

October 31, 2013

The Honorable Richard W. Moyer
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

SYLLABUS:

2013-036

A township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.



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OPINION NO. 2013-036

The Honorable Richard W. Moyer
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

Dear Prosecutor Moyer:

You have requested an opinion whether a township may use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads. Based on the following, a township does not have such authority.

R.C. 5705.19 authorizes a township to levy taxes in excess of the ten-mill limitation for various purposes.¹ *See* R.C. 5705.03(B)(1); R.C. 5705.07. This authority includes levying a tax for the following purposes:

[P]roviding 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 firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under [R.C. 145.48 or R.C. 742.34], or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company[.]

R.C. 5705.19(I).

¹ The ten-mill limitation provides that the aggregate amount of taxes that may be levied on any taxable property in a township may “not in any one year exceed ten mills on each dollar of tax valuation of [the township], except for taxes specifically authorized to be levied in excess thereof.” R.C. 5705.02; *see* Ohio Const. art. XII, § 2. As explained in 2009 Op. Att’y Gen. No. 2009-054 at 2-404 n.1, “[l]evies within the ten-mill limitation are commonly referred to as ‘inside millage.’ Levies in excess of ten mills are commonly referred to as ‘outside millage’ and must be specifically authorized.”

When a township levies a tax pursuant to R.C. 5705.19(I), the township must (1) deposit the revenue derived from the tax into a special fund because the tax levy is a “special levy”² and (2) use the revenue for only the purposes authorized by R.C. 5705.19(I).³ *Bd. of Rootstown Township Trs. v. Rootstown Water Serv. Co.*, Case No. 2011-P-0084, 2012 WL 3645340, ¶21 (Portage County Aug. 27, 2012); see R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made”); R.C. 5705.10(I) (“[m]oney paid into any fund shall be used only for the purposes for which such fund is established”); see also R.C. 5705.09(D) (a township is required to establish “[a] special fund for each special levy”); 1998 Op. Att’y Gen. No. 98-023 at 2-127 (“[p]roceeds derived from a special levy must, in accordance with R.C. 5705.10, ‘be credited to a special fund for the purpose for which the levy was made’ and ‘be used only for the purposes for which such fund is established’”). See generally Ohio Const. art. XII, § 5 (“every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”); *Clark Rest. Co. v. Evatt*, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph 3 (taxing statutes are to be strictly construed and their application cannot be extended beyond the clear meaning of the statutory language used). This means that tax revenue derived from a levy under R.C. 5705.19(I) may be expended only for equipment, services, and other items that relate to the provision of fire protection services or ambulance, paramedic, or other emergency medical services.⁴

² Opinions of the Attorney General have stated that a “special levy,” while not defined for purposes of R.C. Chapter 5705, is “a levy for a specific purpose, as opposed to a general levy for current expenses.” 1992 Op. Att’y Gen. No. 92-058 at 2-239 n.1; accord 2010 Op. Att’y Gen. No. 2010-028 at 2-205.

³ The resolution and ballot language placing a tax levy under R.C. 5705.19(I) before the voters may be narrower than the statutory language authorizing the levy. See 2011 Op. Att’y Gen. No. 2011-037 at 2-301 n.7; 1993 Op. Att’y Gen. No. 93-042 at 2-215; 1990 Op. Att’y Gen. No. 90-069 at 2-292. See generally R.C. 5705.19(YY) (a township’s resolution proposing a tax levy must specify the purpose or purposes of the tax and how the revenue derived from the tax will be used); R.C. 5705.25 (ballot language placing a township tax levy before the voters must state the purpose or purposes for which the tax is being levied and comport with the language in the township’s resolution proposing the tax levy). When this occurs, the narrower language appearing in the resolution and on the ballot “restricts the permissible expenditures of levy moneys.” 1990 Op. Att’y Gen. No. 90-069 at 2-292; accord 2011 Op. Att’y Gen. No. 2011-037 at 2-301 n.7; 1993 Op. Att’y Gen. No. 93-042 at 2-215. See generally *Bd. of Rootstown Township Trs. v. Rootstown Water Serv. Co.*, Case No. 2011-P-0084, 2012 WL 3645340, ¶22 (Portage County Aug. 27, 2012) (tax revenues derived from a levy may be used for any purpose within the language of the resolution and ballot placing the levy before the voters); 2010 Op. Att’y Gen. No. 2010-028 at 2-205 (“[s]pecial levies ... are restricted by resolution or ballot language to a particular use”).

⁴ The resolution and ballot language placing a tax levy under R.C. 5705.19(I) before the voters may not be broader than the purposes authorized by R.C. 5705.19(I). See 1986 Op. Att’y Gen. No. 86-103 at 2-569.

In your particular situation, the piece of equipment to be purchased is a motor vehicle that is equipped to remove snow and ice from township roads.⁵ To do this, the vehicle may be outfitted with a plow, salt spreader, or other equipment used to remove snow and ice from roads, highways, and bridges. The vehicle will not, however, have equipment that is ordinarily or routinely used by firefighters to control or extinguish fires. Nor will it have equipment generally used by emergency medical personnel to treat injured people or save lives.

The motor vehicle in question also will not be used by trained firefighters or emergency medical personnel employed by the township fire department to respond to fires or medical emergencies, transport patients, or provide other services related to the provision of fire protection services or ambulance, paramedic, or other emergency medical services. Instead, the primary purpose of the vehicle is to maintain township roads by removing snow and ice from them.⁶

Because a motor vehicle that is equipped and used to remove snow and ice from township roads is not used to transport firefighting equipment or personnel, emergency medical personnel or equipment, or patients, the vehicle is not used to provide fire protection services or ambulance, paramedic, or other emergency medical services. *See generally* R.C. 9.60(A)(2) (as used in R.C. 9.60, which provides for contracts for fire protection services, “fire protection” means “the use of firefighting equipment by the fire department of a firefighting agency or a private fire company”); R.C. 4765.01(E) (as used in R.C. Chapter 4765, which governs the provision of emergency medical services, an “ambulance” is “any motor vehicle that is used, or is intended to be used, for the purpose of responding to emergency medical situations, transporting emergency patients, and administering

⁵ Except as provided in R.C. 5571.20, a board of township trustees has a duty to “cause all the township roads within the township to be kept free from obstruction by snow.” R.C. 5571.08; *see* R.C. 5501.41 (with respect to township roads, a “board of township trustees ... shall have the same authority to purchase equipment for the removal of and to remove snow and ice as the director [of transportation] has on the state highway system”). *See generally* R.C. 5535.16 (“[n]otwithstanding [R.C. 5535.08 and R.C. 5535.15], the department of transportation or a political subdivision may provide snow and ice removal on the roads under the control of the state or any political subdivision”).

⁶ It is well settled that a township’s duty to maintain the roads under its jurisdiction includes removing snow and ice from them. *See* R.C. 5571.08; 1952 Op. Att’y Gen. No. 1485, p. 419 (syllabus, paragraph 2); 1929 Op. Att’y Gen. No. 1343, vol. III, p. 2018; *see also* 1980 Op. Att’y Gen. No. 80-040 at 2-169 (snow and ice removal is part of highway maintenance); 1942 Op. Att’y Gen. No. 5661, p. 825, at 830 (maintenance of roads and streets includes applying salt to keep them “safe and usable”); 1938 Op. Att’y Gen. No. 2161, vol. I, p. 648 (syllabus, paragraph 1) (a common example of ordinary maintenance operations performed by a municipal corporation is snow removal). *See generally* 1939 Op. Att’y Gen. No. 1494, vol. III, p. 2208 (syllabus, paragraph 1) (“[t]he term ‘maintenance,’ as applied to highways, means such acts as will preserve the improvement in its completed condition against wear and deterioration, as distinguished from the restoration to their original state after having been damaged by wear or deterioration—which is usually referred to as ‘repair’”).

emergency medical service to patients before, during, or after transportation”); R.C. 4765.01(G) (as used in R.C. Chapter 4765, “emergency medical service” is “any of the services described in [R.C. 4765.35, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39] that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics”); R.C. 4765.01(L) (for purposes of R.C. Chapter 4765, “emergency medical service personnel” are “first responders, emergency medical service technicians-basic, emergency medical service technicians-intermediate, emergency medical service technicians-paramedic, and persons who provide medical direction to such persons”); *Merriam-Webster’s Collegiate Dictionary* 899 (11th ed. 2005) (as an adjective, the term “paramedic” means “concerned with supplementing the work of highly trained medical professionals”). For this reason, a township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.⁷ See generally *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys ... constitute a public trust fund.... Said trust fund can be disbursed only by clear authority of law”); *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3) (any doubt as to the authority to expend fees and other moneys deposited into a public treasury must be resolved in favor of the preservation of public assets and against the grant of authority to make an expenditure).

In conclusion, it is my opinion, and you are hereby advised that a township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

⁷ R.C. 5571.08 authorizes a township to use moneys from its “road funds” or “from the funds allocated to the township by [R.C. 5735.27]” to pay for the costs and expenses associated with snow and ice removal from township roads. See 1952 Op. Att’y Gen. No. 1485, p. 419 (syllabus, paragraph 2) (“[t]ownship trustees are authorized by [G.C. 3374-1 (now R.C. 5571.08) and G.C. 1178-5 (now R.C. 5501.41)] to keep the highways within the township free from obstruction by snow and ice and such work is a part of the proper maintenance of such highways, and the cost thereof may be paid from the funds allocated to townships by [G.C. 5541-8 (now R.C. 5735.27)]”).