

February 27, 2018

The Honorable Steven D. Barnett
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

SYLLABUS:

2018-004

A board of county commissioners may levy a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB) to pay the costs of operating a 9-1-1 system that has already been established.



February 27, 2018

OPINION NO. 2018-004

The Honorable Steven D. Barnett
Carroll County Prosecuting Attorney
7 East Main Street
Carrollton, Ohio 44615

Dear Prosecutor Barnett:

You have requested an opinion whether, pursuant to R.C. 5705.19(BB), a board of county commissioners may levy a tax in excess of the ten-mill limitation for the operation of a countywide 9-1-1 system that has already been established. You have asked the following three questions:

1. Whether R.C. 5705.19(BB) may be read in conjunction with R.C. 1.02(F) to permit a board of county commissioners to levy a tax in excess of the ten-mill limitation for operation of a countywide 9-1-1 system where a countywide 9-1-1 system has already been established but more funding is needed to continue to operate the system?
2. When the final plan of a countywide 9-1-1 system is amended from time-to-time, does such an amendment constitute “an establishment” under R.C. 5705.19(BB) to the extent that a board of county commissioners may levy a tax in excess of the ten-mill limit under R.C. 5705.19(BB) when the plan is amended to provide for additional funding for operation of a countywide 9-1-1 system?
3. When a countywide 9-1-1 planning committee amends its final 9-1-1 plan from time-to-time, does such an amendment constitute “establishment” under R.C. 5705.19(BB) when the plan is changed to move from the current 9-1-1 system (*e.g.*, wireless enhanced 9-1-1) in place to another, more advanced 9-1-1 system (*e.g.*, Next-Gen 9-1-1) whereby the levying of a tax in excess of the ten-mill limit is necessary to establish and operate that system?

Your letter explains that Carroll County has established a countywide 9-1-1 system. Until now, the costs of establishing and operating the countywide 9-1-1 system have been paid with moneys from the county’s general fund and the Wireless 9-1-1 Government Assistance

Fund under R.C. 128.54. The county commissioners anticipate that additional revenue will be necessary to pay the costs of operating the countywide 9-1-1 system and transitioning the system to Next-Gen 9-1-1. The county commissioners would like to levy a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB) to generate that additional revenue.

R.C. 5705.19 authorizes the taxing authority of a subdivision to levy a tax in excess of the ten-mill limitation for a variety of purposes. A board of county commissioners, as the taxing authority for a county, may adopt a resolution to submit to the voters the question of levying a tax for any of the purposes specified in R.C. 5705.19. *See generally* R.C. 5705.01(A), (C) (defining “subdivision” and “taxing authority” for the purpose of R.C. Chapter 5705). Division (BB) of R.C. 5705.19 authorizes a board of county commissioners to levy a tax in excess of the ten-mill limitation “[f]or the establishment and operation of a 9-1-1 system[.]”

The word “and” means “in addition; also; as well as[.]” *Webster’s New World College Dictionary* 52 (5th ed. 2014). The word “and” is frequently used as “a logical operator that requires both of two inputs to be present or two conditions to be met for an output to be made or a statement to be executed[.]” *Merriam-Webster’s Collegiate Dictionary* 46 (11th ed. 2005). However, R.C. 1.02(F) states that in the Revised Code, “[a]nd’ may be read ‘or,’ ... if the sense requires it.” *See also In re Marrs*, 158 Ohio St. 95, 99, 107 N.E.2d 148 (1952) (“[t]he word, ‘and,’ or, ‘or,’ will not be given its literal meaning where such meaning would do violence to the evident intent and purpose of the lawmakers and the other meaning would give effect to such intent”). For the reasons that follow, we conclude that sense requires that “and” be read as “or” in R.C. 5705.19(BB).

R.C. 5705.19(YY) requires that a taxing authority’s resolution authorizing submission of the question of levying a tax in excess of the ten-mill limitation “be confined to the purpose *or* purposes described in one division of [R.C. 5705.19].” (Emphasis added.) That provision further states that “[t]he existence in any other division of [R.C. 5705.19] of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.” R.C. 5705.19(YY). The combination of those two statements in R.C. 5705.19(YY) manifests the General Assembly’s intent that a taxing authority may levy a tax in excess of the ten-mill limitation for one of the purposes specified in a division of R.C. 5705.19, even if that division specifies more than one purpose.

It is well established that a resolution levying a tax may not specify a purpose that is broader than the purpose identified in the authorizing tax statute. *See* 2000 Op. Att’y Gen. No. 2000-044, at 2-266 (“taxing statutes are to be strictly construed and their application cannot be extended beyond the clear meaning of the statutory language used”); 1977 Op. Att’y Gen. No. 77-097, at 2-323 (“the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein”). Nevertheless, a resolution and ballot language proposing a special tax levy may specify a purpose that is narrower than the purpose permitted by the authorizing tax statute, so long as that narrower purpose is within the broader purpose provided in the statute.

2013 Op. Att’y Gen. No. 2013-005, at 2-51 (“[a] special levy’s purpose may be limited to a particular use by the authorizing statute and further limited by the language of the levy resolution or ballot”); 2012 Op. Att’y Gen. No. 2012-014, at 2-119; 2005 Op. Att’y Gen. No. 2005-044, at 2-479 n.1 (“[t]he resolution and ballot language cannot expand the purposes for which tax revenues may be expended beyond the purposes established by the language of [the levy statute], but may restrict the purposes for which tax revenues may be expended to specified purposes that come within the purposes authorized by [the levy statute]”); 1990 Op. Att’y Gen. No. 90-069, at 2-292. Therefore, in the resolution and ballot language proposing a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB), a board of county commissioners may restrict the use of the tax revenue to solely the costs of operating a 9-1-1 system.

Our reading of R.C. 5705.19(BB) is further supported by the statutes setting forth the manner in which a countywide 9-1-1 system is established and funded. A final plan adopted by a 9-1-1 planning committee shall specify, among other things, the number and location of public safety answering points¹ in the 9-1-1 system and “[w]hether the cost of establishing, equipping, furnishing, operating, or maintaining each public safety answering point should be funded through charges imposed under [R.C. 128.22²] or will be allocated among the subdivisions served by the answering point and, if any such cost is to be allocated, the formula for so allocating it[.]” R.C. 128.07(B)(2), (B)(5). Each public safety answering point shall be operated by a subdivision or a regional council of governments. R.C. 128.03(D)(1); *see generally* R.C. 128.01(M) (defining “subdivision” for the purpose of R.C. Chapter 128 to include, *inter alia*, a county). “A subdivision or a regional council of governments that operates a public safety answering point shall pay all of the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility and shall allocate those costs among itself and the subdivisions served by the answering point based on the allocation formula in a final plan.” R.C. 128.03(D)(2).

A county has various options available to fund its share of the costs of operating public safety answering points in a countywide 9-1-1 system. 2010 Op. Att’y Gen. No. 2010-021, at 2-146; 2000 Op. Att’y Gen. No. 2000-044, at 2-270. If appropriate under the final plan, a board of county commissioners may impose reasonable charges on improved real property in the county

¹ As used in R.C. Chapter 128, a “public safety answering point” is “a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.” R.C. 128.01(P).

² R.C. 128.22(A)(1) authorizes a board of county commissioners to “fix and impose, on each lot or parcel of real property in the county that is owned by a person, municipal corporation, township, or other political subdivision and is improved, or is in the process of being improved, reasonable charges to be paid by each such owner.”

pursuant to R.C. 128.22. Alternatively, a county may use general revenue funds, *see generally* R.C. 5705.04(B) (general levy for current expenses within the ten-mill limitation); R.C. 5705.05 (purpose of general levy for current expenses), or the county may impose additional sales and use tax pursuant to R.C. 5739.026(A)(6) and R.C. 5741.023. An additional option is for the county to levy a property tax in excess of the ten-mill limitation pursuant to a pertinent division of R.C. 5705.19. *See generally* R.C. 5705.19(A), (U), (BB), (SS); 2014 Op. Att’y Gen. No. 2014-013 (syllabus); 2010 Op. Att’y Gen. No. 2010-021, at 2-146; 2000 Op. Att’y Gen. No. 2000-044, at 2-270. To pay the costs of a public safety answering point that provides wireless enhanced 9-1-1, a county may use its share of moneys disbursed from the Wireless 9-1-1 Government Assistance Fund pursuant to R.C. 128.55(B).³

A final plan may be amended for the purpose of “[r]eprescribing the funding of public safety answering points as between the alternatives set forth in [R.C. 128.07(B)(5).]” R.C. 128.12(A)(5). Let us consider the following example. When first established, a countywide 9-1-1 system was funded under R.C. 128.22. As the technology and capabilities of the countywide 9-1-1 system changed over time, the participating subdivisions determined that it was necessary to alter the manner in which the public safety answering points were funded so that the costs were allocated among the subdivisions according to a formula. Upon amendment of the final plan to require an allocation of the costs among subdivisions served by the 9-1-1 system, the county may have elected to pay its portion of the allocated costs with general revenue funds. The county may then determine that its general revenue funds are insufficient to pay the rising costs of more advanced 9-1-1 technology and a special levy in excess of the ten-mill limitation is necessary.

The General Assembly’s express authorization of the amendment of a final plan to re prescribe the funding of public safety answering points demonstrates that the General Assembly anticipated that the needs and costs of public safety answering points may change, which may require a countywide 9-1-1 system to adopt a different method of funding the public safety answering points than was initially adopted when the 9-1-1 system was established. Moreover, a county may not impose a tax in excess of the ten-mill limitation unless it is first determined that moneys generated by taxes levied within the ten-mill limitation are insufficient to pay for the expenses of the county. Those factors, in combination with the statement in R.C. 5705.19(YY) that a taxing authority may levy a tax under a division of R.C. 5705.19 for only

³ Additional funding options are available to a county if a final plan has not been approved or has not been implemented because of a lack of funding. R.C. 128.25(B) (“a monthly charge on telephone access lines to pay for the equipment costs of establishing and maintaining no more than three public safety answering points of a countywide 9-1-1 system, which public safety answering points shall be only twenty-four-hour dispatching points already existing in the county”); R.C. 128.26(B) (“a monthly charge on telephone access lines to pay for the operating and equipment costs of establishing and maintaining no more than one public safety answering point of a countywide 9-1-1 system”).

part of the purposes specified in the division, lead us to conclude that a board of county commissioners may levy a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB) to pay the costs of operating a 9-1-1 system that has already been established.

Your second and third questions are asked based upon the presumption that a tax may not be levied under R.C. 5705.19(BB) unless the revenue is intended to be used for both the establishment and operation of a 9-1-1 system. Since we have concluded that a board of county commissioners may levy a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB) to pay the costs of operating a 9-1-1 system that has already been established, it is unnecessary for us to answer your second and third questions.

Based on the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners may levy a tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB) to pay the costs of operating a 9-1-1 system that has already been established.

Very respectfully yours,

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

MICHAEL DEWINE
Ohio Attorney General