February 20, 2007

The Honorable Dean Holman
Medina County Prosecuting Attorney
72 Public Square
Medina, Ohio 44256

SYLLABUS: 2007-002

1. A board of county commissioners may propose to the electors of the county a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only.

2. A board of county commissioners proposing to the electors a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only may not, in the resolution creating the community improvements board to administer the funds generated by the sales tax, restrict the authority of the community improvements board by defining what shall be considered a school district, how much shall go to each district, or what shall be considered a permanent improvement that must be approved if within the monetary limits established.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
MARC DANN, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

February 20, 2007

OPINION NO. 2007-002

The Honorable Dean Holman
Medina County Prosecuting Attorney
72 Public Square
Medina, Ohio 44256

Dear Prosecutor Holman:

We have received your request for an opinion pertaining to a proposed sales tax levy in Medina County. You have asked the following questions:

1. Can a Board of County Commissioners propose a levy to the voters under ORC 5739.026(A)(4) limited to permanent improvements for school districts only?

2. If the answer to one is yes, can a Board of County Commissioners further restrict the authority of a Community Improvements Board set up to administer the funds generated by such a limited tax, in the resolution creating the Community Improvements Board, by defining what shall be considered a school district, how much shall go to each district and what shall be considered a permanent improvement that must be approved if within the monetary limits established?

For the reasons discussed below, we conclude that a board of county commissioners may propose to the electors of the county a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only. We conclude, further, that a board of county commissioners proposing such a sales tax levy may not, in the resolution creating the community improvements board to administer the funds generated by the sales tax, restrict the authority of the community improvements board by defining what shall be considered a school district, how much shall go to each district, or what shall be considered a permanent improvement that must be approved if within the monetary limits established.

Sales Tax Under R.C. 5739.026(A)(4)

Your questions pertain to R.C. 5739.026, which authorizes a board of county commissioners to levy a sales tax of one-fourth or one-half of one per cent on retail sales (except sales of watercraft, outboard motors, and motor vehicles) to pay the expenses of administering the tax and for one or more of several purposes listed in the statute.[1] The proposal in question is to levy a tax under division (A)(4), which sets forth the following purpose:

> (4) To provide additional revenue for *permanent improvements within the county to be distributed by the community improvements board* in accordance with section 307.283 [307.28.3] and to pay principal, interest, and premium on bonds issued under section 307.284 [307.28.4] of the Revised Code. (Emphasis added.)

A tax levied under division (A)(4) thus is to be distributed by a community improvements board and used for permanent improvements within the county.

A sales tax levy under R.C. 5739.026 is initiated by a resolution of the board of county commissioners. However, a resolution levying a tax for the purpose set forth in division (A)(4) cannot go into effect until it is submitted to the electors of the county and approved by a majority of the electors voting on the question of the tax. R.C. 5739.026(A), (D)(1). The resolution must state the rate and purpose of the tax and the period for which it is to be levied or that it is for a continuing period of time. R.C. 5739.026(D)(1).[2]

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[1] Under Ohio law, a sales tax is always accompanied by a use tax for the same purposes. *See, e.g.*, 2006 Op. Att'y Gen. No. 2006-028, at 2-251. In the case of a sales tax under R.C. 5739.026, the applicable use tax provisions appear in R.C. 5741.023. Because you have not asked about the use tax provisions, this opinion does not address them.

[2] The adoption of a voted tax levy requires both a resolution levying the tax and ballot language submitting the question to the electorate. As discussed in 2006 Op. Att'y Gen. No. 2006-028, at 2-254 to 2-255, because R.C. 5739.026 does not prescribe ballot language, the ballot language is prepared, certified, and approved by the board of elections under R.C. 3501.11(V) and R.C. 3505.06(E), and approved by the Secretary of State under R.C. 3501.05(J). If the full text of the resolution does not appear on the ballot, the full text must be posted in each polling place. R.C. 3505.06(E). The language of the resolution and the language of the ballot need not be identical but must be consistent. *See* 2006 Op. Att'y Gen. No. 2006-028, at 2-260 n.11. Written notice of the levy question must be given to the Tax Commissioner, who provides notice of a tax change upon certification of the results of the election. R.C. 5739.026(D)(1), (G). In addressing your questions, we discuss the board of county commissioners' resolution levying the tax, with the understanding that the ballot language will be consistent with that resolution.

Before adopting a resolution levying a tax under R.C. 5739.026(A)(4), the board of county commissioners must adopt a resolution creating a community improvements board. R.C. 5739.026(B).[3] A community improvements board consists of nine members. Three members (of whom not more than two may be members of the same political party) are appointed by the mayor of the municipal corporation with the greatest population residing in the county, subject to the approval of the municipality's legislative authority. Six members (of whom not more than three may be members of the same political party) are appointed by the board of county commissioners. Of the members appointed by the board of county commissioners, one must be the chief executive of a municipality in the county other than the municipality with the greatest population and one must be a township trustee of a township in the county. A third must be one of the following: chief executive of a municipality other than the municipality with the greatest population, township trustee, representative of a major business trade association located in the county, or representative of a labor organization located in the county. The members serve for three-year terms. A majority of the membership of the board constitutes a quorum, and no action may be taken without the affirmative vote of a majority of the members. If the tax proposed under R.C. 5739.026 is disapproved by the electors, the community improvements board is dissolved upon certification of the election results. R.C. 307.282.

Moneys received from a sales tax levied under R.C. 5739.026 are deposited in a separate fund, and moneys allocated for the purpose of division (A)(4) are transferred to and disbursed from the community improvements fund in the county treasury. R.C. 5739.211(B). The community improvements board is empowered to award grants of this sales tax revenue to government agencies. R.C. 307.283. A "[g]rant" is "a payment award for the year to a government agency for a permanent improvement project in the amount specified by the community improvements board." R.C. 307.283(A)(3). The term "[g]overnment agency" is defined to include "the county, a political subdivision any part of which is located in the county, or the state." R.C. 307.283(A)(4).[4]

No definition of "political subdivision" appears in R.C. 307.283 or related statutory provisions. It has long been established, however, that school districts are political subdivisions under Ohio law. *See, e.g., City of Cleveland v. Public Library Bd.*, 94 Ohio St. 311, 316, 114 N.E. 247 (1916) (a city and a city school district are "separate and distinct political subdivisions"); R.C. 3313.17 ("[t]he board of education of each school district shall be a body politic and corporate"); R.C. 5705.01(A) (a school district is a subdivision for purposes of R.C. Chapter 5705); 2006 Op. Att'y Gen. No. 2006-050, at 2-478 to 2-479 (school districts are political subdivisions for purposes of R.C. 9.23(F)); 1999 Op. Att'y Gen. No. 99-007, at 2-55

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[3] R.C. 5739.026(B) refers to R.C. 307.283, which sets forth the duties of a community improvements board. The creation of the board is governed by R.C. 307.282.

[4] A permanent improvement undertaken by the state with a grant under R.C. 307.283 must be located within the county. R.C. 307.283(A)(8).

("[t]he sales tax does not apply . . . to sales of services provided by the state or political subdivisions, including school districts"); 1992 Op. Att'y Gen. No. 92-056, at 2-228 ("[m]any sections of the Revised Code recognize school districts as separate political subdivisions distinct from the state").

In its ordinary sense, the term "political subdivision" has been defined as "a limited geographical area of the State, within which a public agency is authorized to exercise some governmental function." 1972 Op. Att'y Gen. No. 72-035, at 2-135; *accord* 2002 Op. Att'y Gen. No. 2002-038, at 2-244; *see also Black's Law Dictionary* 1179 (7th ed. 1999) (defining "political subdivision" as "[a] division of a state that exists primarily to discharge some function of local government"). School districts consist of defined areas within the state, administered by boards of education that carry out the governmental function of providing education to those children eligible to attend their schools. *See, e.g.*, Ohio Const. art. VI, § 2 (the General Assembly shall make provision for "a thorough and efficient system of common schools throughout the state"); R.C. 3311.01 (school districts); R.C. 3313.01-.02 (boards of education); R.C. 3313.17; R.C. 3313.48 (free education for youth of school age within the district); 2006 Op. Att'y Gen. No. 2006-050. Therefore, school districts are political subdivisions within the ordinary meaning of the term and are included as political subdivisions under R.C. 307.283. Hence, a community improvements board is authorized by R.C. 307.283 to award grants to school districts that are located at least in part in the county.

The statutory provisions governing community improvements boards set forth a detailed procedure prescribing the method by which moneys in the community improvements fund (*i.e.*, proceeds of a sales tax under R.C. 5739.026(A)(4)) may be expended. Each year the community improvements board must convene and certify to the board of county commissioners the estimated grant revenue to be transferred to the community improvements fund during the current year, the total amount of grants that may be awarded during the current year, and, with respect to outstanding grant award bonds, the total debt service charges for the current year and each of the ensuing nine years. R.C. 307.283(B).

There are two provisions under which the community improvements board may award grants. Division (C) authorizes the board to make grants that do not exceed the available grant revenue. Under division (C), the community improvements board certifies to the board of county commissioners the project for which a grant is awarded, the amount of the grant, and the government agency to which the grant is to be paid. The board must include a statement instructing the county commissioners with respect to whether and in what proportion or amount the grant is to be reduced or whether the grant is to be paid in full if actual grant revenues for the year are less than the estimated grant revenues for the year. "By a unanimous vote the board of county commissioners may disallow a grant awarded under this division, in which case it shall certify its determination to the community improvements board, and the grant shall not be paid . . . ." R.C. 307.283(C). If a grant is disallowed, it is considered not to have been awarded, and the community improvements board may reconvene for the purpose of awarding grants. R.C. 307.283(F).

Division (D) authorizes the community improvements board, within specified limits, to make grants in excess of the available grant revenue. R.C. 307.283(D). Statutory provisions govern the issuance of bonds. R.C. 307.283(D), (E); R.C. 307.284. As under division (C), the board certifies to the board of county commissioners each project for which a grant is awarded, the amount of the grant, and the government agency to which the grant is to be paid. "The board of county commissioners may disallow a grant awarded under this division, in which case it shall certify its determination to the community improvements board, and the grant shall not be paid . . . ." R.C. 307.283(D).[5] If the board makes a grant under division (D), it must also certify the estimated grant revenue to be transferred to the community improvements fund during each of the nine ensuing years, the estimated total debt service charges for the current year and nine ensuing years on grant award bonds that would need to be issued during the current year to pay the grant, and which (if any) grants under division (B)[6] should not be paid if a grant under division (D) is paid.

Unless a grant is disallowed, the board of county commissioners must pay to each government agency from the county's community improvements fund the amount of that agency's grant award in accordance with the certification of the community improvements board. If the balance in the fund is insufficient to make the payment of any grant in the amount specified in the certification, the board of county commissioners may issue grant award bonds in the amount of the insufficiency and pay the balance of the grant from the bond proceeds. R.C. 307.283(E); R.C. 307.284. If a permanent improvement project has been rejected by a separate vote of the electorate, there must be a subsequent separate vote reversing the prior result before the community improvements board may approve funding for the project. R.C. 307.283(G).

Resolution Limiting the Uses of a Sales Tax Under R.C. 5739.026(A)(4)

Your first question asks if a Board of County Commissioners may propose to the voters a levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only. A board of county commissioners is generally recognized as a creature of statute having only the powers granted by statute, either expressly or by necessary implication. *See Geauga County Bd.*

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[5] The requirement that disallowance of an award be made by a unanimous vote of the board of county commissioners appears in connection with a grant awarded under division (C) of R.C. 307.283 but not in connection with a grant awarded under division (D). It is not clear if the requirement of unanimity in division (C) was intended to be applicable to the disapproval of grants under division (D). *See generally* Ohio Legislative Service Comm'n, *Summary of Enactments January - March 1986*, 148, 155 (Am. Sub. H.B. 583) ("[u]pon certification of grant awards by the CIB [community improvements board], the commissioners must pay the grant to each governmental agency unless actual grant revenues are less than estimated grant revenues, or the commissioners unanimously vote to disallow the grant, in which case the commissioners must certify that action to the CIB, which may reconvene and make an alternative award").

[6] The intent may have been to refer to division (C).

of Comm'rs v. Munn Rd. Sand & Gravel, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993) ("[c]ounties . . . may exercise only those powers affirmatively granted by the General Assembly"); *State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947).[7] Hence, the authority of a board of county commissioners with respect to a resolution enacting a tax levy must be determined by examination of the statutes granting that authority.

As discussed above, the language of division (A)(4) of R.C. 5739.026 authorizes a board of county commissioners to levy a sales tax to "provide additional revenue for permanent improvements within the county to be distributed by the community improvements board in accordance with [R.C. 307.283]," and R.C. 307.283 permits the community improvements board to award grants to school districts. The statutory language does not specify whether the levy may be limited to certain purposes within the statutory authorization.

A determination of this question is significant because the language of the resolution levying a tax defines the purpose for which proceeds of the tax may be expended. Under Ohio law, proceeds of a tax may be expended only for the purpose for which the tax is levied. *See* Ohio Const. art. XII, § 5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); *In re Petition for Transfer of Funds*, 52 Ohio App. 3d 1, 2, 556 N.E.2d 191 (Montgomery County 1988) (Ohio Const. art. XII, § 5 "prevents taxes levied for a specific purpose which the voters approve being used for a purpose the voters did not approve"); 2006 Op. Att'y Gen. No. 2006-028, at 2-253 n.7; 1997 Op. Att'y Gen. No. 97-030, at 2-176 ("[i]t is . . . fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted").

The general question whether the county commissioners may, by resolution, limit a tax levy to specified uses within those authorized by statute was recently addressed in 2006 Op. Att'y Gen. No. 2006-028, in connection with a sales tax under R.C. 5739.021. That opinion noted that there was no express authority to restrict the use of tax revenues to specified purposes within the statutory authorization, but that at least one county had, by resolution, adopted and implemented such restrictions. The opinion then discussed certain opinions of prior Attorneys General finding that some property tax levies must be available for broad uses authorized by statute and may not be restricted by resolution and ballot to more specific uses, but that other property tax levies may be so restricted.[8]

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[7] This opinion does not discuss the authority of a county that has acquired home rule powers pursuant to Ohio Const. art. X, § 1 or has adopted a charter pursuant to Ohio Const. art. X, §§ 3 and 4. *See Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 583 n.2, 621 N.E.2d 696 (1993); 2006 Att'y Gen. No. 2006-052, at 2-520 n.2.

[8] 2006 Op. Att'y Gen. No. 2006-028 states, at 2-252 n.6:

Although R.C. 5739.021 does not expressly authorize a tax levy that restricts the use of sales and use tax revenues to specified purposes within the uses permitted of general revenues of the county, it appears that such restrictions have been imposed in other instances. For example, 2000 Op. Att'y Gen. No. 2000-044 and 1999 Op. Att'y Gen. No. 99-022 addressed a situation in which the authorized purpose of a sales and use tax under R.C. 5739.021 and R.C. 5741.021 was described on the ballot as "CONSTRUCTION, EQUIPPING, AND FURNISHING A NEW JAIL, COURTS AND SHERIFF'S OFFICE FOR JACKSON COUNTY AND PAYING DEBT SERVICE ON BONDS OR NOTES ISSUED FOR SUCH PURPOSES AND PROVIDING REVENUE FOR THE OPERATION OR MAINTENANCE OF SUCH JAIL." 2000 Op. Att'y Gen. No. 2000-044, at 2-265. The ambiguity of this language and possible methods of accounting for the revenues were addressed in 1999 Op. Att'y Gen. No. 99-022, at 2-148, and in 2000 Op. Att'y Gen. No. 2000-004, at 2-266 n.2; *see also* 1981 Op. Att'y Gen. No. 81-035; note 7, *infra.*

We are aware that certain opinions of prior Attorneys General have found that some property tax levies must be available for broad uses authorized by statute and may not be restricted by resolution and ballot to more specific uses, but that other property tax levies may be so restricted. *See* 1990 Op. Att'y Gen. No. 90-069, at 2-292 ("[a] line of Attorney General opinions has taken the position that a levy under R.C. 5705.19(A) must be available for all current expenses of a subdivision and may not be restricted by ballot language to particular uses. Special levies may, however, be restricted by resolution and ballot language to particular uses" (citations omitted)); R.C. 5705.19 (in levying a property tax pursuant to R.C. 5705.19, "[t]he resolution shall be confined to the purpose or purposes described in one division of [R.C. 5705.19], to which the revenue derived therefrom shall be applied"); 1965 Op. Att'y Gen. No. 65-187 (syllabus) ("[w]hen a tax is proposed to be levied under Section 5705.19 (A), Revised Code, the term 'current expenses' must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot"); *see also, e.g.*, 1992 Op. Att'y Gen. No. 92-058, at 2-239 ("[a]lthough the proceeds of a general levy for current expenses must be available for all current expenses of a subdivision, a special levy may be restricted by ballot language to particular uses" (footnote omitted)); 1988 Op. Att'y Gen. No. 88-101, at 2-497 n.1. *See generally* 1990 Op. Att'y Gen. No. 90-069, at 2-292 ("county commissioners are not prohibited from using language in the resolution and on the ballot that provides more specifically than the statutory language the uses for which moneys generated by a levy under R.C. 5705.24 [county property tax levy for children services] may be expended"); 1976 Op. Att'y Gen. No. 76-032 (syllabus, paragraph 2) ("[w]hen a tax levy is submitted to

The common thread running through the numerous sources cited in 2006 Op. Att'y Gen. No. 2006-028 is that the question whether the use of tax proceeds may, by resolution, be restricted to specified uses within those authorized by the statute depends upon the language of the particular statute and the extent to which the language permits the taxing authority to specify uses of tax revenue. In the instant case, the language of R.C. 5739.026(A)(4) does not address the particular uses of tax revenue, but requires only that a community board distribute the revenue in accordance with R.C. 307.283. Thus, the statute does not limit the board of county commissioners' authority to use the resolution levying the sales tax to define the specific uses of the sales tax revenue. Therefore, in the resolution levying the tax, the board of county commissioners may restrict the uses of the tax revenue to any purpose for which the community improvements board may distribute revenue in accordance with R.C. 307.283.[9] *See* 2006 Op. Att'y Gen. No. 2006-028, at 2-252 n.6 (noting that certain sales tax levies adopted under R.C. 5739.021 have restricted the uses of tax proceeds); *see also, e.g.,* 1990 Op. Att'y Gen. No. 90-069, at 2-292 ("county commissioners are not prohibited from using language in the resolution and on the ballot that provides more specifically than the statutory language the uses for which moneys generated by a levy under R.C. 5705.24 [county property tax levy for children services] may be expended").[10]

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the voters pursuant to R.C. 3354.12 the ballot shall state the statutory purpose of the proposal, but need not state the specific anticipated use of the proceeds of the levy"); *accord* 1987 Op. Att'y Gen. No. 87-096, at 2-639. This opinion assumes that the taxes in question were validly adopted and does not address the extent to which the use of taxes levied under R.C. 5739.021 and R.C. 5741.021 may be limited to purposes more narrow than the range of purposes authorized by statute. *See* note 7, *infra.*

[9] We are aware that two counties, acting under R.C. 5739.026(A)(4), have adopted levies limiting the use of tax revenue to certain purposes within those authorized by R.C. 307.283 – in one case to fund a county jail and in another to fund a county hospital.

[10] Because R.C. 5739.026 does not require that the resolution levying a tax be passed by a unanimous vote, this conclusion would permit two members of the board of county commissioners to adopt a resolution imposing spending restrictions that the third member opposes. *See* R.C. 305.08 ("[a] majority of the board [of county commissioners] shall constitute a quorum at any regular or special meeting"); *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 48, 212 N.E.2d 604 (1965) ("[i]n the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur"). Thus, two commissioners could adopt a resolution that would restrict the authority of the community improvements board in this manner, whereas the vote of all three would be required for the unanimous disallowance of particular grants under R.C. 307.283(C). It should be noted, however, that the tax cannot be levied without the approval of the electors.

We conclude, therefore, that a board of county commissioners may, under R.C. 5739.026(A)(4), propose to the voters a levy limited to particular uses for which a community improvements board may distribute revenue under R.C. 307.283. As discussed above, a community improvements board is permitted by R.C. 307.283 to use revenue from a tax levied under R.C. 5739.026(A)(4) to award grants for public improvements to school districts.[11] Therefore, a board of county commissioners may propose to the electors of the county a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only.

Resolution Creating the Community Improvements Board

Your second question asks, if the first question is answered affirmatively, whether the board of county commissioners may further restrict the authority of a community improvements board set up to administer the funds generated by such a limited tax, in the resolution creating the community improvements board, by defining what shall be considered a school district, how much shall go to each district, and what shall be considered a permanent improvement that must be approved if within the monetary limits established. Our review of the relevant statutes indicates that the board of county commissioners is not empowered to further restrict the authority of the community improvements board in this manner.[12]

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[11] It might be argued that the General Assembly, having enacted numerous provisions addressed specifically to the funding of schools, did not intend that a sales tax under R.C. 5739.026(A)(4) be used as a means of school funding. It might be argued, further, that the proposed arrangement is objectionable because it collects sales taxes of the county and distributes them to other political subdivisions (in this case, school districts), rather than using them for county projects. The response to these arguments is that the plain language of R.C. 5739.026(A)(4) and R.C. 307.283 permits these results. R.C. 5739.026(A)(4) authorizes the levy of a sales tax to fund permanent improvements as determined by the community improvements board. R.C. 307.283 authorizes the community improvements board to make grants for permanent improvements to political subdivisions in the county, including school districts. For the proposed arrangement to take effect, it must be adopted by the board of county commissioners, approved by the voters, and administered by the community improvements board, thereby reflecting the determination that the construction of permanent improvements for school districts is a proper purpose for the proceeds of a county sales tax levied under R.C. 5739.026(A)(4). Further, each grant is made by the community improvements board and is subject to disallowance by the board of county commissioners, providing for oversight of each expenditure to make certain that it comports with the purpose of the tax. *See generally City of Cleveland v. Public Library Bd.*, 94 Ohio St. 311, 114 N.E. 247 (1916); 1988 Op. Att'y Gen. No. 88-018.

[12] As a practical matter, it might be possible to include in the resolution levying the tax some of the matters described in your second question. As discussed earlier in this opinion, the terms of the resolution define the purposes for which levy proceeds may be expended and thus

As discussed above, a board of county commissioners has only the powers granted by statute, either expressly or by necessary implication. R.C. 5739.026(B) requires the board of county commissioners to create a community improvements board before levying a tax under division (A)(4), and R.C. 307.282 provides for the board of county commissioners to adopt a resolution creating the county improvements board. Statutory provisions define the manner in which the community improvements board is created and the powers the board is given. *See* R.C. 307.282; R.C. 307.283; R.C. 307.284. As described above, the statutes contain detailed provisions governing the membership of the community improvements board and its responsibility to award grants. The statutes do not grant the board of county commissioners express authority to modify the creation of the community improvements board or to limit the powers granted to the community improvements board under R.C. 307.282, R.C. 307.283, and R.C. 307.284. Further, there is no apparent basis for finding such authority necessary to the exercise of the duties of the board of county commissioners so that the authority must be implied. *See Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875) (statutory powers include only "those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable [public officials] to perform the duties imposed upon them").

As outlined above, a community improvements board is an independent body, separate from the board of county commissioners. As its name indicates, the community improvements board is designed to provide benefits to the community as a whole. Its members are drawn from municipalities and townships and represent various party affiliations and viewpoints. The community improvements board is given responsibility for awarding to government agencies grants for permanent improvement projects, subject only to the disallowance of particular grants by the board of county commissioners under R.C. 307.283(C) or (D).

In the exercise of its powers, the community improvements board is restricted by the provisions of the resolution levying the sales tax under R.C. 5739.026(A)(4). Because, as discussed above, proceeds of a tax may be expended only for the purpose for which the tax is levied, the community improvements board is permitted to expend money only as authorized by the resolution levying the tax. Within the limits imposed by that resolution, however, the community improvements board is free to exercise its powers under R.C. 307.282, R.C. 307.283, and R.C. 307.284 to award grants for permanent improvements to any proper government agency.

The authority of the board of county commissioners to adopt a resolution creating the community improvements board cannot reasonably be read to authorize the board of county commissioners to limit or redefine the powers granted to the community improvements board by the provisions of R.C. 307.282, R.C. 307.283, and R.C. 307.284. It is evident that the

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restrict the actions of the community improvements board. *See, e.g.*, 2006 Op. Att'y Gen. No. 2006-028, at 2-253.

community improvements board is created to remove from the board of county commissioners the authority to select projects to be funded by revenue from a tax under R.C. 5739.026(A)(4) and to place that authority, instead, in an independent body that represents a broader community. To allow the board of county commissioners to limit or redefine the community improvements board's powers in the resolution that creates the board would thwart this legislative intent. The statutory scheme authorizes the board of county commissioners to disallow particular grants, but otherwise permits the community improvements board to exercise discretion in evaluating the merits of various grants for permanent improvements, within the bounds permitted by the resolution levying the tax.

The fact that the board of county commissioners must act unanimously to disallow a grant under R.C. 307.283(C) provides an illustration of the manner in which the board of county commissioners would overstep its authority if it were to use the resolution that creates the community improvements board to impose restrictions upon the community improvements board. The board of county commissioners may enact a resolution creating the community improvements board by the action of a majority of the board, but must act unanimously to disallow a grant under R.C. 307.283(C). *See* note 5, *supra*. Thus, two members of the board of county commissioners might, by resolution, impose upon the community improvements board restrictions with which the third county commissioner disagrees, thereby imposing their wishes upon the community improvements board even though they would not have the unanimous support required to disallow a particular grant. The board of county commissioners has no clear grant of authority to restrict the powers of the community improvements board in this manner, and there is no reasonable basis for finding implied authority to implement this result.

We conclude, accordingly, that the board of county commissioners lacks statutory authority to include in the resolution creating the community improvements board any definitions or conditions that restrict the community improvements board's authority to carry out its responsibilities under R.C. 307.282, R.C. 307.283, and R.C. 307.284 with respect to the selection of projects to be funded with revenue from the tax levied under R.C. 5739.026(A)(4). Therefore, a board of county commissioners proposing to the electors a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only may not, in the resolution creating a community improvements board to administer the funds generated by the sales tax, restrict the authority of the community improvements board by defining what shall be considered a school district, how much shall go to each district, or what shall be considered a permanent improvement that must be approved if within the monetary limits established.

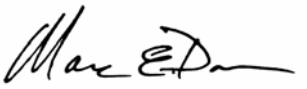
Conclusions

For the reasons discussed above, it is my opinion, and you are advised as follows:

1. A board of county commissioners may propose to the electors of the county a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only.

2. A board of county commissioners proposing to the electors a sales tax levy under R.C. 5739.026(A)(4) limited to permanent improvements for school districts only may not, in the resolution creating the community improvements board to administer the funds generated by the sales tax, restrict the authority of the community improvements board by defining what shall be considered a school district, how much shall go to each district, or what shall be considered a permanent improvement that must be approved if within the monetary limits established.

Respectfully,



MARC DANN
Attorney General