

OPINION NO. 93-019**Syllabus:**

1. When a municipal corporation is located within the boundaries of a township but does not have boundaries that are identical to those of the township, and when no steps have been taken to alter the boundaries, electors who reside both within the municipal corporation and within the township are entitled to vote for both municipal and township elected officials and to vote on both municipal and township tax levies, except as otherwise provided by statute.
2. The taxable value of a township includes the taxable value of property within a municipal corporation that is included within the township, except as otherwise provided by statute.
3. When a municipal corporation is located within the boundaries of a township but does not have boundaries that are identical to those of the township, and when no steps have been taken to alter the boundaries, residents of the municipal corporation must be assessed the same township tax rate within the ten-mill limitation as residents of the unincorporated areas of the township, except as otherwise provided by statute.

To: David W. Norris, Portage County Prosecuting Attorney, Ravenna, Ohio
By: Lee Fisher, Attorney General, September 16, 1993

You have asked for an opinion concerning the taxation of property that is located within both a township and a municipal corporation. Your questions relate to situations in which a township has either a city or a village within its borders. Your questions are as follows:

Assuming that neither subdivision has taken the statutory steps for separation (and that no special taxing district has been created within the township), we are requesting your opinion on the following questions:

1. When a municipal corporation is located within the boundaries of a township, must the residents of the incorporated areas of the township vote on both township officials and township-wide levies?
2. When a municipal corporation is located within the boundaries of a township and has not been separated from it, does the taxable value of the township include that portion within the municipality's boundaries?
3. When a municipal corporation is located within the boundaries of a township and has not been separated from it, must the residents within the municipality be assessed the same township inside millage as those within the unincorporated areas of the township?

Local Government Law

Each parcel of land in Ohio may be located in, and subject to taxation by, a variety of overlapping political subdivisions or other taxing units. For example, a parcel of land may be located in a township, *see* R.C. Title 5; a municipal corporation, *see* Ohio Const. art. XVIII; R.C. Title 7; a school district, *see* R.C. Chapter 3311; a park district, *see* R.C. Chapter 1545; a joint-county alcohol, drug addiction, and mental health service district, *see* R.C. Chapter 340; and any of a number of other taxing entities that may encompass different territories. *See* R.C. 5705.01(A), (C), (H), (I).

If the boundaries of a township and a municipal corporation are identical, the township offices are abolished and the governmental duties are transferred to the municipal corporation. *See* R.C. 703.22; *see also* R.C. 503.09. If, however, some or all of the territory of a township is included within a municipal corporation but the boundaries are not identical, then the township continues to exist and function. *See, e.g.*, 1985 Op. Att'y Gen. No. 85-033; 1959 Op. Att'y Gen. No. 888, p. 584; 1954 Op. Att'y Gen. No. 4642, p. 648 (overruled in part, on other grounds, by 1959 Op. Att'y Gen. No. 91, p. 42). In those circumstances, territory that is incorporated into a city or village remains part of the township in which it is located, and residents of that territory are residents of both the municipal corporation and the township. *See, e.g., State ex rel. Halsey v. Ward*, 17 Ohio St. 543 (1867); 1990 Op. Att'y Gen. No. 90-048; Op. No. 85-033.

Various statutory means are available for changing municipal and township boundaries, either to make the boundaries identical so that the township offices will be abolished within the municipal corporation, or to deal in other ways with the effects of overlapping boundaries. *See, e.g.*, R.C. 503.07-.09; R.C. 703.20; R.C. Chapter 709. Your letter assumes that no such boundary changes have been made in the situation with which you are concerned.

Existing statutes also authorize the creation of various types of taxing districts whose boundaries may be different from those of a township or a municipal corporation. *See* R.C. 5705.01(A), (C), (H), (I); *see also, e.g.*, R.C. 505.37 (fire district). When a taxing district is created, property throughout the district is subject to taxation by the taxing authority of the district at a uniform rate. *See, e.g.*, Op. No. 90-048; 1988 Op. Att'y Gen. No. 88-036. Your request describes a situation in which no special taxing districts have been created.

Residents of a Municipal Corporation Who Are Also Residents of a Township Are Entitled to Vote on Township Officials and Township-Wide Tax Levies, Except As Otherwise Provided By Statute

When a municipal corporation is located within the boundaries of a township but does not have boundaries that are identical to those of the township and no steps have been taken to change the boundaries, electors who reside within both the municipal corporation and the township are residents of both political subdivisions. They are entitled to vote on both municipal and township tax levies and to vote for both municipal and township elected officials, unless a statute provides otherwise. *See State ex rel. Halsey v. Ward*; 1959 Op. No. 888 (syllabus) ("[a] proposed township levy in excess of the ten mill limitation must be submitted to the electors of the township residing both within and outside of a village located wholly within the boundaries of said township"). The applicable principle is that set forth in 1977 Op. Att'y Gen. No. 77-031, at 2-114 to 2-115, and quoted in Op. No. 90-048, at 2-203, as follows:

[I]t would appear that property of the township, even though it is also located within the limits of a municipality, still retains a complete and independent

existence as part of the township. The inhabitants of the territory located within the municipality still retain their full voting rights with regard to the election of the various township officers and the property of such territory still remains subject to township tax levies, unless there is some exception in the statute providing for the specific tax. Accordingly, the owners of such property would clearly have the right to vote on levies and issues which might result in any additional taxation to their property. *See*: 1944 Op. Att'y. Gen. No. 7038, p. 406 and 1939 Op. Att'y. Gen. No. 198, p. 249 (dealing with the issue of taxation of the township area located within a municipality).

The application of this principle to a situation concerning fire levies is discussed in detail in Op. No. 90-048. *See also, e.g.*, Op. No. 88-036; 1924 Op. Att'y Gen. No. 1213, p. 82. It is, thus, clear that an elector who is a resident of both a municipal corporation and a township is entitled to vote for both municipal and township elected officials and to vote on both municipal and township tax levies, except as otherwise provided by statute. *See* Op. No. 90-048; 1939 Op. Att'y Gen. No. 198, vol. I, p. 249.

The Taxable Value of a Township Includes the Valuation of Land Located In a Municipal Corporation That Is Included Within the Township, Except As Otherwise Provided By Statute

Your second question is whether the taxable value of a township includes the portion of the township that is within the boundaries of a municipal corporation included within the township. The taxable value of a political subdivision is used to determine the tax rate that must be levied on property within the political subdivision in order to produce a particular dollar amount. *See, e.g.*, R.C. 319.301(A)(1); R.C. 5705.195. For budget purposes, the total amount of revenue that is expected to be collected by a political subdivision from a particular tax is determined on the basis of the amount of millage and the total taxable value of the subdivision. *See, e.g.*, R.C. 5705.03-.05, .25, .28-.29, .35; *see also* R.C. 5705.11.

In a situation in which the boundaries of the township and municipal corporation are not identical and no steps have been taken to change the boundaries, the territory of the municipal corporation is, as discussed above, included within the township. It follows that the value of taxable property within the municipal corporation is included in the taxable value of the township. *See, e.g.*, R.C. 5705.03, .34, .49; Op. No. 77-031. As was stated in 1924 Op. No. 1213, at 83:

"All the taxable property in the township" includes the taxable property of a village in the township. The practice is and seems always to have been to make the general levies of the township to cover all property within the township. Because some part of the territory of a township becomes a village does not seem to operate to take the area within the village out of the township for voting or for taxing purposes.

The general rule is, therefore, that the taxable value of a township includes property within incorporated areas of the township.

An exception to this general rule applies if a statute authorizes a board of township trustees to levy a tax upon less than all the property in the township. For example, R.C. 5575.10 authorizes a board of township trustees to levy a tax for maintenance and repair of township roads "upon all the taxable property of the township outside of any municipal

corporation or part thereof." *See* 1969 Op. Att'y Gen. No. 69-055 (overruled in part, on other grounds, by Op. No. 88-036).

An exception also exists in instances in which the statutory scheme directs a contrary result. For example, it has been concluded that "[i]n apportioning the appropriation for a general health district pursuant to R.C. 3709.28, the county auditor should exclude from the taxable valuations of a township which is part of the general health district those taxable valuations situated within a city which is located within the township and which has its own health department." Op. No. 85-033 (syllabus). This conclusion was based on the fact that the city had its own health department and city territory was excluded from the general health district. *See also* 1968 Op. Att'y Gen. No. 68-063. The taxable valuation of a township is used under R.C. 3709.28 for purposes of determining a township's proportionate contribution to a board of health. Amounts so apportioned to each township are retained by the auditor from semiannual apportionments of funds. R.C. 3709.28. *See generally* 1966 Op. Att'y Gen. No. 66-112.

It is, of course, clear that, whenever a taxing district is created, the taxable value of that district is based upon the value of the taxable property located within that district. *See, e.g.,* Op. No. 88-036. As noted above, however, your letter assumes that no special taxing districts have been created.

**Residents of Incorporated and Unincorporated Areas of a
Township Must Be Assessed the Same Township Tax Rate
Within the Ten-Mill Limitation, Except As Otherwise Provided
By Statute**

Your third question is whether, when a municipal corporation is included within a township, residents in the municipality must be assessed the same township inside millage as those within the unincorporated areas of the township. The term "inside millage" refers to amounts of taxes levied without voter authorization within the ten-mill limitation established by R.C. 5705.02 and Ohio Const. art. XII, §2. *See also* R.C. 5705.04, .07.

It is evident that, because of the financial needs of various taxing units, the amount of inside millage sought may exceed the amount of inside millage available. The county budget commission is given statutory responsibility for approving tax levies and for fixing the amounts that various taxing units may levy within the ten-mill limitation. Certain levies are required to be approved, and some taxing units are guaranteed minimum levies within the ten-mill limitation. The county budget commission must, however, also make adjustments and reductions, as appropriate, in order to comply with the ten-mill limitation on unvoted taxes. *See* R.C. 5705.31-.32, .34; 1979 Op. Att'y Gen. No. 79-063; 1956 Op. Att'y Gen. No. 7421, p. 813. Reduction of various levies may be necessary in the case of overlapping political subdivisions to assure that the ten-mill limitation is given effect throughout the state. *See, e.g., Cambridge City School District v. Guernsey County Budget Commission*, 11 Ohio App. 2d 77, 228 N.E.2d 874 (Guernsey County 1967), *aff'd*, 13 Ohio St. 2d 77, 234 N.E.2d 512 (1968); Op. No. 79-063; 1956 Op. No. 7421.

Any tax authorized and levied by a taxing unit must be levied in a uniform amount throughout the territory upon which it is levied, unless otherwise provided by law. *See* Ohio Const. art. XII, §2; *Koblentz v. Board of Revision*, 5 Ohio St. 2d 214, 215 N.E.2d 384 (1966); *Miller v. Korns*, 107 Ohio St. 287, 140 N.E. 773 (1923); Op. No. 79-063; Op. No. 69-055; 1960 Op. Att'y Gen. No. 1373, p. 356; 1956 Op. No. 7421. Thus, if a township tax levy must be reduced in one portion of the township so that the total inside millage comes within the ten-

mill limitation, *see, e.g.*, R.C. 5705.31, .32; 1956 Op. No. 7421, the levy must be correspondingly reduced in other areas of the township so that the tax is levied at a uniform rate throughout the township. *See, e.g.*, Op. No. 79-063, at 2-213 ("the budget commission could not levy [a park district] tax in part of the park district while not levying the tax in municipalities [within the park district] already at the ten-mill limitation"; where mandatory minimum tax levies in aggregate equal the ten-mill limitation, no discretionary levy may be approved within the ten-mill limitation); Op. No. 69-055, at 2-119 ("[a]ny levy for the general fund of the township must be made upon all of the taxable property within the township which would necessarily include the taxable property located within the village..."); 1960 Op. No. 1373; 1956 Op. No. 7421. All property within a township must be assessed the same township inside millage, regardless of whether the property is located within a municipal corporation. *See, e.g.*, Op. No. 79-063; Op. No. 69-055. The only exceptions occur, as discussed above, when a township is authorized by statute to levy a tax upon less than all the property in the township. *See* R.C. 5575.10.

Conclusion

It is, therefore, my opinion, and you are advised as follows:

1. When a municipal corporation is located within the boundaries of a township but does not have boundaries that are identical to those of the township, and when no steps have been taken to alter the boundaries, electors who reside both within the municipal corporation and within the township are entitled to vote for both municipal and township elected officials and to vote on both municipal and township tax levies, except as otherwise provided by statute.
2. The taxable value of a township includes the taxable value of property within a municipal corporation that is included within the township, except as otherwise provided by statute.
3. When a municipal corporation is located within the boundaries of a township but does not have boundaries that are identical to those of the township, and when no steps have been taken to alter the boundaries, residents of the municipal corporation must be assessed the same township tax rate within the ten-mill limitation as residents of the unincorporated areas of the township, except as otherwise provided by statute.