OPINION NO. 81-044

Syllabus:

1. County appropriations to a joint-county mental health district need not be in the amount requested by the mental health board.

2. The Constitution of Ohio does not prohibit one county of a joint-county mental health district from levying a tax pursuant to R.C. 5705.221 at a rate which is different from that imposed by the other counties of the same district.

To: Joseph L. Cain, Gallia County Pros. Atty., Gallipolis, Ohio
By: William J. Brown, Attorney General, August 20, 1981

I have before me your request for my opinion concerning the authority of a board of county commissioners to propose a levy pursuant to R.C. 5705.221. You ask whether the board of commissioners of one county of a joint-county mental health district must propose that a tax for mental health purposes be levied at the rate requested by the mental health board of the district of which the county is a part. You have stated that the rate requested to be levied in Gallia County is in excess of the rate currently being levied in the other counties of the district. Provided that the board is not required to propose a levy at the requested rate, you ask whether in this situation such action by the board is permissible.

R.C. 340.07 authorizes a board of county commissioners to appropriate funds to its community mental health board and provides as follows:

> The board of county commissioners of any county participating in a community mental health service district or joint-county district, upon receipt from the community mental health board of a resolution so requesting, may appropriate money to such board for the operation, lease, acquisition, construction, renovation, and maintenance of mental health services, programs, and facilities for mentally ill and emotionally disturbed persons in accordance with the annual comprehensive community mental health plan. (Emphasis added.)

By the use of the word "may" in R.C. 340.07, the legislature has evidenced its intent that the power to appropriate funds to a community mental health board be merely permissive and within the discretion of the county commissioners. See Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971); Dennison v. Dennison, 165 Ohio St. 146, 134 N.E.2d 574 (1956). Clearly, the language of R.C. 340.07 neither mandates that an appropriation to the community mental health board be made, nor requires that the total amount requested by the mental health board be appropriated.

Where a board of county commissioners desires to appropriate funds to a mental health board, but finds that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the county's contribution, the board may propose that an additional tax be levied. A tax for mental health purposes in excess of the ten-mill limitation must be voted upon by the electors of the county as provided for in R.C. 5705.221:

> At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution and certify to the board of elections of the county that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county's community mental health service district established pursuant to Chapter 340. of the Revised Code, or

> the county's contribution to a joint-county district of which the county is a part and that it is necessary to levy a tax in excess of such limitation for the operation of mental health programs and the acquisition, construction, renovation, financing, maintenance, and operation of mental health facilities. . . .
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> If the majority of electors voting on a levy to supplement general fund appropriations for the support of the comprehensive mental health program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the ten-mill limitation during the specified or continuing period, for the purpose stated in the resolution. (Emphasis added.)

As I stated above, the word "may" is generally construed as merely permissive and as used in R.C. 5507.221 indicates that the county commissioners are not required to request that the voters approve an additional levy in any amount. Dorrian, supra. Since a board of county commissioners is not required by R.C. 340.07 to contribute to the community mental health board the amount requested by such board and since the commissioners are not required by R.C. 5705.221 to request the voters to approve a levy to provide additional tax revenue for mental health purposes, it appears that the amount to be contributed and the source of such contribution by one county of a joint-county mental health district is within the discretion of the county's board of commissioners. 1979 Op. Att'y Gen. No. 79-016 (board of county commissioners has discretion to determine needs of mental health and retardation service district and to declare necessity for additional revenue).

Your second question asks whether the board of commissioners of a county that is a member of a joint-county mental health district may impose a rate of taxation for mental health purposes which is in excess of the rate levied by the other counties of the district. Neither R.C. 340.07, R.C. 5705.221 nor any other Ohio statute of which I am aware requires that each of the participating counties of a joint-county mental health district impose the same rate of taxation when levying taxes pursuant to R.C. 5705.221.[1]

R.C. 5705.221 authorizes a board of county commissioners to request that a tax in excess of the ten-mill limitation be levied only when the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide for mental health services. Obviously, one county may have sufficient revenues raised within the ten-mill limitation to make its contribution, while another county may not. In the first case no tax in excess of the ten-mill limitation could be levied for mental health purposes. In the latter case, however, the county could request voter approval of an additional tax pursuant to R.C. 5705.221.

You have asked whether Ohio Const. art. II, §26 requires that taxes levied pursuant to R.C. 5705.221 by each county in a joint-county mental health district be levied at a uniform rate. Ohio Const. art. II, §26 provides as follows:

> All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

The Ohio Supreme Court explained the difference between general and special laws in State ex rel. Saxbe v. Alexander, 168 Ohio St. 404, 407, 155 N.E.2d 678, 680 (1959), as follows: "if the subject does or may exist in, and affect the people of,

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[1]As a point of reference, by virtue of R.C. 5705.01, the mental health board of a joint-county community mental health service district is also a "taxing authority." As such, the board, itself, may levy a tax district-wide in accordance with R.C. 5705.19. 1975 Op. Att'y Gen. No. 75-089.

every county, in the state, it is of a general nature. On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special" (quoting Hixson v. Burson, 54 Ohio St. 470, 43 N.E. 1000 (1896)). Clearly, the levy of taxes for mental health purposes is a subject which exists in and affects the people of every county of the state. Therefore, R.C. 5705.221 is a law of a general nature and must have uniform operation throughout the state.

The constitutional requirement of uniformity of operation discussed in Okey v. Walton, 36 Ohio App. 2d 87, 96, 302 N.E.2d 895, 901 (1973), is aimed at assuring that the provisions of a general law will be available in any area of the state where similar circumstances exist. The court in that case stated:

> The provisions of the act are bounded only by the limits of the state, and uniformity in its operation is not destroyed because the electors in one or more townships may not see fit to avail themselves of its provisions. The act makes no discrimination between localities to the exclusion of any township. Every township in the state comes within the purview of the law, and may have the advantage of its provisions by complying with its terms. The operation of the statute is the same in all parts of the state, under the same circumstances and conditions. (Emphasis added.)

(quoting Gordon v. State, 46 Ohio St. 607, 23 N.E. 63 (1889)). As stated above, R.C. 5705.221 permits any county in the state, upon electorate approval, to levy a tax in excess of the ten-mill limitation to the extent that revenue collected from taxes levies within the ten-mill limitation is insufficient to provide for mental health services. The fact that one county's needs for additional revenue may be greater than another's does not affect the uniform operation of R.C. 5705.221 since under similar circumstances any county could avail itself of the provisions of the law. See Okey, supra.

In addition to the constitutional requirement that all general laws have uniform operation, Ohio Const. art. XII, §2 provides that "land and improvements thereon shall be taxed by uniform rule according to law." In 1979 Op. Att'y Gen. No. 79-063, I opined that Ohio Const. art. II, §2 requires that each tax levy apply uniformly throughout the taxing district. For purposes of R.C. 5705.221 the taxing district is the county. R.C. 5705.01 does not define taxing "district" but rather refers to "taxing unit" as "any subdivision or other governmental district having authority to levy taxes on the property in such district." Pursuant to R.C. 5705.221 the county commissioners are, upon voter approval, permitted to levy a tax on property within the county; they have no authority to levy a tax district-wide. Therefore, although Ohio Const. art. XII, §2 requires that the rate of taxation levied pursuant to R.C. 5705.221 be uniform throughout the county, it does not require that it be the same rate levied by other counties comprising the joint-county mental health district.

Based on the foregoing, it is my opinion, and you are advised, that:

1. County appropriations to a joint-county mental health district need not be in the amount requested by the mental health board.

2. The Constitution of Ohio does not prohibit one county of a joint-county mental health district from levying a tax pursuant to R.C. 5705.221 at a rate which is different from that imposed by the other counties of the same district.