

June 23, 2010

The Honorable Joseph R. Burkard  
Paulding County Prosecuting Attorney  
112 ½ Water Street  
Paulding, Ohio 45879

SYLLABUS:

2010-015

A county agricultural society may use revenues generated from a tax levied pursuant to R.C. 5705.19(NN) to pay the society's monthly costs in connection with operation of the county fairgrounds.



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RICHARD CORDRAY  
OHIO ATTORNEY GENERAL

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June 23, 2010

OPINION NO. 2010-015

The Honorable Joseph R. Burkard  
Paulding County Prosecuting Attorney  
112 ½ Water Street  
Paulding, Ohio 45879

Dear Prosecutor Burkard:

You have requested an opinion whether revenues generated from a tax levied pursuant to R.C. 5705.19(NN) may be used by a county agricultural society to pay the monthly costs the society incurs for operating the fairgrounds. For the reasons that follow, we conclude that a county agricultural society may use revenues generated from a tax levied pursuant to R.C. 5705.19(NN) to pay the society's monthly costs in connection with operation of the county fairgrounds.

To begin, it is helpful to consider how a county agricultural society is funded. Pursuant to several provisions of R.C. Chapter 1711, a county may appropriate monies to a county agricultural society for various purposes. *E.g.*, R.C. 1711.01 (a county agricultural society may receive county monies if such society has held an annual exhibition and reported to the Department of Agriculture); R.C. 1711.03 (a county may provide monies to a county agricultural society to fund the encouragement and carrying on of junior club work); R.C. 1711.15 (a county may purchase or lease property for fairgrounds and may build on or otherwise improve such real estate). A board of county commissioners may appropriate from the county general or permanent improvement fund any amount it considers necessary for the purposes of a county agricultural society. R.C. 1711.15.

Additionally, if a board of county commissioners wishes to raise additional funds for a county agricultural society, it may do so by a tax levy pursuant to R.C. 5705.19. For purposes of

R.C. 5705.19, a board of county commissioners is the taxing authority<sup>1</sup> for a county, and as such, a board may adopt a resolution to submit to the voters a tax levy in excess of the ten-mill limitation<sup>2</sup> for any one of the purposes listed in R.C. 5705.19. Division (NN) authorizes a tax levy “[f]or purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs.” R.C. 5705.19(NN). You inform us that the Paulding County Agricultural Society’s intentions are to use tax monies raised and appropriated by the board of county commissioners to pay for monthly operating costs of the fairgrounds, and you wish to know whether such use is within those permitted by R.C. 5705.19(NN), namely “[f]or purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold agricultural fairs.”

While you do not use the term “monthly operating costs” in reference to a particular statutory requirement, R.C. 5705.01(F) nonetheless defines the term “[c]urrent operating expenses” for purposes of R.C. Chapter 5705. “‘Current operating expenses’ and ‘current expenses’ mean the lawful expenditures of a subdivision,<sup>3</sup> except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.” R.C. 5705.01(F) (footnote added). The General Assembly has used variations of the term “operate” throughout the numerous divisions of R.C. 5705.19. *E.g.*, R.C. 5705.19(K) (“the maintenance and *operation* of a county home or detention facility”); R.C. 5705.19(N) (“a county’s share of the cost of maintaining and *operating* schools”); R.C. 5705.19(P) (“maintaining and *operating* sewage disposal plants and facilities”); R.C. 5705.19(T) (“maintaining and *operating* cemeteries”); R.C. 5705.19(AA) (“the maintenance and *operation* of a free public museum of art, science, or history”); R.C. 5705.19(EE) (“the creation and *operation* of an office or joint office of economic development”); R.C. 5705.19(MM) (“the purpose of maintaining and *operating* a jail or other detention

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<sup>1</sup> A taxing authority is the board or legislative authority of a subdivision or district with the power to levy taxes under R.C. Chapter 5705. 2010 Op. Att’y Gen. No. 2010-005, slip op. at 1. “[I]n the case of any county, [the ‘taxing authority’ is] the board of county commissioners.” R.C. 5705.01(C). *See generally* 1950 Op. Att’y Gen. No. 1845, p. 324 (county agricultural societies are not taxing authorities for purposes of R.C. Chapter 133 and so they may not issue bonds pursuant to R.C. Chapter 133).

<sup>2</sup> The ten-mill limitation provides that no property may be taxed in excess of one percent (10 mills) of its true value in money for all state and local purposes, except with voter approval or as provided in a municipal charter. Ohio Const. art. XII, § 2; R.C. 5705.02. *See also, e.g.*, R.C. 5705.07; R.C. 5705.18. “Levies 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.” 2009 Op. Att’y Gen. No. 2009-054, at 2-404 n.1. *See* R.C. 5705.02; R.C. 5705.07, R.C. 5705.18.

<sup>3</sup> A county is a “subdivision” for purposes of R.C. Chapter 5705. R.C. 5705.01(A).

facility”). (All emphases added.) Although the word “operate” is not used in R.C. 5705.19(NN), the notion of operating “real estate on which to hold agricultural fairs,” R.C. 5705.19(NN), would be an uncommon and perhaps illogical use of the word operate.

Instead, the General Assembly has used the words “purchasing, maintaining, [and] improving” to describe the allowable uses of tax levy monies with regard to the real estate on which agricultural fairs are held, the fairgrounds. R.C. 5705.19(NN). Paying for the monthly operating costs of the fairgrounds clearly is not within the definition of “purchasing” for purposes of R.C. 5705.19(NN). We now must determine whether paying for the monthly operating costs of the fairgrounds falls within the purview of “maintaining” or “improving” the fairgrounds pursuant to R.C. 5705.19(NN).

Neither “maintain” nor “improve” is statutorily defined for purposes of R.C. 5705.19(NN), and “[w]here the General Assembly has not provided or attached a specific meaning to a term, the common or plain meaning of the term is used.” 1989 Op. Att’y Gen. No. 89-091 at 2-434. *Accord* R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983). To maintain is “to keep in an existing state (as of repair, efficiency, or validity)” or to “preserve from failure or decline.” *Merriam-Webster’s Collegiate Dictionary* 749 (11th ed. 2007). To improve is “to enhance in value or quality : make better” or “to increase the value of (land or property) by making it more useful for humans (as by cultivation or the erection of buildings)” or “to grade and drain (a road) and apply surfacing material other than pavement.” *Merriam-Webster’s Collegiate Dictionary* 626 (11th ed. 2007).

You have informed us that typical monthly expenses incurred by the county agricultural society include the cost of general upkeep for the roadways and horse track on the fairgrounds and a substantial electric bill for lighting the fairgrounds. These examples easily fall within the parameters of the common definition of “maintain” and may also meet the common definition of “improve” in some instances. Further, previous Attorneys General have found that the meaning of “maintenance” is substantially related to the meaning of “current expenses.” *See* 2000 Op. Att’y Gen. No. 2000-048, at 2-299 (“[t]he costs of maintaining and operating programs or providing services are considered current operating expenses, and thus, a tax levied for the purpose of providing a board with funds to operate its programs may not be used for the acquisition of permanent improvements”); 1949 Op. Att’y Gen. No. 365, p. 99, at 100 (with regard to “maintaining [a] hospital ... [s]uch expenses, in my opinion, are included in the general classification of ‘Current expenses of the subdivision’”); 1949 Op. Att’y Gen. No. 1092, p. 740, at 743 (“[f]rom the above definition [of ‘current operating expenses’ and ‘current expenses’] it is clear to me that a tax levied by a township for the *upkeep* of its cemeteries is a tax for ‘current expenses’ within the meaning of [the statute]”). *See also* *Roddy v. Andrix*, 95 Ohio L. Abs. 311, 314, 201 N.E.2d 816 (C.P. Madison County 1964) (“[t]he fact is [the word] maintenance is consonant, consistent and compatible with the word ‘operation’” when considering the meaning of a special levy “for the purpose of the maintenance and operation of schools for retarded children” put to voters pursuant to the former R.C. 5705.19(L)).

Paying the cost of lighting the county fairgrounds and maintaining the fairgrounds' roadways and tracks are activities inherent in the operation of the county fairgrounds. In sum, it is my opinion, and you are hereby advised that a county agricultural society may use revenues generated from a tax levied pursuant to R.C. 5705.19(NN) to pay the society's monthly costs in connection with operation of the county fairgrounds.

Respectfully,

A handwritten signature in blue ink that reads "Richard Cordray". The signature is written in a cursive, flowing style.

RICHARD CORDRAY  
Ohio Attorney General