * * *"

"(D) 'Special election' means any election other than the elections required to be regularly held on the day of a general or primary election, provided that a special election may also be held on the day of a general or primary election."

Section 5705.21, Revised Code, expressly provides that "No more than one such special election shall be held in any one calendar year." The meaning of the express limitation of one special election per year was the subject of Opinion No. 1536, Opinions of the Attorney General for 1960, page 485. The syllabus of that opinion is as follows:

"Submission to the voters by a board of education of a proposed additional tax levy for school purposes pursuant to Section 5705.21, Revised Code, is a special election, only one of which may be held in any one calendar year, whether it be on the first Tuesday after the first Monday in May, or on any other date selected by the board of education."

This opinion was expressly approved and followed in the first paragraph of the syllabus of Opinion No. 3472, Opinions of the Attorney General for 1962, page 974.

Both the statutory definition and the opinions treating the subject "special election" have related to the day it is to be held. It is obvious that the legislature was protecting the electorate from harassment by the board of education by limiting the board to one special election per year. Otherwise, if the electorate defeated a levy submitted pursuant to Section 5705.21, Revised Code, the board of education could repeatedly resubmit the proposed levy until it was approved or the board ousted. Such a contest between a board of education and the nonassenting electorate would not only waste much time and effort of the electors, but could also result in a great expenditure of public funds necessary to pay officials to prepare, conduct and report the elections.

The singular tense language employed in Section 5705.21, Revised Code, may lead one to the erroneous conclusion that it is directed to, and permits only, the approval of a single tax levy. However, the rules of construction set forth in Section 1.10, Revised Code, make clear the intent of the legislature. Section 1.10 (C), Revised Code, is as follows:

"As used in the Revised Code, unless the context otherwise requires:

" * * * * *"

"(C) Words in the plural number include the singular number, and words in the singular number include the plural number."

The rules of construction contained in Section 1.10 (C), Revised Code, operate to permit an interpretation of Sections 5705.19, and 5705.25, Revised Code, which is compatible with the interpretation of Section 5705.21, Revised Code.

Since all taxes in excess of the ten mill limitation are "additional" taxes, the form prescribed for ballots in Section 5705.25, Revised Code, calls for the designation of such tax levies as additional taxes as follows:

"The form of the ballots cast at such election shall be:

"An additional tax for the benefit of (name of subdivision) for the purpose of (purpose stated in the resolution) at a rate not exceeding mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) for each one hundred dollars of valuation, for (life of indebtedness or number of years the levy is to run pursuant to the provisions of section 5705.19 of the Revised Code, or the amount of the increase which may be continued for an indefinite period of time pursuant to the provisions of section 5705.192 5705.19.27)."

However, if the levy submitted is a proposal to renew an existing levy in the same amount, the form of the ballot may be changed by substituting for the words "An additional," at the beginning of the form, the words "A renewal of a." If the levy submitted is a proposal to increase an existing levy the form of the ballot may be changed by substituting for the words "An additional," at the beginning of the form, the words, "A renewal of mills and an increase of mills to constitute a." Similarly, Section 5705.25, Revised Code, provides for altering the form of the ballot in a case of a proposed levy decrease.

Section 5705.25, Revised Code, also provides:

"The question covered by such resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election."

The legislature has expressly authorized the submission of more than one question to the electorate on the same special election day. The submission of two levies, one an increase and the other a renewal, by separate ballots or on the same ballot, is permitted by Sections 5705.21 and 5705.25, Revised Code.

In conclusion, it is my opinion and you are advised that a local school district board of education may submit two separate

levies in excess of the ten mill limitation, one to renew an existing levy and the other an additional levy, for the same purpose, for the same period of time, and under the same code provision, Section 5705.21, Revised Code.