

IN THE SUPREME COURT OF OHIO

STATE ex rel.	*	CASE NO. 2015-2092
CORNERSTONE DEVELOPERS, LTD.,	*	
	*	(Expedited Election Case Under
Relator,	*	S.C.Prac.R. 12.08 – Original Action
	*	in Mandamus and Prohibition)
vs.	*	
	*	
GREENE COUNTY BOARD OF	*	
ELECTIONS, et al.,	*	
	*	
Respondents.	*	

MERIT BRIEF OF RESPONDENT,
CITY OF CENTERVILLE

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ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES CITED.....	iii
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT.....	7
<u>CITY OF CENTERVILLE’S RESPONSE TO RELATOR’S PROPOSITION OF LAW NO. I AND THE CITY OF CENTERVILLE’S PROPOSITION OF LAW NO. 1</u>	
<u>City of Centerville Proposition of Law No. I:</u> Pursuant to R.C. § 5705.03(B) and R.C. § 5705.19, the Township was required to: 1) pass a resolution to proceed with the proposed levy after it received and reviewed the revenue certificate of the County Auditor; and 2) certify the resolution to proceed and revenue certificate of the County Auditor to the Board of Elections on or before December 16, 2015.....	7
<u>CITY OF CENTERVILLE’S RESPONSE TO RELATOR’S PROPOSITION OF LAW NO. II</u>	
	18
<u>CITY OF CENTERVILLE’S RESPONSE TO RELATOR’S PROPOSITION OF LAW NO. III AND THE CITY OF CENTERVILLE’S PROPOSITION OF LAW NO. III</u>	
	18
<u>City of Centerville Proposition of Law No. III:</u> Under R.C. § 505.37(C), a township may not create a fire district of portions of a township for the purpose of discouraging annexation of township territory and may only create such a district when the township can show that creation of the fire district is “expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages from their occurrence.” Further, when a township is without authority to create a proposed fire district, it likewise is without authority to seek a levy to fund the fire district.....	
	18



ALTICK
&
CORWIN
CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

**CITY OF CENTERVILLE'S RESPONSE TO RELATOR'S
PROPOSITION OF LAW NO. IV.....22**

CONCLUSION.....22

PROOF OF SERVICE.....25

EXHIBIT A – Map of Annexed Areas of Centerville Located in Sugarcreek
Township

APPENDIX



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

TABLE OF AUTHORITIES

Page

CASES

<i>Cornerstone Developers, Ltd. v. Sugarcreek Township v. The City of Centerville</i> , Greene County Common Pleas Court, Case No. 2015-CV-0031.....	4,20
<i>Drees Co. v. Hamilton Twp.</i> , 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916.....	18
<i>State ex rel. Davis v. Beaver Township Board of Trustees</i> , 133 Ohio St.3d 170, 2012-Ohio-4177, 977 N.E.2d 578.....	16
<i>State ex rel. Edwards Land Co. Ltd. v. Delaware County Board of Elections</i> , 129 Ohio St.3d 580, 2001-Ohio-4317, 954 N.E.2d 993.....	16
<i>State ex rel. Orange Township Board of Trustees v. Delaware County Board of Elections</i> , 135 Ohio St.3d 162, 2013-Ohio-36, 985 N.E.2d 441.....	14,15,16,17
<i>State ex rel. Schramm v. Ayres, Aud.</i> , 158 Ohio St. 30, 106 N.E.2d 630 (1952).....	2,19,22
<i>Stutzman v. Madison County Board of Elections</i> , 93 Ohio St.3d 511, 514, 2001-Ohio-1624, 757 N.E.2d 297 (2001).....	8,16

CONSTITUTIONAL PROVISIONS; STATUTES

R.C. § 505.37(C).....	1,6,18,22
R.C. § 5705.03.....	15
R.C. § 5705.03(B).....	7,8,9,10,11, 13,14,15, 16,17,22
R.C. § 5705.03(B)(1).....	8,9,11,12,14
R.C. § 5705.03(B)(3).....	8,9,10,12,13 14
R.C. § 5705.19.....	7,8,9,10,11, 12,13,15,16, 17,22
R.C. § 5705.19(I).....	11,15



OTHER AUTHORITIES

Ohio Ballot Questions and Issues Handbook, Chapter 2.....16



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

STATEMENT OF THE CASE AND FACTS

Relator, Cornerstone Developers, Ltd. (“Cornerstone”), brings this matter before the Court as an Original Action in Mandamus and Prohibition and as an Expedited Election Case under S.C.Prac.R. 12.08. Cornerstone’s Complaint presents the narrow question of whether this Court should issue a Writ of Mandamus or a Writ of Prohibition which would preclude Respondents, Greene County Board of Elections (“Greene BOE”) and Jon Husted, Ohio Secretary of State (“SOS”), from allowing a 5.3 mill fire district funding levy proposed by Respondent, Sugarcreek Township (“Sugarcreek” or “Township”), to be placed on the March 15, 2016 ballot. In the context of this narrow issue, Respondent, City of Centerville (“Centerville” or “City”), does not dispute Cornerstone’s “Statement of the Case” or its “Statement of the Facts,” but offers the following to supplement and clarify Cornerstone’s Statements and as statements which relate specifically to the invalidity of a ballot measure intended to fund an improperly created township fire district.

One of Cornerstone’s arguments for keeping the Township’s 5.3 mill levy to fund the Sugarcreek Fire District off the March 15, 2016 ballot is that the fire district was created for an unauthorized purpose and contrary to statute. Cornerstone cites R.C. § 505.37(C), which gives Township Trustees authority to create a fire district out of a portion of a Township, “whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages from their occurrence.” Indeed, the Township was not motivated by the safety of its citizens but rather by a desire to punish property owners for annexing to Centerville and to thwart future annexation. Since the Township is without



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

authority to form a fire district for this invalid purpose, the levy proposing to fund the invalid fire district is likewise invalid and must be rejected. Under this Court's well-settled precedent, a levy to fund such an impermissibly-formed special purpose district cannot be permitted to reach the ballot. *See State ex rel. Schramm v. Ayres, Aud.*, 158 Ohio St. 30, at 34, 106 N.E.2d 630, at 632 (1952) (finding that a township's creation of an invalid joint hospital district, out of only portions of the township, justified an elected official's refusal to place the levy funding the district on the ballot).

Cornerstone cites ample evidence that the Township Trustees' purpose in creating the Fire District was to discourage annexation of Township territory rather than "guard against the occurrence of fires or protect the property and lives" of citizens. While Cornerstone's Merit Brief establishes the improper anti-annexation purpose of the fire district, additional facts exist which demonstrate that the fire district does not "guard against the occurrence of fires" or "protect the property and lives of citizens," but, instead, places the citizens' property and lives at risk.

A. The Areas Excluded from Fire and EMS Protection.

To understand how the Township's new fire district places lives and property at risk, it is important to understand what property the Township seeks to exclude from fire and EMS protection. At *Exhibit A* to this Brief is a map showing the portion of Sugarcreek Township which is also annexed into the City of Centerville via Type-II annexation. (The map attached as *Exhibit A* is also *Exhibit A* to the Affidavit of Gregory B. Horn, City Manager for the City of Centerville, submitted as *Exhibit A* to Respondent, City of Centerville's Evidence.) This map



shows that the portion of the annexed Cornerstone Development, identified on the map as Dille North, is bounded by Wilmington Pike to the west, Feedwire Road to the south, Interstate-675 to the east, and Brown Road to the north. To the south of the development, also in the annexed area, are portions of Interstate-675, including entrance and exit ramps. Wilmington Pike is a major thoroughfare and is five lanes wide where it intersects with Feedwire Road and the junction of Interstate-675. A hospital is situated just south of the junction of Interstate-675 on Wilmington Pike.

Under the terms of Sugarcreek Township Resolution No. 2015.10.19.06 (*Exhibit 8* to Relator Cornerstone's Evidence filed herein), the Sugarcreek Township Fire District includes and, therefore serves, only the unincorporated area of Sugarcreek Township. In using this language to create boundaries for the fire district, the Township seeks to exclude fire and EMS services to any portion of the Township which is or becomes annexed into any municipality. As explained by Township Administrator, Barry Tiffany, "[O]nce we design this – once we – now that we have a fire district, if there is an annexation, a territory that they annex automatically comes out of the fire district (...) Now, that's a heck of a disincentive to a property owner to know that if I annex, I got a battle coming because I don't have fire service." (Trans., Sugarcreek Township Board of Trustees, Regular Session October 19, 2015, at p. 35, *Exhibit 11* to Relator Cornerstone's Evidence).

Tiffany's statements show that the Township did not create a fire district because it was "expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence." To the contrary, the

Township's Fire Chief, Randy Pavlak, testified that excluding these areas from fire and EMS coverage places Township residents' lives at risk.

B. Chief Pavlak's Testimony.

Recently retired Sugarcreek Township Fire Chief, Randy Pavlak, was deposed on February 17, 2015, in *Cornerstone Developers, Ltd. v. Sugarcreek Township v. The City of Centerville*, Greene County Common Pleas Court, Case No. 2015-CV-0031. (Randy Pavlak Deposition Transcript, *Exhibit 7* to Relator Cornerstone's Evidence). At issue in the 2015 Greene County Common Pleas Court case was the validity of Sugarcreek's first attempt to create a fire district and exclude the majority of annexed areas in the Township from fire and EMS protection. The area that Sugarcreek sought to exclude from fire and EMS service with the first attempted fire district included land owned and controlled by Cornerstone, and public roads surrounding the Cornerstone Development, including Feedwire Road, portions of Interstate-675, and ramps connecting Interstate-675 to Wilmington Pike. (*Exhibit 4* to Relator Cornerstone's Evidence, "Agreed Preliminary Injunction Order," *Cornerstone Developers, Ltd. v. Sugarcreek Township v. The City of Centerville*, Greene County Common Pleas Court, Case No. 2015-CV-0031, at p. 2, first full paragraph).

The roads at issue in the 2015 Greene County Common Pleas Court case are the same roads which the Trustees, again, seek to exclude from fire and EMS service with the creation of a fire district under Resolution 2015.10.19.06 (*Exhibit 8* to Relator Cornerstone's Evidence, *Exhibit A* attached, and *Exhibit A* to Respondent City of Centerville's Evidence, Affidavit of Gregory B. Horn, City Manager at ¶ 3). In his deposition in the 2015 Common Pleas Court



ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

case, Chief Pavlak identified the major roadways or intersections in the Township that are high volume traffic incident areas, naming Feedwire and Wilmington, Feedwire and Clyo and Wilmington, Interstate-675 and Wilmington. (*Exhibit 7 to Relator Cornerstone's Evidence, Pavlak Depo. at p. 19*). Pavlak stated that these roads were a high accident area and that without fire and EMS service there would be risk to Township residents. He further confirmed that there would be "no rescue to be done," if these areas were excluded from fire and EMS service. (*Id. at pp. 95-96*). When directly asked if Township residents were better off in such a situation, he replied, "No." (*Id.*)

Pavlak's testimony acknowledged that: 1) Centerville does not have a fire department; 2) Centerville is not a member of any mutual aid agreement with other fire departments because the City does not offer fire and EMS services; and 3) Centerville did not agree to provide the annexed areas with fire and EMS services as a part of any annexation agreement. (*Id. at pp. 29-30, 93; See also Exhibit A of Respondent Centerville's Evidence, Affidavit of Gregory B. Horn, City Manager, at paras. 6 - 8*). Therefore, according to Pavlak, if the Township does not service the area, no entity would have an obligation to respond to a call for fire or EMS services on the streets and roadways the Township now seeks to exclude from its anti-annexation fire district. (*Exhibit 7 to Relator Cornerstone's Evidence, Pavlak Depo. at p. 31*).

Chief Pavlak testified on February 17, 2015, just eight months prior to the Township's newest formation of an anti-annexation Fire District on October 19, 2015. His testimony demonstrates that the Township's Fire District: 1) could not be considered "expedient and



CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

necessary to guard against the occurrence of fires or to protect the property and lives of the citizens;” and 2) actually places residents’ lives and property at risk.

C. The Township Secured a \$850,250.00 FEMA Grant to Purchase Equipment to Serve the Cornerstone Development.

The Township’s attempts to exclude fire and EMS coverage for annexed portions of the Township are especially egregious as the Township used the construction of the Cornerstone Development as a basis for obtaining a substantial FEMA grant. Chief Pavlak testified that the Township applied for a federal grant to purchase a new ladder truck in 2013. (*Id.* at p. 41). In seeking the grant, Pavlak included the lack of tax revenue from the Cornerstone Development, due to the TIF, as a justification for receiving Federal funds to aid the Township in purchasing the vehicle. (*Id.* at p. 42). The grant received by the Township in 2014 was for \$850,250.00 and underwrote 95 percent of the cost of the truck (See *Exhibit A* of Respondent Centerville’s Evidence, Affidavit of Gregory B. Horn, City Manager, at ¶ 9 and *Exhibit B* attached thereto).

In 2013 - 2014, Sugarcreek Township used the existence of the TIF and the obligation to serve the Cornerstone Development to justify requesting an \$850,250.00 grant to purchase new equipment. Now, approximately one year later and after the grant was awarded, the Township is trying to withdraw services from the same area.

The facts cited above, in addition to the facts cited by Cornerstone to establish the Township’s anti-annexation purpose, demonstrate that the Sugarcreek Fire District cannot be considered “expedient and necessary to guard against the occurrence of fires or to protect the property and lives” of Township residents, as required under R.C. § 505.37(C).

ARGUMENT

Relator, Cornerstone, seeks Writs of Mandamus and Prohibition against the Greene County BOE and the SOS to prevent them from placing Sugarcreek Township's levy to fund the unlawful fire district on the March 15, 2016 ballot. Neither Cornerstone nor any other party seeks a Writ or other form of relief against Centerville. Cornerstone nonetheless alleges that the City is an "interested party" in this case because the portions of the Township excluded from fire and EMS services under the Township's newest anti-annexation district are those portions of the Township which are annexed into the City of Centerville. (Relator's Supplemental Complaint at Paragraph 12).

Centerville has never consented to or requested the removal of services from the annexed portions of the Township. It is the Township, not Centerville, that is proposing the levy, and Centerville has no statutory role in placing the proposed levy on the ballot. Under these facts, the City is not an appropriate party to this action and should be dismissed from this case. However, as this Court's rules do not afford parties the ability to move for dismissal or seek judgment on the pleadings, the City of Centerville offers the following in response to Cornerstone's Merit Brief. S.Ct.Prac.R. 12.08(A)(3).

CITY OF CENTERVILLE'S RESPONSE TO RELATOR'S PROPOSITION OF LAW NO. I AND THE CITY OF CENTERVILLE'S PROPOSITION OF LAW NO. I

City of Centerville Proposition of Law No. I:

Pursuant to R.C. § 5705.03(B) and R.C. § 5705.19, the Township was required to: 1) pass a resolution to proceed with the proposed levy after it received and reviewed the revenue certificate of the County Auditor; and 2) certify the resolution to proceed and revenue certificate of the County Auditor to the Board of Elections on or before December 16, 2015.

Cornerstone is correct that Sugarcreek's levy to fund the Township Fire District suffers from a fatal procedural defect. Under the applicable Ohio statutes, R.C. § 5705.03(B) and R.C. § 5705.19, in order to place the levy to fund the Sugarcreek Fire District on the March 15, 2016 ballot, Sugarcreek was required to pass two separate and distinct resolutions and, after adopting the second resolution, to certify that second resolution, along with the auditor's revenue certification, to the Greene BOE no later than 90 days before the election (December 16, 2015). In this case, the second resolution was not passed until January 8, 2016, and could not, therefore, have been submitted to the Greene BOE until at least 23 days after the December 16, 2015 deadline for submission. This Court has consistently held that election laws are mandatory and require strict compliance unless the election statutes expressly authorize substantial compliance. *Stutzman v. Madison County Board of Elections*, 93 Ohio St.3d 511, 514, 2001-Ohio-1624, 757 N.E.2d 297 (2001). As the Township missed the submission deadline by at least 23 days, it did not strictly, or even substantially, comply with Ohio's election laws. Therefore, the Township's levy cannot be placed on the March 15, 2016 ballot.

To fully understand Sugarcreek Township's violation of Ohio election law, and why it means the fire district levy cannot be placed on the March 15, 2016 ballot, one must consider the two resolution process set forth at R.C. § 5705.03(B)(1) and (3), and the interaction of this process with the timing requirements for submission of a levy, set forth in R.C. § 5705.19. When the content and timing of Sugarcreek Township's resolutions attempting to place the fire district levy on the March 15, 2016 ballot are compared to the requirements of R.C. §§



CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1500
DAYTON, OHIO 45402-2026

5705.03(B)(1),(3) and 5705.19, the defect in Sugarcreek's attempt to place the levy on the ballot is readily apparent.

A. The Two Resolution Process Required Under R.C. § 5705.03(B) and the Manner and Time for Submission of a Levy to the Board of Elections under R.C. § 5705.19.

R.C. § 5705.03(B) sets forth the two resolution process required of a taxing authority seeking to place a levy before the voters. The requirement for a first resolution is set forth at R.C. § 5705.03(B)(1), which reads, in relevant part, as follows:

When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or a replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax.

Under this portion of the statute, a taxing authority, such as the Township, is required to issue a resolution requesting the county auditor to certify either the number of mills required to generate a specific amount of revenue or the amount of revenue that a specific number of mills would generate. The resolution must also state the purpose for the tax, whether the tax is a renewal or replacement of an existing tax, and the Revised Code Section authorizing submission of the tax. The requirement for auditor certification serves the practical purpose of ensuring that a proposed levy will generate the minimum amount of funds a taxing authority requires for a particular purpose without imposing an excessive tax burden beyond the amount required.

The requirement of and timing of the second resolution in the two resolution process is set forth at R.C. § 5705.03(B)(3), which reads, in relevant part, as follows:

If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor. The county board of elections shall not submit the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board.

The foregoing language makes it clear that there must be a second resolution, as the decision to proceed with the levy can only occur "upon receiving the certification from the county auditor." It is only after receiving assurance of the funds that the proposed tax will generate that the statute authorizes a taxing authority to decide whether to proceed and submit a levy to the voters. The taxing authority's second resolution, deciding to proceed, must then be certified and, along with the county auditor's certification of estimated revenue, submitted to the County Board of Elections within the time prescribed by statute.

Applicable to this case, R.C. § 5705.19, sets forth the manner and time for a taxing authority to submit of any proposed levy to a board of elections and provides, in relevant part:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all members of the taxing authority, may declare by resolution and certify the resolution to a board of elections not less than 90 days before the election upon which it will be voted that the amount of taxes that may be raised within the 10-mill limitation will be insufficient to provide for the necessary



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes¹: (Emphasis Added.)

R.C. § 5705.19 clearly states the certification to the Board of Elections must occur “not less than 90 days before an election.”

A comparison of the content and timing of Sugarcreek Township’s resolutions to fund the Sugarcreek Township Fire District with the requirements of R.C. § 5705.03(B) and R.C. § 5705.19 demonstrates that the Township did not comply with Ohio election law.

B. The Content and Timing of Sugarcreek Township Resolutions Attempting to Fund the Township Fire District.

Sugarcreek Township seeks to place its proposed levy on the March 15, 2016 ballot. With 2016 being a leap year, 90 days before the March 15, 2016 election is December 16, 2015. Under R.C. § 5705.19, Sugarcreek was required to certify its second resolution, to proceed with submitting the levy to the voters, after receipt of the county auditor’s certification of revenue and to the Greene BOE on or before December 16, 2015. Sugarcreek failed to meet this requirement.

Sugarcreek Township’s first resolution, Resolution No. 2015.10.19.07, adopted October 19, 2015, generally followed the requirements for a first resolution set forth at R.C. § 5705.03(B)(1). (*See Exhibit 9 of Relator Cornerstone’s Evidence*). The first resolution stated the Board of Trustees’ determination that it was necessary to levy a tax outside of the 10-mill limitation for a purpose authorized by the Ohio Revised Code, *i.e.*, to fund the fire district. The

¹ Among the purposes identified in R.C. § 5705.19, are the providing and maintaining of fire apparatus, appliances, buildings, or sites, etc. R.C. § 5705.19(I).



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-3026

resolution also requested the Greene County Auditor to certify the dollar amount of revenue that would be generated by a specific number of mills. Finally, the Board of Trustees stated that this would be a new and additional tax levy. The Township arguably complied with the requirements for a first resolution contemplated under R.C. § 5705.03(B)(1). However, in order to have the levy placed on the March 15, 2016 ballot, the Township still needed to adopt a second resolution to proceed with the levy, required under R.C. § 5705.03(B)(3), and to certify the second resolution, along with the county auditor's certification of revenue, to the Board of Elections on or before the December 16, 2015 deadline imposed by R.C. § 5705.19.

The Township Trustees did not adopt the required second resolution, to proceed with submission of the levy to the voters, until January 8, 2016, with Resolution No. 2016.01.08.01, which reads as follows:

WHEREAS, the Board of Trustees of Sugarcreek Township, Greene County, Ohio, previously formed and established the Sugarcreek Township Fire District consisting of the unincorporated areas of Sugarcreek Township, Greene County, Ohio; and

WHEREAS, having passed a Resolution of Necessity for Levying a Tax, 2015.10.19.07, and receiving certification from Greene County Auditor, David Graham, the Sugarcreek Board of Trustees moves for a Resolution to Proceed and desires to proceed and place this Fire District Levy on the March 15, 2016 Ballot.

NOW THEREFORE IT RESOLVED, THAT THIS Resolution to Proceed for Ballot is hereby adopted and that this Resolution shall take effect and be in force from and after the earliest time provided by law.

(Exhibit 12 to Relator Cornerstone's Evidence).

It is only with the adoption of this January 8, 2016 resolution that the Sugarcreek Township Board of Trustees passed the required second resolution, setting forth the decision to



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1500
DAYTON, OHIO 45402-2026

proceed with submission of the question of the Fire District levy to the voters. As the Township's resolution to proceed with the levy was not adopted until January 8, 2016, the Township could not and did not comply with the requirement of R.C. § 5705.19, that the levy had to be to the Board of Elections on or before December 16, 2015. Even if the Trustees certified the January 8, 2016 Resolution to the Board of Elections the same day it was passed, any such certification occurred at least 23 days after the December 16, 2015 deadline.

C. Sugarcreek Cannot Claim that the October 19, 2015 Funding Resolution was Sufficient to Meet the Statutory Requirements for Placing a Levy on the March 15, 2016 Ballot.

Nor can the Township's October 19, 2015 Resolution, standing alone, satisfy the two resolution requirement of R.C. § 5705.03(B). R.C. § 5705.03(B)(3) provides that, "If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections." The foregoing language makes it clear that the decision to proceed can only be made after receipt of the auditor's certification of revenue, which necessarily requires a second resolution. This is logical as it is not until receipt of the county auditor's certification of estimated revenue that the taxing authority knows whether the proposed levy provides sufficient funds.

The equivocal language of the Township's October 19, 2015 Resolution would also require a second resolution to proceed to place the levy on the ballot, even if R.C. § 5705.03(B)(3) did not. The Township's October 19, 2015 Resolution to fund the Fire District

states, at paragraph 4, that “The Township Fiscal Officer is hereby authorized and directed to certify a copy of this resolution request to the Greene County Auditor and if necessary, the Greene County Board of Elections.” This language does not state the Trustees’ determination to proceed with the levy, regardless of the auditor’s certification. The instructions in paragraph 4 contain a qualifier as what the Township Fiscal Officer is to do, stating that the officer is to certify the resolution to the Board of Elections “if necessary.” This language left the Trustees’ final decision as to whether to proceed with the levy, following receipt of the auditor’s certification, an open question. Therefore, even if R.C. § 5705.03(B)(3) did not require a second resolution stating the Township’s decision to proceed with the levy, which it does, the October 19, 2015, Resolution was insufficient to certify any resolution to the Greene BOE.

Finally, accepting an argument that one resolution is sufficient to meet the requirements of R.C. § 5705.03(B)(1) and (3) would defeat the purpose of the statute. There is an important reason why the statute requires the auditor’s certification of estimated revenues be received and reviewed by the taxing authority prior to making a determination to proceed with the levy. Requiring a two-step process ensures that the taxing authority affirms through the second resolution that the estimated revenue generated by a proposed tax will be sufficient for, but not excessive of, the purpose of the levy.

D. The Two Resolution Process Required to Enact Levies Under Ohio Election Law has been Acknowledged by this Court and is the Procedure Outlined to Taxing Authorities by Ohio’s Secretary of State.

The two resolution process required under R.C. § 5705.03(B) was recently outlined by this Court in *State ex rel. Orange Township Board of Trustees v. Delaware County Board of*

Elections, 135 Ohio St.3d 162, 2013-Ohio-36, 985 N.E.2d 441, ¶¶ 4-7. In *Orange*, the Township Trustees, on November 7, 2012, adopted Resolution 12.453 which declared the necessity of a levy for fire protection and EMS services and requested that the Delaware County Auditor certify, under R.C. § 5705.03, the amount of revenue that would be generated by a 7.5 mill tax. *Orange* at ¶ 4. The county auditor issued the certificate of estimated revenue that same day and following the issuance of the auditor's certificate, the Orange Township Board of Trustees passed a second resolution, Resolution 12-454, which declared it necessary to levy the additional 7.5 mill tax and determined to proceed to submit the question to the voters at a February 8, 2013 special election. *Orange* at ¶¶ 5-6. Commenting on this process, in *Orange* this Court stated what R.C. § 5705.03(B) required the Township to do before the levy could be placed on the ballot:

To have the requested levy placed on the ballot, the township had to certify to the board of elections by the November 7, 2012 deadline, the auditor's certificate of estimated property tax revenue and the resolution declaring it necessary to levy the additional tax and proceed with the submission of the question of the tax to the voters, i.e., Resolution 12-454. [The Second Resolution] See R.C. §§ 5705.19(I) and 5705.03(B). (Bracketed Material Added)

As this Court made clear in *Orange*, the placement of a levy on the ballot under R.C. § 5705.03 requires two resolutions. Further, it is the second resolution, declaring both the necessity of the tax and the taxing authority's decision to proceed, which this Court said must be certified to the Board of Elections prior to the deadline established under R.C. § 5705.19. In this case, the Township failed to comply with these requirements.



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

The two resolution process acknowledged by this Court in *Orange* is also consistent with the guidance provided by the Ohio Secretary of State to taxing authorities in the “Ohio Ballot Questions of Issues Handbook.” Specifically, in Chapter 2 “Tax Levies,” at page 2-9 through 2-11, the Secretary outlines the basic procedural requirements of R.C. § 5705.03(B). The process is summarized as “Resolution – Certification – Resolution – Certification.” As noted by the Secretary of State, the statutes require: 1. A “RESOLUTION of Necessity”; 2. A “CERTIFICATION” by the County Auditor; 3. “RESOLUTION to Proceed of the Taxing Authority”; and 4. A “CERTIFICATION by the Taxing Authority to the Board of Elections.” See: <http://www.sos.state.oh.us/sos/upload/elections/eoresources/general/2013qandi.pdf> - (Chapter 2 of the “Ohio Ballot Questions and Issues Handbook”, copy attached in Appendix.)

E. Neither R.C. § 5705.03(B) nor R.C. § 5705.19 allow for Substantial Compliance.

This Court has consistently held that election laws are mandatory and require strict compliance unless the election statutes expressly authorize substantial compliance. *Stutzman v. Madison County Board of Elections*, 93 Ohio St.3d 511, 514, 2001-Ohio-1624, 757 N.E.2d 297 (2001); *State ex rel. Davis v. Beaver Township Board of Trustees*, 133 Ohio St.3d 170, 2012-Ohio-4177, 977 N.E.2d 578, ¶ 12; *State ex rel. Edwards Land Co. Ltd. v. Delaware County Board of Elections*, 129 Ohio St.3d 580, 2001-Ohio-4317, 954 N.E.2d 993 at 41. Nothing within the terms of either R.C. § 5705.19 or § 5705.03(B) allows for substantial compliance. Further, even if “substantial compliance” were allowed, the Township cannot credibly argue



CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

that it “substantially complied” with these statutes by certifying the levy to the Greene BOE at least 23 days or more after the deadline, if at all.

In an attempt to argue that R.C. § 5705.03(B) or R.C. § 5705.19 allow for substantial compliance, the Township may cite to this Court’s decision in *Orange*. In *Orange*, this Court considered the same statutes and allowed an issue to be placed on the ballot when a township was arguably two minutes late certifying its second resolution declaring the necessity of the tax and the decision to proceed with the tax to the Board of Elections. However, in *Orange*, not only was the Township only two minutes late, it had submitted all required materials before the deadline, electronically, and only the paper copies were presented two minutes late. *Orange* at ¶¶ 8, 9 and 27. In this case, Sugarcreek Township missed the certification deadline by at least 23 days.

In *Orange*, the Township was frantically working to comply with Ohio’s election statutes and to certify the proper resolutions to the board of before a deadline of November 7, 2012. Orange Township only became aware of the need for the levy to fund fire and EMS services following an unexpected defeat of another similar levy one day earlier. *Orange* at ¶¶ 2-3. In this case, Sugarcreek Township ignored the requirements of the statute and did not attempt to pass the required second resolution until over three weeks after the deadline had passed, and only after Cornerstone filed this Expedited Election proceeding. Finally, in *Orange* the Board of Trustees in *Orange* was attempting to fund necessary fire and EMS services for a community. In contrast, Sugarcreek Township is attempting to withdraw necessary safety services to discourage annexation, without regard for the safety of residents.



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

Ohio requires strict compliance with election statutes. In enacting the fire district and attempting to fund it, Sugarcreek ignored statutory requirements, and for no good purpose. Cornerstone's request for a Writ should be granted and an order should be issued prohibiting the Township's 5.3 mill levy from being placed on the ballot.

CITY OF CENTERVILLE'S RESPONSE TO RELATOR'S PROPOSITION OF LAW NO. II

Respondent, City of Centerville, does not contest, oppose, or offer any argument in response to Relator Cornerstone's Proposition of Law No. II.

CITY OF CENTERVILLE'S RESPONSE TO RELATOR'S PROPOSITION OF LAW NO. III AND THE CITY OF CENTERVILLE'S PROPOSITION OF LAW NO. III

City of Centerville Proposition of Law No. III:

Under R.C. § 505.37(C), a township may not create a fire district of portions of a township for the purpose of discouraging annexation of township territory and may only create such a district when the township can show that creation of the fire district is "expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages from their occurrence." Further, when a township is without authority to create a proposed fire district, it likewise is without authority to seek a levy to fund the fire district.

Ohio townships are creatures of the law and have only such authority as is conferred on them by law. *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916. An Ohio township's authority to establish a fire district is set forth at R.C. § 505.37(C) which states, in relevant part:

The board of township trustees of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district of any portions of the township that it considers necessary.

The statute limits a board of township trustees' authority to form a fire district out of only portions of the township to circumstances where it is, "expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence." In this case, Sugarcreek has not, and cannot, show that such circumstances exist.

A. When a Fire District is Invalid, and Created Unlawfully, there is No Justification for Placing a Levy to Fund the District on the Ballot.

The validity or invalidity of Sugarcreek's fire district is vital to determining whether the levy to fund the district should be placed on the March 15, 2016, ballot. In *Schramm*, this Court previously recognized an elected official's right to refuse to place a levy on the ballot when the joint township hospital district the levy would fund was not valid. *Schramm, supra*, at 34, 106 N.E.2d 630, at 632, ("[A]ttempting to create a joint hospital district was invalid, and the respondent county auditor was justified in refusing to place a tax levy on the real estate list."). In this case, the converse is equally true, as Sugarcreek Township's attempt to form a fire district was, and remains, invalid there is no justification for placing a levy to fund the district on the ballot and Writs should be issued against the Greene BOE and the SOS prohibiting any such action.

B. The Township Fire District was Created for an Improper Purpose and Contrary to Statute.

There is no question that the fire district is invalid as it was neither "expedient" nor "necessary" to "guard against the occurrence of fires or to protect the property and lives of the citizens." As demonstrated in Relator Cornerstone's Merit Brief: 1) the Township's personnel



CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2626

and elected officials have failed to produce any study, analysis or research indicating that reducing existing fire and EMS services by forming the fire district would protect Township residents or their property; and 2) in the October 19, 2015 meeting where the Township's Trustees established the fire district, the Township's Trustees and Administrator plainly stated that the fire district was formed as an anti-annexation measure. Cornerstone's Merit Brief thoroughly documents the Township's actions in this regard at pages 2-16, and 24-29, and Centerville incorporates by reference the facts and arguments set forth therein.

In addition to the facts and arguments set forth by Cornerstone on this issue, the testimony of the Township's Fire Chief demonstrates that rather than protecting the lives and property of Township residents, creation of the district actually places those lives and property at greater risk.

Sugarcreek Township's first attempt to exclude annexed portions of the Township from fire and EMS protection was at issue in a Greene County Common Pleas Court Case, *Cornerstone Developers Ltd. v. Sugarcreek Township v. The City of Centerville*, Greene County Common Pleas Court Case No. 2015-CV-0031. The roads at issue in that 2015 Common Pleas Court case included Feedwire Road, portions of I-675, including on and off ramps, and Wilmington Pike. (*Exhibit 4* to Relator Cornerstone's Evidence at p. 2, first full paragraph). These roads are currently annexed into the City of Centerville and are, therefore, excluded from fire and EMS coverage provided by the newly formed Sugarcreek Fire District, as they are not "an unincorporated area" of the Township. (*Exhibit 8* to Relator's Evidence, *Exhibit A* attached, *Exhibit A* to Respondent City of Centerville's Evidence, Affidavit of Gregory B. Horn, City



ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

Manager, at ¶¶ 2, 8 and *Exhibit A* thereto). As more fully explained in Respondent's Statement of Facts, in testimony given in the 2015 Greene County Common Pleas Court case, Chief Pavlak identified Feedwire Road, Wilmington Pike, Interstate-675, and the interchanges and intersections of these roads, as high volume traffic incident areas and high accident areas. (Pavlak Depo. at pp. 19, 95-96, *Exhibit 7* to Relator Cornerstone's Evidence).

Pavlak went on to state that if the Township did not provide service to these areas, he is not aware of any entity that would have an obligation to respond to a call for fire or EMS services on these streets and roadways. (*Id.* at p. 31). Pavlak admitted that the City of Centerville has no fire department and is not a member of any mutual aid agreement for fire services, because the City does not offer such services. (*Id.* at pp. 29-30). Acknowledging that Township residents frequently use these roads, Pavlak stated that there would be risk to Township residents if the area was excluded from fire and EMS service, and when asked if Township residents were better off in such a situation, he replied, "No." (*Id.* at pp. 95-96).

The evidence before this Court demonstrates that the Sugarcreek Township Trustees formed a fire district of only a portion of the Township territory as an anti-annexation measure. The Trustees had no study, analysis or research which showed the formation of the District was either expedient or necessary to protect the lives and property of Township residents. Further, the Township's Fire Chief testified that the areas the Township seeks to exclude from fire and EMS coverage include high traffic and high accident areas and that excluding such services would place Township residents at risk, and would not be in the residents' best interest. Based on the evidence before the Court, it is readily apparent that the fire district was not formed for



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2826

the purpose authorized under R.C. § 505.37(C) to “guard against the occurrence of fires or to protect the property and lives of the citizens,” but for the unauthorized purpose of punishing property owners who annex and thwarting future annexation.

As the Township Fire District was formed for an improper purpose, and as townships only have the authority conferred on them by law, the fire district is necessarily invalid. As the district is invalid, under *Schramm*, a levy to fund the district should not be allowed on the March 15, 2016 ballot.

CITY OF CENTERVILLE’S RESPONSE TO RELATOR’S PROPOSITION OF LAW NO. IV

Respondent, City of Centerville, does not contest, oppose, or offer any argument in response to Relator Cornerstone’s Proposition of Law No. IV.

CONCLUSION

As demonstrated above, and in Relator Cornerstone’s Merit Brief, on October 19, 2015, Sugarcreek Township attempted to form a fire district for an improper purpose. Because the fire district is invalid, a levy to fund the Fire District cannot be placed upon the Ballot. *Schramm, supra*. Further, even if the district were valid, which it is not, there are fatal procedural defects in Sugarcreek Township’s attempt to place the levy on the ballot. As a result of these defects, Sugarcreek Township failed to certify the required second resolution to the Greene County Board of Elections by the statutorily imposed deadline of December 16, 2015. R.C. § 5705.03(B) and R.C. § 5705.19. This Court has consistently held that election laws are mandatory and require strict compliance. In this case, the Township missed the deadline to



CO., L.P.A.
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

submit a certified resolution to proceed with the levy by at least 23 days. The Township did not strictly, or even substantially, comply with Ohio's election laws and, therefore, the levy should not be placed on the March 15, 2016 ballot.

As the fire district itself is invalid, and as the levy to fund the fire district is procedurally defective, Respondent. City of Centerville respectfully states that this Court should grant the relief sought by Relator Cornerstone and issue a Writ of Mandamus ordering the Greene County Board of Elections and the Ohio Secretary of State to remove the 5.3 mill tax levy to fund the Sugarcreek Township Fire District from the March 15, 2016 ballot, as well as a Writ of Prohibition, prohibiting the Greene County Board of Elections and the Ohio Secretary of State from placing the 5.3 mill tax levy to fund the Sugarcreek Fire District on the March 15, 2016 ballot.



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

Respectfully submitted,

/s/Scott A. Liberman

Scott A. Liberman (#0058432)

**Counsel of Record*

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Counsel for Respondent

City of Centerville



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2026

CERTIFICATE OF SERVICE

This is to certify that in accordance with S.Ct.Prac.R. 12.08(c), a true copy of the foregoing has been served this 19th day of January, 2016, upon **Joseph L. Trauth, Esq./Michael T. Cappel, Esq./Sophia R. Jannace, Esq.**, Attorneys for Relator, KEATING MEUTHING & KLEKAMP PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202, at jtrauth@kmklaw.com and upon **Charles M. Miller, Esq.**, Co-Counsel for Relator, at cmiller@kmklaw.com; upon **Elizabeth A. Ellis, Esq.**, Attorney for Respondent, Greene County Board of Elections, Greene County Prosecutor's Office, 61 Greene Street, Suite 200, Xenia, Ohio 45385, at eellis@greene.oh.us; upon **Stephanie R. Hayden, Esq.**, Assistant Prosecuting Attorney, Attorney for Respondent, Sugarcreek Township, Greene County Prosecuting Attorney's Office, 55 Greene Street, Xenia, Ohio 45385, at SHayden@co.greene.oh.us and upon **Jeffrey C. Turner, Esq./Dawn M. Frick, Esq./Liza J. Brackman, Esq.**, Co-Counsel for Respondent, Sugarcreek Township, 8163 Old Yankee Street, Suite C, Dayton, Ohio 45458, at jturner@sdtlawyers.com; and upon **Jordan S. Berman, Esq./Sarah E. Pierce, Esq.**, Assistant Attorneys General, Attorneys for Respondent, Jon Husted, Ohio Secretary of State, 30 E. Broad Street, 16th Floor, Columbus, Ohio 43215, at jordan.berman@ohioattorneygeneral.gov.

/s/Scott A. Liberman

Scott A. Liberman (#0058432)

Steven E. Bacon (#0059926)

Counsel for Respondent

City of Centerville



CO., L.P.A.

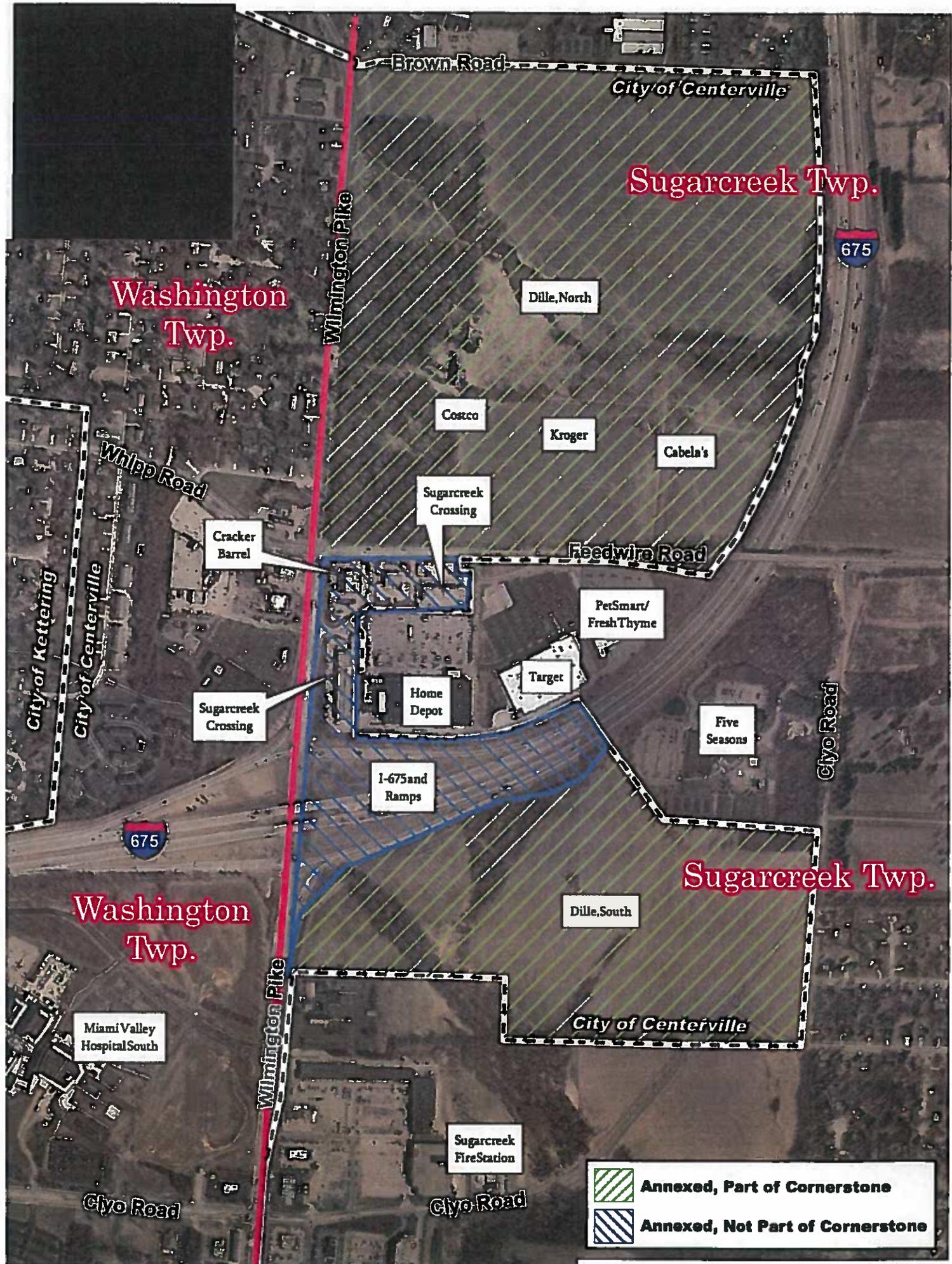
ONE SOUTH MAIN STREET
SUITE 1590
DAYTON, OHIO 45402-2624

EXHIBIT A



CO., L.P.A.

ONE SOUTH MAIN STREET
SUITE 1500
DAYTON, OHIO 45402-2026



Brown Road

City of Centerville

Sugarcreek Twp.

675

Washington Twp.

Dille, North

Costco

Kroger

Cabela's

Whipp Road

Wilmington Pike

Sugarcreek Crossing

Feedwire Road

Cracker Barrel

PetSmart/
Fresh Thyme

City of Kettering

City of Centerville

Sugarcreek Crossing

Home Depot

Target

Five Seasons

Clio Road

675

I-675 and Ramps

Sugarcreek Twp.

Washington Twp.

Dille, South

City of Centerville

Miami Valley Hospital South

Sugarcreek Fire Station

Clio Road

Clio Road

505.37 Fire protection services.

(A) The board of township trustees may establish all necessary rules to guard against the occurrence of fires and to protect the property and lives of the citizens against damage and accidents, and may, with the approval of the specifications by the prosecuting attorney or, if the township has adopted limited home rule government under Chapter 504. of the Revised Code, with the approval of the specifications by the township's law director, purchase, lease, lease with an option to purchase, or otherwise provide any fire apparatus, mechanical resuscitators, or other equipment, appliances, materials, fire hydrants, and water supply for fire-fighting purposes that seems advisable to the board. The board shall provide for the care and maintenance of fire equipment, and, for these purposes, may purchase, lease, lease with an option to purchase, or construct and maintain necessary buildings, and it may establish and maintain lines of fire-alarm communications within the limits of the township. The board may employ one or more persons to maintain and operate fire-fighting equipment, or it may enter into an agreement with a volunteer fire company for the use and operation of fire-fighting equipment. The board may compensate the members of a volunteer fire company on any basis and in any amount that it considers equitable.

When the estimated cost to purchase fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services exceeds fifty thousand dollars, the contract shall be let by competitive bidding. When competitive bidding is required, the board shall advertise once a week for not less than two consecutive weeks in a newspaper of general circulation within the township. The board may also cause notice to be inserted in trade papers or other publications designated by it or to be distributed by electronic means, including posting the notice on the board's internet web site. If the board posts the notice on its web site, it may eliminate the second notice otherwise required to be published in a newspaper of general circulation within the township, provided that the first notice published in such newspaper meets all of the following requirements:

- (1) It is published at least two weeks before the opening of bids.
- (2) It includes a statement that the notice is posted on the board's internet web site.
- (3) It includes the internet address of the board's internet web site.
- (4) It includes instructions describing how the notice may be accessed on the board's internet web site.

The advertisement shall include the time, date, and place where the clerk of the township, or the clerk's designee, will read bids publicly. The time, date, and place of bid openings may be extended to a later date by the board of township trustees, provided that written or oral notice of the change shall be given to all persons who have received or requested specifications not later than ninety-six hours prior to the original time and date fixed for the opening. The board may reject all the bids or accept the lowest and best bid, provided that the successful bidder meets the requirements of section 153.54 of the Revised Code when the contract is for the construction, demolition, alteration, repair, or reconstruction of an improvement.

(B) The boards of township trustees of any two or more townships, or the legislative authorities of any two or more political subdivisions, or any combination of these, may, through joint action, unite in the joint purchase, lease, lease with an option to purchase, maintenance, use, and operation of fire-

fighting equipment, or for any other purpose designated in sections 505.37 to 505.42 of the Revised Code, and may prorate the expense of the joint action on any terms that are mutually agreed upon.

(C) The board of township trustees of any township may, by resolution, whenever it is expedient and necessary to guard against the occurrence of fires or to protect the property and lives of the citizens against damages resulting from their occurrence, create a fire district of any portions of the township that it considers necessary. The board may purchase, lease, lease with an option to purchase, or otherwise provide any fire apparatus, appliances, materials, fire hydrants, and water supply for fire-fighting purposes, or may contract for the fire protection for the fire district as provided in section 9.60 of the Revised Code. The fire district so created shall be given a separate name by which it shall be known.

Additional unincorporated territory of the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition. A municipal corporation that is within or adjoining the township may be added to a fire district upon the board's adoption of a resolution authorizing the addition and the municipal legislative authority's adoption of a resolution or ordinance requesting the addition of the municipal corporation to the fire district.

If the township fire district imposes a tax, additional unincorporated territory of the township or a municipal corporation that is within or adjoining the township shall become part of the fire district only after all of the following have occurred:

(1) Adoption by the board of township trustees of a resolution approving the expansion of the territorial limits of the district and, if the resolution proposes to add a municipal corporation, adoption by the municipal legislative authority of a resolution or ordinance requesting the addition of the municipal corporation to the district;

(2) Adoption by the board of township trustees of a resolution recommending the extension of the tax to the additional territory;

(3) Approval of the tax by the electors of the territory proposed for addition to the district.

Each resolution of the board adopted under division (C)(2) of this section shall state the name of the fire district, a description of the territory to be added, and the rate and termination date of the tax, which shall be the rate and termination date of the tax currently in effect in the fire district.

The board of trustees shall certify each resolution adopted under division (C)(2) of this section to the board of elections in accordance with section 5705.19 of the Revised Code. The election required under division (C)(3) of this section shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read:

"Shall the territory within (description of the proposed territory to be added) be added to (name) fire district, and a property tax at a rate of taxation not exceeding (here insert tax rate) be in effect for (here insert the number of years the tax is to be in effect or "a continuing period of time," as applicable)?"

If the question is approved by at least a majority of the electors voting on it, the joinder shall be effective as of the first day of July of the year following approval, and on that date, the township fire district tax shall be extended to the taxable property within the territory that has been added. If the

territory that has been added is a municipal corporation and if it had adopted a tax levy for fire purposes, the levy is terminated on the effective date of the joinder.

Any municipal corporation may withdraw from a township fire district created under division (C) of this section by the adoption by the municipal legislative authority of a resolution or ordinance ordering withdrawal. On the first day of July of the year following the adoption of the resolution or ordinance of withdrawal, the municipal corporation withdrawing ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in the withdrawing municipal corporation terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

Upon the withdrawal of any municipal corporation from a township fire district created under division (C) of this section, the county auditor shall ascertain, apportion, and order a division of the funds on hand, moneys and taxes in the process of collection except for taxes levied for the payment of indebtedness, credits, and real and personal property, either in money or in kind, on the basis of the valuation of the respective tax duplicates of the withdrawing municipal corporation and the remaining territory of the fire district.

A board of township trustees may remove unincorporated territory of the township from the fire district upon the adoption of a resolution authorizing the removal. On the first day of July of the year following the adoption of the resolution, the unincorporated township territory described in the resolution ceases to be a part of the district, and the power of the fire district to levy a tax upon taxable property in that territory terminates, except that the fire district shall continue to levy and collect taxes for the payment of indebtedness within the territory of the fire district as it was composed at the time the indebtedness was incurred.

(D) The board of township trustees of any township, the board of fire district trustees of a fire district created under section 505.371 of the Revised Code, or the legislative authority of any municipal corporation may purchase, lease, or lease with an option to purchase the necessary fire-fighting equipment, buildings, and sites for the township, fire district, or municipal corporation and issue securities for that purpose with maximum maturities as provided in section 133.20 of the Revised Code. The board of township trustees, board of fire district trustees, or legislative authority may also construct any buildings necessary to house fire-fighting equipment and issue securities for that purpose with maximum maturities as provided in section 133.20 of the Revised Code.

The board of township trustees, board of fire district trustees, or legislative authority may issue the securities of the township, fire district, or municipal corporation, signed by the board or designated officer of the municipal corporation and attested by the signature of the township fiscal officer, fire district clerk, or municipal clerk, covering any deferred payments and payable at the times provided, which securities shall bear interest not to exceed the rate determined as provided in section 9.95 of the Revised Code, and shall not be subject to Chapter 133. of the Revised Code. The legislation authorizing the issuance of the securities shall provide for levying and collecting annually by taxation, amounts sufficient to pay the interest on and principal of the securities. The securities shall be offered for sale on the open market or given to the vendor or contractor if no sale is made.

Section 505.40 of the Revised Code does not apply to any securities issued, or any lease with an option to purchase entered into, in accordance with this division.

(E) A board of township trustees of any township or a board of fire district trustees of a fire district created under section 505.371 of the Revised Code may purchase a policy or policies of liability insurance for the officers, employees, and appointees of the fire department, fire district, or joint fire district governed by the board that includes personal injury liability coverage as to the civil liability of those officers, employees, and appointees for false arrest, detention, or imprisonment, malicious prosecution, libel, slander, defamation or other violation of the right of privacy, wrongful entry or eviction, or other invasion of the right of private occupancy, arising out of the performance of their duties.

When a board of township trustees cannot, by deed of gift or by purchase and upon terms it considers reasonable, procure land for a township fire station that is needed in order to respond in reasonable time to a fire or medical emergency, the board may appropriate land for that purpose under sections 163.01 to 163.22 of the Revised Code. If it is necessary to acquire additional adjacent land for enlarging or improving the fire station, the board may purchase, appropriate, or accept a deed of gift for the land for these purposes.

(F) As used in this division, "emergency medical service organization" has the same meaning as in section 4766.01 of the Revised Code.

A board of township trustees, by adoption of an appropriate resolution, may choose to have the state board of emergency medical, fire, and transportation services license any emergency medical service organization it operates. If the board adopts such a resolution, Chapter 4766. of the Revised Code, except for sections 4766.06 and 4766.99 of the Revised Code, applies to the organization. All rules adopted under the applicable sections of that chapter also apply to the organization. A board of township trustees, by adoption of an appropriate resolution, may remove its emergency medical service organization from the jurisdiction of the state board of emergency medical, fire, and transportation services.

Amended by OHIO Acts of the 130th General Assembly File No. 7, HB 51, §101.01, eff. 7/1/2013.

Effective Date: 03-09-2004; 12-20-2005; 2007 HB119 09-29-2007; 2008 SB268 09-12-2008

5705.03 Authorization to levy taxes - collection.

(A) The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47 of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.

(B)

(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or a replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax. If a subdivision is located in more than one county, the county auditor shall obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county. The county auditor shall issue the certification to the taxing authority within ten days after receiving the taxing authority's resolution or ordinance requesting it.

(2) When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.

(3) If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor. The county board of elections shall not submit the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board. Before requesting a taxing authority to submit a tax levy, any agency or authority authorized to make that request shall first request the certification from the county auditor provided under this section.

(4) This division is supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the ten-mill limitation, including sections 133.18 and 5705.195 of the Revised Code.

(C) All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county

in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be deposited in its treasury to the credit of the appropriate fund.

Effective Date: 12-21-1998; 03-30-2006

5705.19 Resolution relative to tax levy in excess of ten-mill limitation.

This section does not apply to school districts, county school financing districts, or lake facilities authorities.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted 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 for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For the purpose of 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 payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, 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;

(J) For the purpose of providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, or the payment of salaries of permanent or part-time police, communications, or administrative personnel to

operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or the provision of ambulance or emergency medical services operated by a police department;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that the procedure for such levies shall be as provided in section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse, including yard waste;

(W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 128.01 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold, and the operating expenses of, agricultural fairs operated by a county agricultural society or independent agricultural society under Chapter 1711. of the Revised Code. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 1515. of the Revised Code;

(WW) For the OSU extension fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation;

(YY) For any combination of the purposes specified in divisions (NN), (VV), and (WW) of this section. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this

section 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.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (T), (Z), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code,

by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election

When the electors of a subdivision or, in the case of a qualifying library levy for the support of a library association or private corporation, the electors of the association library district, have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No.166, HB 360, §1, eff. 12/20/2012.

Amended by 129th General Assembly File No.140, SB 321, §1, eff. 6/26/2012, op. 1/1/2013.

Amended by 129th General Assembly File No.127, HB 487, §101.01, eff. 9/10/2012.

Amended by 129th General Assembly File No.28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No.31, HB 313, §1, eff. 7/7/2010.

Amended by 128th General Assembly File No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 03-11-2004; 03-30-2006; 2008 HB385 09-12-2008; 2008 SB353 04-07-2009

Related Legislative Provision: See 131st General Assembly File No. TBD, HB 64, §812.70.

Chapter

2

Tax Levies

Jon Husted
Ohio Secretary of State 

Ohio Ballot Questions and Issues Handbook

GENERALLY

The authority for levying taxes on real property, and for limiting or exempting certain types of real property from taxation, is set forth in Section 2 of Article XII of the Ohio Constitution:

"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. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without



limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law."

Provisions throughout the Revised Code authorize taxing authorities of various political subdivisions to levy taxes for specific purposes and for specified periods of time. Appendix A contains the statutory authority for many of the subdivisions' taxing powers and purposes.

A. Ten-mill limitation

The language of Article XII, Section 2 provides the general authority for levying property taxes up to and including 10 mills – that is, "one per cent" of the property's "true value in money" – without prior approval of the electorate. This chapter focuses on the levies that would exceed the "ten-mill limitation" and therefore be submitted to, and approved by, a vote of the people before they could be collected.

R.C. 5705.02 sets forth the statutory definition of the ten-mill limitation as follows:

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. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.





B. Uniform tax levy laws

Although there are provisions throughout the Revised Code authorizing elections on property tax questions for particular purposes, the tax levies most frequently certified to the ballot are provided for in the uniform tax levy law contained in Revised Code Chapter 5705.

1. Definitions

R.C. 5705.01 sets forth the definitions of certain terms used in Revised Code Chapter 5705, including the following, but not limited to:

- a. subdivision
- b. municipal corporation
- c. taxing authority or bond issuing authority
- d. fiscal officer
- e. permanent improvement or improvement
- f. current operating expenses and current expense
- g. debt charges
- h. taxing unit
- i. district authority
- j. tax list and tax duplicate
- k. property (as applied to a tax levy)
- l. association library district
- m. library district
- n. qualifying library levy
- o. lake facilities authority

Using these terms as they are defined in law promotes both compliance with the governing legal provisions and mutual understanding among election officials, taxing authorities and their legal counsel regarding the questions and issues to be submitted to the voters. Election officials must



apply these statutory definitions when preparing ballot language for resolutions or ordinances certifying tax issues to the ballot.

2. *Statutory taxing authorities*

The taxing authority of any political subdivision may issue tax levies authorized in excess of the 10-mill limitation by a vote of the people under the applicable law, irrespective of all limitations on tax rate. The entity designated as the taxing authority for most political subdivisions is found in R.C. 5705.01(C); for example, the board of county commissioners is designated as the taxing authority for the county. Other political subdivisions are designated a "taxing authority" for specific sections of R.C. Chapter 5705. For example, a board of education may be designated the taxing authority for a particular public library.

C. Special elections

1. *Definition*

The term "special election" is defined in Ohio's election law to mean "any election other than those elections defined in other divisions of this section."¹ The "other elections" defined in R.C. 3501.01 are the "general election," "regular municipal election," "regular state election," "primary election" and "presidential primary election."

Because all "other elections" involve the nomination or election of candidates, the term "special election" generally has come to be accepted to mean an election on questions and issues. However, some provisions of Ohio's election laws use the term "special election" in a different context; for example, the provisions relating to special elections held to fill vacancies in congressional nominations² and offices.³

2. *Dates of election*

The statutory guidelines for when to hold special elections are set forth in

¹ R.C. 3501.01(D).

² R.C. 3513.301.

³ R.C. 3521.02, 3521.03.



R.C. 3501.01(D) and R.C. 3501.02(E). Those statutes, read together, provide that special elections may be held on the following dates:

- In non-presidential primary years, on the first Tuesday after the first Monday in February, May, August, and November, or on the day authorized by a particular municipal or county charter for the holding of a primary election.
- In a presidential primary year, on the first Tuesday after the first Monday in March (the day of the presidential primary election), August and November. No special election shall be held in February or May of a presidential primary year, except as authorized by a municipal or county charter.

TYPES OF REAL PROPERTY TAX LEVIES

Ohio law provides generally for three classifications of tax levies on real property:

A. Additional levy

The taxing authority may seek approval of a tax that the taxing authority is authorized to levy and which is not already being collected. This tax will be collected in addition to other existing taxes.

Absent legal authority providing otherwise, an additional levy must be submitted to voters at a general election.⁴ However, an additional levy authorized by R.C. 5705.191 may be submitted at a general, primary, or special election on the day specified in the resolution.⁵

⁴ R.C. 5705.25.

⁵ Please refer to 3. Special procedures for certain levies in subdivisions other than school districts on page 2-12.





B. Renewal levy

A taxing authority may propose to renew all or a portion of an existing tax that the taxing authority is authorized to levy. The tax will continue to be levied based on the same rate of real property valuation.

Generally, a renewal levy may be submitted to the voters at the general election held in the last year the tax to be renewed may be extended on the real and public utility property tax list and duplicate (the last tax year) or at any election in the ensuing year (the last collection year).⁶ Exceptions to the general rule limiting when a renewal levy may be placed on the ballot include resolutions to:

- Renew and increase, or renew part of, an existing levy that was imposed under R.C. 5705.191 to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals.
- Renew two or more existing levies imposed by school districts under R.C. 5705.21. In this case, the question shall be submitted on the date of the general or primary election held during the last year that at least one of the levies to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held during the ensuing year. For purposes of this section, a levy shall be considered to be an existing levy through the year following the last year it can be placed on that tax list and duplicate.

C. Replacement levy⁷

1. Generally

A taxing authority may propose to replace all or a portion of an existing tax that it is authorized to levy, with the exception of a school district

⁶ R.C. 5705.25.

⁷ R.C. 5705.192.





emergency levy under R.C. 5705.194 to 5705.197. A replacement levy is a levy for the same purpose as an existing levy but with a different collection rate than the levy it replaces. For the purpose of R.C. 5705.192 only, a township board of park commissioners is considered a "taxing authority."

The taxing authority may propose to replace all or a portion of an existing levy:

- At the collection rate at which it is authorized to be levied (replacement).
- At a lesser rate (replacement and decrease).
- At an increased rate (replacement and increase).

Except as otherwise provided in R.C. 5705.192(B), a replacement levy is limited to the purpose of the existing levy and shall appear separately on the ballot from (and shall not be conjoined with) the renewal of any other levy. In the case of an existing school district levy imposed under R.C. 5705.21 for the purpose specified in R.C. 5705.19(F), or in the case of an existing school district levy imposed under R.C. 5705.217 for the acquisition, construction, enlargement, renovation, and financing of permanent improvements, the replacement for that existing levy may be for the same purpose or for the purpose of general permanent improvements as defined in R.C. 5705.21.

2. *Basic requirements:*

- a. The proposed replacement levy must be for the same purpose as the original levy.
- b. The proposed levy must be called a replacement levy and designated as such on the ballot.
- c. The resolution and ballot must state whether the levy is an increase, a decrease, or at the same rate as the original levy. The length of time must also be stated.



- d. A replacement levy may combine two existing levies so long as both are for the same purpose and expire the same tax year or both are for a continuing period of time.
 - e. Ballot language is prescribed in R.C. 5705.192.⁸
3. *Timing of levy*
- a. For replacement of a levy for a fixed term of years, the election must be either the general election in the last tax year, or any election in the last collection year.
 - b. For replacement of a levy for a continuing period of time, the election can be any time after the year the levy was originally approved, but there may be only one such election per calendar year. Failure of the voters to approve a replacement of a levy imposed for a continuing period of time does not terminate the existing continuing levy.

LENGTH OF LEVY

The time that taxes may be levied will vary, depending on the governing law. Some taxes may be levied only for a fixed number of years; others may be levied for either a fixed number of years or a continuing period of time. Elections officials must consult the statutes governing each tax levy that is certified to the ballot to ensure that the taxing authority's resolution incorporates the correct length of time for levying the tax.

Most levies under R.C. 5705.19 may be levied for a period of up to five years. Levies under R.C. 5705.194 can be levied for a period of ten years or less. Levies under R.C. 5705.21 may be levied for a period up to five years, except for current expenses or general ongoing permanent improvements, in which case the tax may be levied for a continuing period of time.

⁸ See Appendix B for suggested ballot language.



PROCEDURE - REQUIREMENTS

The procedural steps required to submit to the voters a question about levying a property tax vary according to the purpose of the levy and the type of subdivision.

A. Basic procedural requirements

R.C. 5705.03(B) sets forth the basic procedural requirements to be followed by a taxing authority that wants to levy a tax outside the 10-mill limitation for any purpose authorized by the Revised Code.

As illustrated below, the order in which a taxing authority completes the statutory procedural requirements for having a tax levy placed on the ballot is "resolution – certification – resolution – certification:"

1. *RESOLUTION of Necessity adopted by the Taxing Authority and certified to County Auditor*

The taxing authority must adopt a resolution or ordinance declaring it necessary to levy a tax outside the 10-mill limitation and requesting the county auditor to certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills.

The resolution or ordinance of necessity must include all the following:

- The purpose of the tax.
- Whether the tax is an additional levy, a renewal of an existing tax or a replacement of an existing tax.
- The specific section of the Revised Code authorizing submission of the question of the tax for a particular purpose; e.g., R.C. 5705.19(A) for current expenses, R.C. 5705.194 for an emergency levy, etc.



Note: R.C. 5705.03 does not authorize the levying of a tax for a particular purpose. Rather, R.C. 5705.03 sets forth the procedure by which a taxing authority has a tax levy placed on the ballot.

The taxing authority must certify its resolution of necessity or ordinance to the county auditor.

2. *CERTIFICATION by the County Auditor*

The county auditor must issue the certification to the taxing authority within 10 days after receiving the taxing authority's resolution or ordinance requesting it. If the subdivision is located in more than one county, the county auditor must obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county.

The procedures of R.C. 5705.03 are supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the 10-mill limitation, including R.C. 133.18 (issuance of general obligation bonds) and R.C. 5705.195 (school levies).

3. *RESOLUTION to Proceed of the Taxing Authority*

If, after receiving the certification from the county auditor, the taxing authority decides to submit the question of the tax to the voters, the taxing authority shall adopt a resolution or ordinance stating its intention to proceed with the ballot issue. The resolution to proceed shall include the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor.

4. *CERTIFICATION by the Taxing Authority to the Board of Elections*

The taxing authority shall certify its resolution or ordinance to proceed to the proper board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question. Most certifications to proceed will be governed by the time

and manner provisions of R.C. 3501.02(F), which requires that any question or issue to be voted upon at an election shall be certified to the board of elections not later than 4 p.m. of the 90th day before the day of the election.⁹

A copy of the county auditor's certification must accompany the certified resolution to proceed when that resolution is filed with the board of elections. A board of elections is specifically prohibited from submitting the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board.¹⁰

B. Taxing authorities other than school districts, county school financing districts and lake facility authorities¹¹

1. *Purposes*

Many of the purposes for which a taxing authority other than a school district, county school financing district or lake facility authority may levy a tax are set forth in R.C. 5705.19.

2. *Resolution to proceed¹²*

After complying with R.C. 5705.03, the taxing authority shall adopt a resolution to proceed by a two-thirds vote of all its members and certify that resolution to the board of elections not later than 4 p.m. of the 90th day before the election upon which it will be voted. The resolution must conform to the following requirements:

- a. Be confined to one of the purposes, to which all revenue from the levy will be applied.

⁹ *State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections* (Ohio, 01-11-2013) 2013-Ohio-36.

¹⁰ R.C. 5705.03.

¹¹ See C under this heading for school districts and county financing districts.

¹² R.C. 5705.03, R.C. 5705.19.

- b. Declare that the amount of taxes which may be raised within the 10-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and it is necessary to levy a tax in excess of the limitation.
 - c. State the purpose of the levy, the proposed rate in mills, the number of years during which the levy will be in effect, and the commencing tax year.
 - d. A majority vote is required for passage.
 - e. Although not required, it is recommended that the resolution to proceed set forth the section of the Revised Code that authorizes the tax. This information is necessary for the board of elections to prepare correct ballot language and format as prescribed in R.C. 5705.25.
3. Special procedures for certain levies in subdivisions other than school districts

R.C. 5705.191 allows subdivisions other than school districts and county school financing districts to request submission of a tax levy under special circumstances. The levy may be for any of the purposes authorized by R.C. 5705.19 or to supplement the general fund for the purpose of making appropriations for public assistance, human or social services, relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals.

a. *Resolution*

The resolution to proceed must be adopted by a two-thirds vote of the members of the taxing authority of the subdivision and certified to the board of elections of the proper county no later than 4 p.m. of the 90th day before the election. The resolution must declare the amount of taxes which may be raised within the 10-mill limitation by levies on the current tax duplicate is insufficient, state the purpose, and declare that an additional tax in excess of the limitation is necessary. The resolution cannot call for a levy on the current tax list unless the election is held prior to, or at, the general election.



b. *Election*

- i. The election may be held at a general, primary, or special election on the day specified in the resolution.
- ii. Only one special election for a levy authorized by R.C. 5705.191 may be held in any calendar year, and a special election may be held on the same day as a primary election.
- iii. The election must be conducted in the manner provided by R.C. 5705.25.
- iv. Levies authorized by R.C. 5705.191 require a majority vote for passage.

4. *Timing of election*¹³

A board of elections that timely receives the certified copy of a proper resolution must make the necessary arrangements for submitting the question to the voters of the subdivision.

Questions of additional taxes submitted to the voters under the authority of R.C. 5705.19 and 5705.191 will be placed on the ballot at the next general election or at times other than a general election as permitted by R.C. 5705.191.

C. School districts

1. *Regular (non-emergency) levy*¹⁴

- a. A board of education may submit a tax levy at a special, primary or general election by a vote of two-thirds of its members. The levy must be for a single purpose specified in divisions (A), (D), (F), (H) or (DD) of R.C. 5705.19; for general permanent improvements; for the purpose of operating a cultural center; for the purpose of providing for school safety and security; or for the purpose of providing education technology.

¹³ R.C. 3501.02, R.C. 5705.25.

¹⁴ R.C. 5705.21(A).



- b. The resolution must specify the date of the election, which may not be earlier than 90 days after adoption and certification of the resolution.
 - c. The election may be held during a general, primary, or special election, but cannot be submitted to the voters more than three times in any calendar year.¹⁵
 - d. The number of years the levy is to be in effect must be specified and cannot exceed five unless the purpose of the levy is for current operating expenses or general permanent improvements, in which case the levy may also be for a continuing period of time.
 - e. The amount of the increase in tax must be specified.
2. *Municipal school district and partnering community schools*¹⁶
- a. The board of education of a municipal school district may levy a tax for the purpose of paying the current expenses of the district and of partnering community schools.
 - b. The question of the additional tax levy shall be submitted to the electors of the school district at a special election on a day specified in the resolution.
 - c. The resolution shall state the purpose of the levy, the rate of the tax expressed in mills per dollar of taxable value, the number of such mills to be levied for the current expenses of the partnering community schools and the number of such mills to be levied for the current expenses of the school district, the number of years the tax will be levied, and the first year the tax will be levied.
 - d. The number of years the tax may be levied may be any number not exceeding 10 years, or for a continuing period of time.

¹⁵ R.C. 5705.214.

¹⁶ R.C. 5705.21(B).

- e. The form of the ballot for this ballot issue is set forth in R.C. 5705.21(B)(2).
 - f. The notice of election shall state the number of the mills to be levied for the current expenses of partnering community schools and the number of the mills to be levied for the current expenses of the municipal school district.
 - g. In the case of a resolution adopted under R.C. 5705.21(B), a levy for a continuing period of time may be reduced pursuant to R.C. 5705.261.
3. *Emergency levy*¹⁷
- R.C. 5705.194 permits a board of education to submit a tax levy in excess of the 10-mill limitation if the total revenue produced by authorized tax levies, plus state and federal assistance, will be insufficient to provide for the emergency requirements of the school district or to avoid an operating deficit. The resolution must specify a single purpose; the purposes are set forth in R.C. 5705.194.

The resolution may be adopted at any time but a resolution under this section may not be submitted more than three times in one calendar year.¹⁸ The number of years in which the levy will be collected may not exceed 10.

A school district may renew an existing emergency levy. A single levy may be placed on the ballot during the last year it may be extended on the tax list and duplicate (the last "tax year"). The question may not appear on a February or August special election ballot during that year, but may appear at any election in the ensuing year (the last "collection year").

Two or more existing levies for the same purpose may be included in a renewal levy. The combined levies may appear on the ballot at a primary or general election during the last year one of the levies being renewed is

¹⁷ R.C. 5705.194.

¹⁸ R.C. 5705.214.

in its last year of extension on the tax list and duplicate or at any election in the ensuing year. The purpose of a renewal levy combining two or more levies may be either to provide for emergency requirements or to avoid an operating deficit, regardless of the original purpose.

The resolution must specify the date of holding the election, which cannot be earlier than 80 days after the adoption and certification of the resolution to the county auditor. The resolution must state the amount of money necessary for the specified purpose, the millage to be imposed, number of years the tax will be imposed and the date of the election. If a renewal levy, the resolution must also state if the levy is to renew all or portion of the existing levy or an increase or renewing multiple levies.

R.C. 5705.197 prescribes the form of the ballot. The purpose must be printed in bold face type, at least twice the size of the other text.

D. Special duties of board of elections

1. *Confirm the year in which a levy expires*

While it is the responsibility of the taxing authority to know the last year a current levy appears on the tax duplicate, it is recommended that a board of elections obtain the county auditor's list of tax levies in the final tax year and last collection year.

2. *Publication*

The notice requirements for tax levy questions vary depending on the code sections under which they are submitted.¹⁹

a. In general, the provisions of R.C. 5705.25(A) will apply. This section requires the board of elections to publish notice of the election as follows:

- i. In a newspaper of general circulation in the subdivision once a week for two consecutive weeks, or as provided in R.C. 7.16, prior to the election.

¹⁹ See Appendix A.



- ii. If the board of elections operates and maintains a website, the board must post notice of the election on its website for 30 days before the election.

The notice must state the purpose, the proposed increase in rate (expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation), the number of years during which the increase will be in effect, first month and year in which the tax will be levied, and the time and place of the election.

- b. If the specific section authorizing the tax levy election is silent concerning public notification, R.C. 3501.03 applies. This section requires the board of elections to give public notice at least 10 days before the time for holding an election. The public may be notified by a proclamation, posted in a conspicuous place in the courthouse or city hall, or in a newspaper published in the county. If no newspaper is published in the county, then the proclamation must be published in any newspaper of general circulation within the county.





DECREASE OF INCREASED RATE OF LEVY²⁰

A. Levies subject to reduction

Any levy approved by the voters for a continuing period of time — and only levies approved for a continuing period of time — may be reduced (but not repealed or eliminated)²¹ in accordance with the provisions of R.C. 5705.261.

B. Petition

The question of decrease of an increased rate of a continuing period of time levy may be initiated by filing a petition (Ohio Secretary of State *Form 6-R*) with the board of elections not later than 4 p.m. of the 90th day before the general election in any year.²²

1. The petition must be signed by at least 10 percent of the total votes cast at the last gubernatorial general election in the subdivision.
2. The petition must state the amount of the proposed decrease in the rate.
3. Only one such petition may be filed during each five-year period following the election at which the voters approved the increased rate.
4. The board of elections has the duty to determine the validity of the petition pursuant to R.C. 3501.38.

C. Election

After determining that the petition is valid, the board of elections must submit the question of reduction in rate to the voters of the subdivision at the next general election.

1. The election must be conducted, canvassed and certified in the same manner as a regular subdivision election.

²⁰ R.C. 5705.261.

²¹ *State ex rel. Choices for South-Western City Schools v. Anthony* (Ohio, 10-10-2005) 108 Ohio St.3d 1, 2005-Ohio-5362. DECISION: Writ denied.

²² See Filing fees in Chapter 1.





2. Notice of the election must be published as follows:
 - a. In a newspaper of general circulation in the district once a week for two consecutive weeks, or as provided in R.C. 7.16, prior to the election.
 - b. If the board of elections operates and maintains a website, the board must post notice of the election on its website for 30 days before the election.

The notice must state the purpose of the special election, the amount of the proposed decrease in rate, and the time and place of the election.

3. The form of the ballot is prescribed by the Secretary of State.²³
4. A majority affirmative vote is required for passage.
5. The board of elections must certify the results of the election to the taxing authority immediately after the official canvass.

BALLOTS

The general form of the tax levy ballots for levies authorized in the uniform tax levy law is prescribed in R.C. 5705.25.²⁴

A. Title

The ballot must contain a title that briefly describes of the issue, such as "Proposed Tax Levy (Additional)," and contains a brief statement of the percentage of affirmative votes necessary for passage, such as "A majority vote is necessary for passage."²⁵

²³ See Appendix B for suggested ballot language.

²⁴ See Appendix B for suggested ballot language.

²⁵ R.C. 3505.06(D).





B. Type of tax

The ballot must state whether the tax is an additional tax, a renewal, a renewal and increase, a renewal and reduction, a replacement, a replacement and increase, or a replacement and reduction. The appropriate amounts must be shown in each case.

C. Ballot language

The full text of the proposed tax levy need not appear on the ballot; the board of elections may use a condensed text that will properly describe the tax levy. However, if other than a full text is used, the full text of the tax levy, together with the percentage of affirmative votes necessary for passage, shall be posted in each polling place in some spot that is easily accessible to the voters.²⁶

D. Separate propositions

Questions covered by resolutions initiated in accordance with the requirements of the various sections of R.C. Chapter 5705 must be submitted as separate propositions.

1. More than one question may be submitted at the same election.
2. Questions may be printed on the same ballot with any other proposition submitted at the same election, but not on the ballot for the election of officers.
3. If the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot must state this and not set forth a specified number of years for the levy.

²⁶ R.C. 3505.06(E).

