



**Michael C. O'Malley**  
CUYAHOGA COUNTY PROSECUTOR

April 4, 2024

The Honorable Dave Yost  
Attorney General of State of Ohio c/o Opinions Section  
30 East Broad Street, 15th Floor  
Columbus, OH 43215

Dear Attorney General Yost:

As the Prosecuting Attorney for Cuyahoga County, I am called upon at times to advise County officers as to the proper expenditure of public funds. To assist me in that endeavor, I am seeking your legal opinion regarding the manner in which funds derived from Cuyahoga County's health and human services levies may be used. Specifically, R.C. 5705.191, the Ohio law which authorizes certain county tax levies, requires that money generated by health and human services levies be utilized for "health and human or social services." Cuyahoga County officials have expressed to me a desire to be able to utilize tax dollars derived from such levies on items that are traditionally characterized as capital expenditures, such as expenditures to acquire, construct, or renovate buildings used by a particular department or agency. I am seeking your opinion on whether money derived from such levies may be expended on capital expenditures for the acquisition, construction, or renovation of permanent improvements that house operations providing such services.

By way of background, Cuyahoga County is currently receiving funding from two health and human services levies (collectively "HHS Levy").<sup>1</sup> One is a 4.7-mill levy that was approved in 2020 and will last until 2028. The other, a 4.8-mill levy, was approved in 2016 and will last until 2024.<sup>2</sup>

The HHS Levy was approved by the electorate "for the purpose of supplementing general fund appropriations for health and human or social **services**[" The HHS Levy funds several county programs and services including substance abuse treatment, a county hospital (MetroHealth Medical System), child protective services, programs for the elderly, and homelessness services.

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<sup>1</sup> I am enclosing copies of the ballot language for the two levies.

<sup>2</sup> The voters approved a renewal of the 4.8-mill HHS Levy during the March 2024 primary election.

The HHS Levy approved by the voters of Cuyahoga County was levied pursuant to R.C. 5705.191, which provides, in pertinent part as follows:

The taxing authority of any subdivision, other than the board of education of a school district or the taxing authority of a county school financing district, by a vote of two-thirds of all its members, may declare by resolution that the amount of taxes that 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: public assistance, **human or social services**, relief, welfare, hospitalization, **health**, and support of general 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. \* \* \*

Also relevant to this question is Ohio Constitution art. XII, § 5, which states: "No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, **to which only, it shall be applied.**" (Emphasis added.) The Ohio Attorney General has repeatedly opined that art. XII, § 5 restricts the use of so-called "special levy" dollars. As stated in 2010 Op. Att'y Gen. No. 2010-028,

While the term "special levy" is not defined for purposes of R.C. Chapter 5705, opinions have stated that "a special levy" is a levy for a specific purpose, as opposed to a general levy for current expenses.

2010 Op. Att'y Gen. No. 2010-028, at 2-205 (quoting 1992 Op. Att'y Gen. No. 92-058, at 2-239 n. 1). The specific purpose for which a special levy exists is that contained in (1) the enabling legislation that permits the political subdivision to levy the tax, and (2) in the levy language itself. Because the County's HHS Levy was levied pursuant to R.C. 5705.191, the use of the funds must be limited to health and human or social services. Furthermore, the ballot language itself restricts the use of the funds to "health and human or social services[.]"

In operating the various County departments and divisions which are dedicated to providing "health and human or social services," the County must make certain capital expenditures for the acquisition, construction, or renovation of permanent improvements. These capital expenditures for permanent improvements are inextricably intertwined with the provision of "health and human or social services." That is, the provision of certain services requires capital expenditures for the construction, acquisition, or renovation of permanent improvements, such as buildings. Without these capital expenditures for permanent improvements, certain health and human services simply cannot be provided.

For instance, as noted above, the HHS Levy funds substance abuse treatment services. The County cannot provide residential, in-patient substance abuse treatment services without having a building and beds in which to do so.

The HHS Levy also funds homeless services. The County cannot provide services to the homeless without having shelters and beds in which to do so. In order to provide these services, the Office of Homeless Services requires funds to both acquire the actual homeless shelters, and to repair and upgrade various components of such shelters, such as windows and fire suppression systems. In providing services, the Office of Homeless Services incurs significant renovation expenses, including, but not limited to, shower and bathroom additions to accommodate the increasing homeless populations, and renovations to bring shelters in compliance with applicable code provisions.

Another example is the expenditure of funds to operate the County's Office of Reentry. In order to provide reintegration services, the Office of Reentry needs transitional housing items including, but not limited to beds, dressers, chairs, and furniture. In providing reintegration programs and services, the Office of Reentry incurs transportation expenses, including the cost of purchasing vehicles.

Accordingly, the question for your consideration and response are:

**May the County use funds derived from the HHS Levy for capital expenditures for the acquisition, construction, or renovation of permanent improvements that are inextricably intertwined with and made for the purpose of providing such services, or are the funds to be used solely for non-capital items in the nature of current operating expenses?**

In 1963 Op. Att'y Gen. No. 1963-154, the Ohio Attorney General considered whether a county child welfare board may use funds from a special levy for new construction of buildings. *Id.* at 240-241. The Attorney General concluded that proceeds of a levy under R.C. 5705.191 could not be expended for building purposes:

[t]here 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.

1963 Op. Att'y Gen. No. 1963-154, at 248. The Attorney General opined that "[t]he 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.**” (Emphasis added.) *Id.* at paragraph three of the syllabus.

I ask for your considered opinion on whether the prior opinion, 1963 Op. Att’y Gen. No. 1963-154, is controlling, such that funds derived from the County’s HHS levy may only be used for the provision of “health and human or social services” to the exclusion of capital/permanent improvements, or whether it is appropriate to revisit that prior opinion and read the terms “health and human or social services” more broadly such that the levy funds in question may also be used for capital expenditures for permanent improvements – provided that the permanent improvements are associated with and necessary to provide such “health and human or social services.”

The answer to the question being asked in this letter has immediate application. The Alcohol, Drug Addiction & Mental Health Services Board of Cuyahoga County (“ADAMHS Board”) is intending to use funds derived from the County’s HHS Levy for capital items, including treatment facilities and the fixtures and equipment necessary to provide services at these facilities. In carrying out its statutory mandate (see Chapter 340 of the Ohio Revised Code), which clearly consists of the provision of health and human or social services (such as addiction and mental health treatment and counseling), may the ADAMHS Board expend HHS Levy funds on capital items? Stated more broadly, and to reiterate the fundamental question so that I may provide appropriate legal advice to the County, I ask you to answer the following:

**May the County use funds derived from the HHS Levy for capital expenditures for the acquisition, construction, or renovation of permanent improvements that are inextricably intertwined with and made for the purpose of providing such services, or are the funds to be used solely for non-capital items in the nature of current operating expenses?**

I thank you in advance for your consideration of this matter. Please contact me if you should have any questions or require any additional information to assist you in advising me on these issues. Thank you for your attention to this matter.

Sincerely,



Michael C. O'Malley  
Cuyahoga County Prosecuting Attorney