

## OPINION NO. 76-021

## Syllabus:

1. R.C. 3311.213 requires the county auditor of a school district, which has been assigned to an existing joint vocational school district with an outstanding tax levy for building purposes, bond retirement or current expenses, to place the tax rate of the joint vocational school district on the tax duplicate of the assigned school district.

2. R.C. 3311.20 and R.C. 3311.21 allow the board of education of a joint vocational school district to levy a tax in excess of the "ten mill limitation and thus do not conflict with R.C. 5705.02.

3. Section 2, Article XII of the Ohio Constitution allows the outstanding tax levies of a joint vocational school district to be applied in a school district which is added to the joint vocational school district after such tax levies have received proper approval. (Kellenberger v. Board of Education, 173 Ohio St. 201 (1962) and Gigandet v. Brewer, 134 Ohio St. 86 (1939) followed.)

To: Lawrence S. Huffman, Allen County Pros. Atty., Lima, Ohio  
By: William J. Brown, Attorney General, March 19, 1976

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

"1. Does §3313.91, or any other statutory provision directly or by implication, require the County Auditor in which is located a school district assigned to a Joint Vocational School District by action of the State Board of Education to levy the joint vocational district rates of taxation on the real property within the school district so assigned?

"2. If your answer to the first question is in the affirmative, are such statutory provisions in conflict with §5705.02 of the Revised Code, the 'ten mill limitation' provision?

"3. If your answer to the first question is in the affirmative, is §3313.91 or other

statutory scheme requiring the levy of such taxes constitutional in light of the provisions of Article XII, Section 2 of the Constitution of Ohio?"

The answer to your first question is found in R.C. 3311.213. This provision reads in relevant part:

"With the approval of the board of education of a joint vocational school district which is in existence, any other school district in the county or counties comprising the joint vocational school district or any school district in a county adjacent to a county comprising part of a joint vocational school district may become a part of the joint vocational district. On the adoption of a resolution of approval by the board of education of the joint vocational school district, it shall advertise a copy of such resolution in a newspaper of general circulation in the school district proposing to become a part of such joint vocational school district. . . . If such resolution becomes legally effective, the board of education of the joint vocational school district shall notify the county auditor of the county in which the school district becoming a part of the joint vocational school district is located, who shall thereupon have any outstanding levy for building purposes, bond retirement, or current expenses in force in the joint vocational school district spread over the territory of the school district becoming a part of the joint vocational school district.

. . . ." (Emphasis added.)

The language of R.C. 3311.213 is explicit and mandatory. The auditor of a county in which there is located a school district which is to be added to an existing joint vocational school district shall have any outstanding levies of the joint vocational school district for building purposes, bond retirement or current expenses spread over the territory in the school district becoming a part of the joint vocational school district.

You have made reference in your letter to the fact that various school districts in Auglaize and Mercer Counties have recently been assigned to the Apollo Joint Vocational District and that the Superintendent of Public Instruction for the State of Ohio has notified both county auditors of this action and further instructed them to add the tax rate for the Apollo Joint Vocational District to the tax duplicate of each assigned school district. Pursuant to R.C. 3311.213, then, a tax levy for any or all of the purposes specified in R.C. 3311.213 is required to be placed on the tax duplicates of the school districts assigned to the Apollo Joint Vocational School District.

From your second question it is apparent that the joint vocational school district tax rate exceeds the "ten mill limitation" and, thus, the addition of this tax rate to the duplicates of the school districts assigned will result in a tax levy in excess of the "ten mill limitation" in the assigned district. R.C. 5705.02, which establishes this limitation, reads in relevant part:

"The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of each subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof."

(Emphasis added.)

Pursuant to this section taxes may be levied in excess of the "ten mill limitation" if specifically authorized. Two sections of the Revised Code authorize boards of education of joint vocation school districts to submit tax levies to the voters of the district. These code sections read, in pertinent part, as follows:

R.C. 3311.20

"A joint vocational school district board of education by a vote of at least two-thirds of its full membership may at any time submit to the electors of the joint vocational school district the question of issuing bonds of such district for the purpose of paying the cost of purchasing a site or enlargement thereof, and for the erection and equipment of buildings, or for the purpose of enlarging, improving, or rebuilding thereof, and also the necessity of a levy of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and retire such bonds. . . . On approval of such question, the joint vocational school district board of education may proceed with the issuance of such bonds and the levy of a tax outside a ten-mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity. . . .

". . .The annual levy necessary to pay the principal and interest on such bonds shall be made by said board and shall be extended by the auditor of each county in which territory of the joint vocational school district is located on the tax lists of the school districts in his county participating in the joint vocational school district for each year for which the levy is made and shall be placed for collection on the tax duplicates of such districts in his county to be collected at the same time and in the same manner as other taxes on such duplicates." (Emphasis added.)

R.C. 3311.21

"The board of education of the joint vocational school district by a vote of two-thirds of its full membership may at any time adopt a resolution declaring the necessity to levy a tax in excess of the ten-mill limitation for a period not to exceed ten years to provide funds for any one or more the following purposes . . . purchasing a site or enlargement thereof and for the erection and equipment of buildings, or for the purpose of providing for the current expenses of the

joint vocational school district, or for a continuing period for the purpose of providing for the current expenses of the joint vocational school district.

". . . .

"If a majority of the electors voting on the question of levying such tax vote in favor of such levy, the joint vocational school district board of education shall annually make the levy within such district at the additional rate, or at any lesser rate and the county auditor of each affected county shall annually place such levy on the tax duplicate of the school districts in his county participating in the joint vocational school district. . . ." (Emphasis added.)

Both R.C. 3311.20 and R.C. 3311.21 permit a joint vocational school district board of education to levy a tax in excess of the "ten-mill limitation" for various specified purposes, and require a county auditor to place such levy on the tax duplicates of member school districts. These sections reinforce my answer to your first question, while providing the answer to the second question: since a joint vocational school district board of education may levy a tax in excess of the "ten-mill limitation," a county auditor is required to place the joint vocational school district tax rate on the duplicate of every school district which has been assigned to the joint vocational school district.

Your third question relates to the constitutionality of statutes requiring the county auditor of a school district assigned to a joint vocational school district to levy the tax rate of the joint vocational school district. It is inappropriate for this office to determine the constitutionality of state statutes. As stated in 1962 Op. Att'y Gen. No. 2769, such questions are to be determined in litigation. Branch 1 of the Syllabus of 1962 Op. Att'y Gen. No. 2769 reads:

"1. The power of determining whether a statute is constitutional is lodged solely in the Courts."

It is appropriate, however, to point out that the Supreme Court of Ohio considered a similar question in the case of Kellenberger v. Board of Education of Ross County, 173 Ohio St. 201 (1962). There, the plaintiff sought to enjoin the creation of a new school district, pursuant to R.C. 3311.26, through the combination of two existing districts. He claimed that the statute and the action was unconstitutional under Article XII, Section 2 of the Ohio Constitution since a tax levy in excess of the "ten mill limitation" was to be applied to the new school district, although the levy had been approved by the voters of only one of the existing school districts and not the other. The court held that the levy in excess of ten mills could be applied to the new combined school district, even though the voters of one of the existing districts that would form part of the new district had not approved the levy. In so holding the court relied on Gigandet v. Brewer, 134 Ohio St. 86 (1938), the syllabus of which reads as follows:

"Where a school district is created by a county board of education by the consolidation of two districts under the provisions of Section 4736, General Code, and after an equitable division of funds is made, a levy of a tax outside the one per cent limitation prescribed by Article XII, Section 2 of the Ohio Constitution as amended on November 7, 1933, on all the property in the new district for the retirement of bonds issued for the erection of a school building by a vote of the people in only one of the districts in 1926, is not violative of the aforesaid constitutional provision."

The holdings of these cases directly address the issue you have raised, concluding that it would not violate Article XII, Section 2, of the Ohio Constitution to apply the outstanding tax levy of a joint vocational school district to school districts added to the joint vocational school district, even though the voters of the added districts did not approve the levy.

In conclusion it is, therefore, my opinion and you are so advised that:

1. R.C. 3311.213 requires the county auditor of a school district, which has been assigned to an existing joint vocational school district with an outstanding tax levy for building purposes, bond retirement or current expenses, to place the tax rate of the joint vocational school district on the tax duplicate of the assigned school district.

2. R.C. 3311.20 and R.C. 3311.21 allow the board of education of a joint vocational school district to levy a tax in excess of the "ten mill limitation and thus do not conflict with R.C. 5705.02.

3. Section 2, Article XII of the Ohio Constitution allows the outstanding tax levies of a joint vocational school district to be applied in a school district which is added to the joint vocational school district after such tax levies have received proper approval. (Kellenberger v. Board of Education, 173 Ohio St. 201 (1962) and Gigandet v. Brewer, 134 Ohio St. 86 (1938) followed.)