

Note from the Attorney General's Office:

1983 Op. Att'y Gen. No. 83-032 was overruled by
1991 Op. Att'y Gen. No. 91-008.

OPINION NO. 83-032

Syllabus:

R.C. 5901.11 imposes upon the board of county commissioners the mandatory duty of levying a tax to raise the funds certified as necessary by the Soldiers' Relief Commission, up to five-tenths of a mill per dollar on the assessed value of the property of the county. Pursuant to R.C. 5705.03 and 5705.05, such funds are raised as part of the general levy for current expenses, which need not be submitted to the electors for approval.

To: Mark A. Ochsenbein, Jackson County Prosecuting Attorney, Jackson, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 16, 1983

I have before me your opinion request in which you ask the following question:

Does [R.C. 5901.11] authorize the County Commissioners to levy a tax not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief under said section, without placing said tax on the ballot for the approval or rejection of the electorate of the county?

R.C. 5901.11 states:

On the last Monday in May in each year, the soldiers' relief commission shall meet and determine from the lists provided for in section 5901.08 of the Revised Code the probable amount necessary for the aid and relief of indigent persons for the ensuing year, together with an amount sufficient, in the judgment of the commission, to furnish relief to any such indigent persons not named on such lists, whose rights to relief are established to the satisfaction of the commission. After determining the probable amount necessary for such purpose, the commission shall certify it to the board of county commissioners, which, at its June session, shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the required relief. (Emphasis added.)

This section authorizes the Soldiers' Relief Commission to determine the probable amount necessary for the aid and relief of certain indigent persons and to certify such amount to the board of county commissioners. The board of county commissioners is then required to make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county. State ex rel. Binder v. Board of County Commissioners, 174 Ohio St. 23, 186 N.E.2d 476 (1962) (county commissioners have mandatory duty to appropriate to Soldiers' Relief Commission the amount certified as necessary by the Commission, up to the statutory limit). See generally Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969) (discussing funding of Soldiers' Relief Commission). The relief provided for by R.C. 5901.11 is paid to certain persons whose names appear on the list of "all needy soldiers, sailors, marines, and airmen and of their needy parents, spouses, surviving spouses, and minor children," who reside in the township or ward for which the list is compiled under R.C. 5901.08, and also to certain persons not on such list.

R.C. 5705.03 authorizes the board of county commissioners, R.C. 5705.01(C), to levy taxes annually, subject to the limitations of R.C. 5705.01 to 5705.47, inclusive, on the real and personal property within the county for the purpose of paying, among other things, the current operating expenses of the county. Pursuant to R.C. 5705.05(E), the county shall include in its general levy for current expenses¹ the amounts necessary for certain items, including "the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines." The amount necessary for the Soldiers' Relief Commission is, therefore, included within the general levy for current expenses. See 1930 Op. Att'y Gen. No. 2114, vol. II, p. 1149 (followed by 1935 Op. Att'y Gen. No. 3897, vol. I, p. 108) (the county commissioners shall include in the general levy the amount certified as necessary for soldiers' relief). See also 1935 Op. Att'y Gen. No. 4134, vol. I, p. 382 (proceeds of the levy for soldiers' relief are placed in the general fund).

The question of submitting a tax levy for voter approval arises because the authority of the county commissioners to levy taxes on the real and personal property within the county is subject to the limitations set forth in Ohio Const. art. XII, §2 and R.C. 5705.02. Ohio Const. art. XII, §2 states, in pertinent part:

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. (Emphasis added.)

Pursuant to this provision, the state and local governments are restrained from levying taxes beyond the established limitation unless specifically authorized by the voters or by the charter of a municipal corporation. *Bennett v. Evatt*, 145 Ohio St. 587, 62 N.E.2d 345 (1945) (syllabus, paragraph three). This constitutional limitation is codified in R.C. 5705.02, which states, in part:

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof.

R.C. 5705.02, therefore, imposes a ten-mill limitation upon the amount of taxes which the county commissioners may levy on the taxable property of the county under R.C. 5705.03, except for taxes specifically authorized to be levied in excess of that amount. See, e.g., R.C. 5705.19 (taxing authority of subdivision may declare by resolution that taxes that may be raised within ten-mill limitation will be insufficient and that it is necessary to levy a tax in excess of limitation for certain purposes, such tax levy being subject to voter approval).

R.C. 5901.11 requires the county commissioners to levy a tax not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county in order to fund the activities of the Soldiers' Relief Commission. Neither R.C. 5901.11 nor any other provision of law of which I am aware makes the levying of a tax to fund the Soldiers' Relief Commission dependent upon voter approval. As stated above, the amount necessary for the Soldiers' Relief Commission is raised as part of the general levy for current expenses. 1930 Op. No. 2114. Pursuant to R.C. 5705.03, the county commissioners may impose the general levy for current expenses without voter approval, subject to the provisions of R.C. 5705.01 through 5705.47. Although the county commissioners' authority to levy a tax under R.C. 5705.03 is subject to the ten-mill limitation set forth above, such limitation does not alter the commissioners' duty to levy the tax for the Soldiers' Relief Commission as required by R.C. 5901.11. See 1935 Op. No. 3897 (Ohio Const. art.

¹"Current expenses," as used in R.C. 5705.05, and "current operating expenses," as used in R.C. 5705.03, have the same meaning. R.C. 5705.01(F).

XII, §2 does not change mandatory nature of duty imposed upon county commissioners by G.C. 2936, current version at R.C. 5901.11, to levy tax for Soldiers' Relief Commission in amount certified as necessary). Regardless of the amount the county needs to meet other current expenses, it remains the mandatory duty of the county commissioners to levy a tax for the Soldiers' Relief Commission in the amount properly certified as necessary. Suggesting that such duty may necessitate cuts in amounts appropriated to other county agencies, the court in State ex rel. Binder stated: "Any hardship which may be imposed on the various county departments by reason of the mandatory nature of the law can be eliminated only by the General Assembly."¹ 174 Ohio St. at 24, 186 N.E.2d at 476-477.

It is, therefore, my opinion, and you are advised, that, R.C. 5901.11 imposes upon the board of county commissioners the mandatory duty of levying a tax to raise the funds certified as necessary by the Soldiers' Relief Commission, up to five-tenths of a mill per dollar on the assessed value of the property of the county. Pursuant to R.C. 5705.03 and 5705.05, such funds are raised as part of the general levy for current expenses, which need not be submitted to the electors for approval.

¹ Should the county commissioners determine that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation, R.C. 5705.19(A) authorizes the county commissioners to submit a levy to the voters of the county to provide funds in excess of the ten-mill limitation for the current expenses of the county. I note, however, that since the county commissioners must levy a tax for the Soldiers' Relief Commission in the amount properly certified as necessary, the levying of such tax may not be dependent upon voter approval.