OPINION NO. 2013-036

Syllabus:

2013-036

A township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.

To: Richard W. Moyer, Clinton County Prosecuting Attorney, Wilmington, Ohio

By: Michael DeWine, Ohio Attorney General, October 31, 2013

You have requested an opinion whether a township may use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads. Based on the following, a township does not have such authority.

R.C. 5705.19 authorizes a township to levy taxes in excess of the ten-mill limitation for various purposes. See R.C. 5705.03(B)(1); R.C. 5705.07. This authority includes levying a tax for the following purposes:

1. Providing and maintaining fire apparatus, appliances, buildings, or sites therefor, or sources of water supply and materials therefor, or the establishment and maintenance of lines of fire alarm telegraph, or the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the

1 The ten-mill limitation provides that the aggregate amount of taxes that may be levied on any taxable property in a township may “not in any one year exceed ten mills on each dollar of tax valuation of [the township], except for taxes specifically authorized to be levied in excess thereof.” R.C. 5705.02; see Ohio Const. art. XII, § 2. As explained in 2009 Op. Att’y Gen. No. 2009-054 at 2-404 n.1, “[l]eavies within the ten-mill limitation are commonly referred to as ‘inside millage.’ Levies in excess of ten mills are commonly referred to as ‘outside millage’ and must be specifically authorized.”

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payment of any employer contributions required for such personnel under [R.C. 145.48 or R.C. 742.34], or the purchase of ambulance equipment, or the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company[.]

R.C. 5705.19(1).

When a township levies a tax pursuant to R.C. 5705.19(1), the township must (1) deposit the revenue derived from the tax into a special fund because the tax levy is a "special levy" and (2) use the revenue for only the purposes authorized by R.C. 5705.19(1). See Bd. of Rootstown Township Trs. v. Rootstown Water Servo Co., Case No. 2011-P-0084, 2012 WL 3645340, ¶21 (Portage County Aug. 27, 2012); see R.C. 5705.10(C) ("[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made"); R.C. 5705.10(1) ("[m]oney paid into any fund shall be used only for the purposes for which such fund is established"); see also R.C. 5705.09(D) (a township is required to establish "[a] special fund for each special levy"); 1998 Op. Att'y Gen. No. 98-023 at 2-127 ("[p]roceeds derived from a special levy must, in accordance with R.C. 5705.10, 'be credited to a special fund for the purpose for which the levy was made' and 'be used only for the purposes for which such fund is established'"). See generally Ohio Const. art. XII, § 5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); Clark Rest. Co. v. Evatt, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph 3 (taxing statutes are to be strictly construed).)


* The resolution and ballot language placing a tax levy under R.C. 5705.19(1) before the voters may be narrower than the statutory language authorizing the levy. See 2011 Op. Att'y Gen. No. 2011-037 at 2-301 n.7; 1993 Op. Att'y Gen. No. 93-042 at 2-215; 1990 Op. Att'y Gen. No. 90-069 at 2-292. See generally R.C. 5705.19(YY) (a township's resolution proposing a tax levy must specify the purpose or purposes of the tax and how the revenue derived from the tax will be used); R.C. 5705.25 (ballot language placing a township tax levy before the voters must state the purpose or purposes for which the tax is being levied and comport with the language in the township's resolution proposing the tax levy). When this occurs, the narrower language appearing in the resolution and on the ballot "restricts the permissible expenditures of levy moneys." 1990 Op. Att'y Gen. No. 90-069 at 2-292; accord 2011 Op. Att'y Gen. No. 2011-037 at 2-301 n.7; 1993 Op. Att'y Gen. No. 93-042 at 2-215. See generally Bd. of Rootstown Township Trs. v. Rootstown Water Servo Co., Case No. 2011-P-0084, 2012 WL 3645340, ¶22 (Portage County Aug. 27, 2012) (tax revenues derived from a levy may be used for any purpose within the language of the resolution and ballot placing the levy before the voters); 2010 Op. Att'y Gen. No. 2010-028 at 2-205 ("[s]pecial levies . . . are restricted by resolution or ballot language to a particular use").
be strictly construed and their application cannot be extended beyond the clear meaning of the statutory language used). This means that tax revenue derived from a levy under R.C. 5705.19(I) may be expended only for equipment, services, and other items that relate to the provision of fire protection services or ambulance, paramedic, or other emergency medical services. 4

In your particular situation, the piece of equipment to be purchased is a motor vehicle that is equipped to remove snow and ice from township roads. 5 To do this, the vehicle may be outfitted with a plow, salt spreader, or other equipment used to remove snow and ice from roads, highways, and bridges. The vehicle will not, however, have equipment that is ordinarily or routinely used by firefighters to control or extinguish fires. Nor will it have equipment generally used by emergency medical personnel to treat injured people or save lives.

The motor vehicle in question also will not be used by trained firefighters or emergency medical personnel employed by the township fire department to respond to fires or medical emergencies, transport patients, or provide other services related to the provision of fire protection services or ambulance, paramedic, or other emergency medical services. Instead, the primary purpose of the vehicle is to maintain township roads by removing snow and ice from them. 6

Because a motor vehicle that is equipped and used to remove snow and ice

4 The resolution and ballot language placing a tax levy under R.C. 5705.19(I) before the voters may not be broader than the purposes authorized by R.C. 5705.19(I). See 1986 Op. Att’y Gen. No. 86-103 at 2-569.

5 Except as provided in R.C. 5571.20, a board of township trustees has a duty to “cause all the township roads within the township to be kept free from obstruction by snow.” R.C. 5571.08; see R.C. 5501.41 (with respect to township roads, a “board of township trustees . . . shall have the same authority to purchase equipment for the removal of and to remove snow and ice as the director [of transportation] has on the state highway system”). See generally R.C. 5535.16 (“[n]otwithstanding [R.C. 5535.08 and R.C. 5535.15], the department of transportation or a political subdivision may provide snow and ice removal on the roads under the control of the state or any political subdivision”).

from township roads is not used to transport firefighting equipment or personnel, emergency medical personnel or equipment, or patients, the vehicle is not used to provide fire protection services or ambulance, paramedic, or other emergency medical services. See generally R.C. 9.60(A)(2) (as used in R.C. 9.60, which provides for contracts for fire protection services, “fire protection” means “the use of firefighting equipment by the fire department of a firefighting agency or a private fire company’’); R.C. 4765.01(E) (as used in R.C. Chapter 4765, which governs the provision of emergency medical services, an “ambulance” is “any motor vehicle that is used, or is intended to be used, for the purpose of responding to emergency medical situations, transporting emergency patients, and administering emergency medical service to patients before, during, or after transportation’’); R.C. 4765.01(G) (as used in R.C. Chapter 4765, “emergency medical service” is “any of the services described in [R.C. 4765.35, R.C. 4765.37, R.C. 4765.38, and R.C. 4765.39] that are performed by first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics’’); R.C. 4765.01(L) (for purposes of R.C. Chapter 4765, “emergency medical service personnel” are “first responders, emergency medical service technicians-basic, emergency medical service technicians-intermediate, emergency medical service technicians-paramedic, and persons who provide medical direction to such persons’’); Merriam-Webster’s Collegiate Dictionary 899 (11th ed. 2005) (as an adjective, the term “paramedic” means “concerned with supplementing the work of highly trained medical professionals”). For this reason, a township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a motor vehicle that is equipped and used to remove snow and ice from township roads.

In conclusion, it is my opinion, and you are hereby advised that a township may not use tax revenue derived from a levy under R.C. 5705.19(I) to purchase a

after having been damaged by wear or deterioration—which is usually referred to as ‘repair’

7 R.C. 5571.08 authorizes a township to use moneys from its “road funds” or “from the funds allocated to the township by [R.C. 5735.27]” to pay for the costs and expenses associated with snow and ice removal from township roads. See 1952 Op. Att’y Gen. No. 1485, p. 419 (syllabus, paragraph 2) (“[t]ownship trustees are authorized by [G.C. 3374-1 (now R.C. 5571.08) and G.C. 1178-5 (now R.C. 5501.41)] to keep the highways within the township free from obstruction by snow and ice and such work is a part of the proper maintenance of such highways, and the cost thereof may be paid from the funds allocated to townships by [G.C. 5541-8 (now R.C. 5735.27)]’’).
motor vehicle that is equipped and used to remove snow and ice from township roads.