

**OPINION NO. 1578****Syllabus:**

Where a taxing authority proceeds as authorized by Section 5705.19, et seq., Revised Code, to declare that it is necessary to levy a tax in excess of the ten-mill limitation and that such tax shall be levied upon the duplicate for the current year, the tax shall, after approval by the electors, be levied on the current duplicate as directed by statute, and there is no requirement that the necessity for the additional taxation must have been included in the budget submitted to the county auditor by the taxing authority prior to the adoption of the resolution of necessity.

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**To: Joseph Loha, Jefferson County Pros. Atty., Steubenville, Ohio**  
**By: William B. Saxbe, Attorney General, December 4, 1964**

Your request for my opinion reads:

"The Budget Commission of Jefferson County requests an opinion by your office on the following question concerning the proper setting of tax rates for several districts for the ensuing year. I have researched Revised Code 5705.19, and .34, and .25 and I cannot come to a clear out decision on this matter. The question is as follows:

"After the Taxing authority of a district has adopted and filed their 1965 budget with the county Auditor by July 20, the authority determines the need of additional funds for maintenance and operation, recreation, proposed police district, etc., but these anticipated revenues were not included in the budget. The authority passed a resolution of necessity and filed the resolution with the Board of Elections before September 15, 1964, for an additional levy

to be voted on at the November 3, 1964 general election and to be included in the 1964 tax rate.

"Does the Budget Commission have the authority to include the additional levy or any portion of it in the 1964 tax rate when the need is not shown in the 1965 budget.

"We have six school districts, two townships and one city voting on an additional levy at the General Election November 3, 1964. None of the proposed levies were included in the budget for 1965.

"At hearings on the budget each district stated the need for the additional levy."

Taxing authorities of subdivisions are required by Section 5705.28, et seq., Revised Code, to adopt a budget for the next succeeding fiscal year and to submit such budget to the auditor of the county on or before the twentieth day of July or at such later time as may be fixed according to law. These sections direct that the budget shall contain an estimate of the contemplated revenue and expenditures for the ensuing fiscal year. The budget so submitted is reviewed by the budget commission. Such commission may adjust and revise the estimate of balances and receipts and shall determine the total appropriations which may be made. The taxing authority then authorizes the necessary tax levies and certified them to the county auditor.

Taxing authorities of subdivisions are granted broad authority by Section 5705.19, et seq., Revised Code, to declare the necessity to raise additional revenue by taxation outside the ten-mill limitation and to determine that such additional tax shall be levied upon the tax duplicate for the current year. You have inquired, in effect, whether the statutory requirements for the preparation and submission of a budget to the budget commission are a limitation upon the right of such taxing authorities to proceed under Section 5705.19, et seq., Revised Code.

I assume from your letter that the taxing authorities in question are proceeding under Section 5705.19 or, in the case of the school districts, Section 5705.192, Revised Code. Both of these statutes direct that the resolution of necessity shall be adopted prior to the fifteenth day of September and may provide for a levy upon the duplicate of the current year. I should mention here that my conclusion would be the same where boards of education are proceeding under Section 5705.21, Revised Code.

After a resolution has been adopted in accordance with Section 5705.19 or 5705.192, Revised Code, and the electors have cast a favorable vote, the taxing authority is directed by the final paragraph of Section 5705.25, Revised Code, to proceed as follows:

"A levy voted in excess of the ten-mill limitation under this section shall be certified to the board of tax appeals. In the first year of such levy, it shall be extended on the tax lists after the February settlement next succeeding such election. If such additional tax is to be placed upon

the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor, who shall extend it on the tax list for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission."

Section 5705.34, Revised Code, directs the budget commission to certify the budget to the taxing authority and the latter to authorize the necessary tax levies and certify them to the auditor; that section then concludes with this language:

"\* \* \*If the levying of a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under sections 5705.01 to 5705.47, inclusive, of the Revised Code, \* \* \* the commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed \* \* \*."

There is nothing in these sections which requires action by the budget commission as a prerequisite to the adoption by a taxing authority of a resolution of necessity. Power is given to the taxing authorities to determine and declare the need for additional taxes, and if the electors cast a favorable vote, the taxes must be levied as provided by law.

Your attention is invited to State of Ohio, ex rel. Board of Education of Village of Norton, Ohio vs. Calvin L. Bower, County Auditor, et al., being Case No. 5435, decided January 14, 1964, for the Court of Appeals for the Ninth Judicial District. In that action the board of education was proceeding under Section 5705.21, Revised Code. The electors of the district approved on December 10, 1963, an additional tax to be levied for the years 1963 to 1967, both inclusive. The county auditor, county treasurer, and the budget commission refused to certify the tax on the duplicate for 1963, claiming that the tax could be first certified on the 1964 tax duplicate.

In the course of this opinion the Court said that Sections 5705.21 and 5705.34, Revised Code, must be read in pari materia and that where the electors approve a levy after the first day of October and within a period when the budget can be revised, the budget commission must reconsider and revise its action.

I do not consider it necessary to discuss statements of my predecessors in office that there is no legal power for a taxing authority to revise a budget after it has been duly adopted and submitted to the county auditor. In the situation you have described, the taxing authority is proceeding as authorized by law to declare the necessity for additional taxation, and, after approval by the electors, the county officials must proceed to levy the tax as approved.

It is, therefore, my opinion and you are advised that where

a taxing authority proceeds as authorized by Section 5705.19, et seq., Revised Code, to declare that it is necessary to levy a tax in excess of the ten-mill limitation and that such tax shall be levied upon the duplicate for the current year, the tax shall, after approval by the electors, be levied on the current duplicate as directed by statute, and there is no requirement that the necessity for the additional taxation must have been included in the budget submitted to the county auditor by the taxing authority prior to the adoption of the resolution of necessity.