

787

BOARD OF EDUCATION—MAY NOT BEFORE JANUARY 1, 1960, USE SECTION 5705.192, R. C., TO PROPOSE TAX LEVY IN EXCESS OF TEN-MILL LIMIT TO BE EFFECTIVE FOR AN INDEFINITE TIME IF THERE ARE OUTSTANDING TAX LEVIES FOR CURRENT OPERATION EQUALING THE TEN-MILL LIMIT—§5705.192, R. C.—CHAPTER 3317., R. C.—AM. H. B. 76 & 705, 103RD GENERAL ASSEMBLY.

## SYLLABUS:

Until Amended Sub. H. B. 705 becomes effective on January 1, 1960, a board of education which has already qualified for state financial aid by having outstanding levies which total at least ten mills for current operation, as required by Chapter 3317., Revised Code, may not use the provisions of Section 5705.192, Revised Code, as contained in Amended Sub. H. B. 76 to propose a levy outside the ten-mill limitation, any part of which would be in effect for an indefinite time.

Columbus, Ohio, August 25, 1959

Hon. E. E. Holt, Superintendent of Public Instruction  
Department of Education, Columbus, Ohio

Dear Sir:

I have before me your request for an opinion which reads as follows:

“I have studied Amended Sub. H. B. 76, and would like to ask your opinion in regard to the following questions:

“May the board of education of a school district which has in existence outstanding voted levies for current operation which, when added to the unvoted millage for current operations, qualify the district for distribution of funds from the state under Chapter 3317 of the Revised Code by having a tax levy of at least ten mills for current operation, lawfully provide pursuant to Amended Sub. H. B. 76 for a tax outside the ten-mill limitation for an indefinite period of time?

“Section 5705.192 of such bill provides in part that the board shall specify the amount of the increase in rate which it is necessary to levy, the portion of the increase in rate, if any, proposed to be levied in order to qualify for state financial aid, and the portion of the increased rate, if any, in excess of the amount necessary to qualify for state financial aid. The law also provides that

the first above noted portion may be for an indefinite period up to ten mills and the excess for a period not longer than ten years.

“Does the fact that the board of education has already qualified for state financial aid by having outstanding levies which total at least ten mills for current operation deny it the right to use the provisions of the above bill to designate the portion of the increased rate as the specific portion of the school district’s entire voted millage that shall be used to meet the minimum requirements of at least ten mills.

Subsequent to the receipt of your request for my opinion on this matter there was enacted by the General Assembly, Amended Sub. H. B. 705, which amends Section 5705.192, Revised Code, the particular statute enacted by Amended Sub. H. B. 76 mentioned in your request. The amendment to Section 5705.192, Revised Code, contained in Amended Sub. H. B. 705, is identical to the version of that law contained in Amended Sub. H. B. 76, except that Sub. H. B. 705 also contains the following language :

“The board of education, in such resolution may specify that the total increased rate proposed to be levied, shall be for an indefinite period of time, notwithstanding the fact that the total millage for current expenses being currently levied by the district is at least the minimum millage rate required by Chapter 3317.02 of the Revised Code, provided that the total millage outstanding, in effect for an indefinite period of time, if such levy is adopted, shall not exceed ten mills. Such portion which shall be for an indefinite period shall be in effect until such time as the rate may be decreased by an amount equal to or less than the amount of such voted increase, by a majority vote of the electors of the school district approving such decrease pursuant to the provisions of section 5705.261 of the Revised Code, or pursuant to the provisions of section 5713.11 of the Revised Code; or such portion may be so decreased for a period of not to exceed one year, and from year to year, by a majority vote on the part of the board of education. Such portion not otherwise specified or which would be in excess of the ten mills specified and approved for an indefinite period, shall be in effect for a period no longer than ten years.”

This subsequent amendment provided by Amended Sub. H. B. 705 will become effective January 1, 1960, and as of that date will provide a complete answer to your question. After January 1, 1960, the fact that a board of education has already qualified for state financial aid by having outstanding levies which total at least ten mills for current operation, as

required by Chapter 3317., Revised Code, will not prohibit such board from levying an increased rate of taxation for an indefinite period under the provisions of Section 5705.192, Revised Code, provided that the total millage outstanding, in effect for an indefinite time if such levy is adopted, does not exceed ten mills.

It will be noted, however, that the effective date of Amended Sub. H. B. 76 is September 10, 1959. This same bill also provides that the board of education of a city, exempted village or local school district may resolve to levy a tax under Section 5705.192, Revised Code, at any time prior to the 15th day of September in any year. This means that a board of education may resolve to levy a tax under Section 5705.192 at any time between September 10 and September 15, 1959, at which time the provisions of Amended Sub. H. B. 705 would not be applicable. This raises the question which you posed in your request for my opinion.

I have been unable to find any authority exactly on this point. Section 5705.192, Revised Code, as effective September 10, 1959, provides in part as follows:

“Such resolution shall also specify the amount of increase in rate which it is necessary to levy, the portion of the increase in rate, if any, proposed to be levied in order to qualify for the distribution of school funds pursuant to the provisions of Chapter 3317 of the Revised Code, and the portion of the increased rate, if any, in excess of the amount necessary to qualify for the distribution of funds pursuant to the provisions of Chapter 3317 of the Revised Code, and whether or not there shall be a levy upon the duplicate of the current year.”

As the board of education in your hypothetical example has already qualified for state aid under the provisions of Section 3317.02, Revised Code, by having a tax levy for current school operation of at least ten mills, the board would be unable to resolve that an increased tax levy would be necessary to qualify for state aid. For this reason, the above quoted part of Section 5705.192, Revised Code, would be inapplicable. Any attempt on the part of a board of education to pass a resolution declaring that additional levies were necessary when, in fact, the local school district had already qualified for state aid as far as the tax levies are concerned, would potentially be an unlawful attempt to circumvent the clear meaning of the statute as enacted in Amended Sub. H. B. 76. That this is the meaning of Section 5705.192, Revised Code, is underscored by the fact

that the General Assembly foresaw your question and deemed the passage of Amended Sub. H. B. 705 necessary to provide an answer in the affirmative.

It is my opinion, therefore, and you are accordingly advised that, until Amended Sub. H. B. 705 becomes effective on January 1, 1960, a board of education which has already qualified for state financial aid by having outstanding levies which total at least ten mills for current operation, as required by Chapter 3317., Revised Code, may not use the provisions of Section 5705.192, Revised Code, as contained in Amended Sub. H. B. 76 to propose a levy outside the ten-mill limitation, any part of which would be in effect for an indefinite time.

Respectfully,  
MARK McELROY  
Attorney General