

October 3, 1995

OPINION NO. 95-031

The Honorable Robert L. Herron  
Columbiana County Prosecuting Attorney  
105 South Market Street  
Lisbon, Ohio 44432

Dear Prosecutor Herron:

You have described a situation in which money escheated to the state pursuant to R.C. 2105.06 and the county auditor needs guidance as to how the money should be distributed. R.C. 2105.07 says that the money "shall be applied exclusively to the support of the common schools of the county in which collected."

In determining to whom to distribute funds, we must first answer the question: what does "common schools" mean, as that term is used in R.C. 2105.07? There is no relevant statutory definition, but the term "common schools" has been used in Ohio law for many years and is ordinarily understood to mean "public schools," or schools that are administered by public agencies and maintained from public funds. *See* Ohio Const. art. VI, §§2, 3; 1933 Op. Att'y Gen. No. 1409, vol. II, p. 1290. Precisely which schools are included as common schools under a particular statute depends on the intent of the legislature in enacting that statute. *See* 1933 Op. No. 1409.

In conjunction with this first question, you have also asked whether a variety of publicly-funded entities -- namely, city school districts, exempted village school districts, local school districts, a joint vocational school, a mentally retarded/developmentally disabled (MR|DD) school, and a county board of education (changed by recent legislation to an educational service center<sup>1</sup>) -- are considered "common schools" for purposes of R.C. 2105.07. Under the general definition of "common schools" discussed above, it would appear to be possible to classify educational facilities and operations of any of these entities as "common schools," since each of the entities is a public agency and receives public funds. *See, e.g.,* R.C. 3311.01; R.C. 3317.01, .022-.024, .11, .16; R.C. 5126.05; R.C. 5705.01(C).

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<sup>1</sup> *See* Am. Sub. H.B. 117, 121st Gen. A. (1995) (eff. June 30, 1995, with relevant provisions eff. Sept. 29, 1995).

In addition, you have asked about school districts that are located primarily outside the county but include one school or a portion of land within the county. Any public schools that serve residents of the county could be included as "common schools of the county" under the general definition discussed above. *See, e.g.,* R.C. 3311.02, .05; *Cline v. Martin*, 94 Ohio St. 420, 115 N.E. 37 (1916).

R.C. 2105.07 does not indicate which entities should be included as common schools for purposes of distributing escheated funds. Therefore, any reasonable definition of "common schools" may be adopted. *See generally, e.g., State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915).

Once the "common schools" question is decided, it is necessary to determine how to allocate the money among the various common schools. No statute addresses this issue. In the absence of statutory direction, the county may distribute funds under R.C. 2105.07 to the support of the common schools of the county in any manner that it determines to be fair and equitable. *See generally, e.g., State ex rel. Hunt v. Hildebrant*.

In adopting an appropriate definition of "common schools" and determining how to distribute money pursuant to R.C. 2105.07, it might be useful to consider the provisions of R.C. 3315.32, which was repealed in 1985. *See* 1985-1986 Ohio Laws, Part I, 1760, 2640 (Sub. H.B. 201, eff. July 1, 1985, with repeal eff. Aug. 1, 1985). That statute stated that money in the county treasury for the support of common schools that was not otherwise appropriated should "be apportioned annually to the school districts and parts of districts in the county in proportion to their respective numbers of pupils in average daily membership used as a basis for the distribution of state funds" under R.C. 3317.022-.024. 1975-1976 Ohio Laws, Part I, 475, 486 (Am. Sub. S.B. 170, eff. Aug. 29, 1975). Although these provisions no longer exist in statutory form, they might provide some guidance as to an interpretation of R.C. 2105.07 that could be considered reasonable.

If used as a guideline for distributing money under R.C. 2105.07, the provisions of R.C. 3315.32 (repealed) indicate that escheated money should be distributed to city, local, and exempted village school districts and parts of districts in the county in proportion to their respective numbers of pupils in average daily membership used as a basis for the distribution of state funds under R.C. 3317.022-.024. Under this guideline, joint vocational school districts, MR/DD boards and their facilities, and educational service centers would be excluded from the distribution because they do not receive state funds on the basis of their average daily membership pursuant to R.C. 3317.022-.024. *See* R.C. 3317.01, .022-.024, .11, .16.

R.C. 2105.07 does not require that escheated money be provided directly to each public educational program within a county or that the money be paid to all schools on an equal basis. Instead, it requires that the money "be applied exclusively to the support of the common schools of the county." R.C. 2105.07. This result is reached if the money is distributed in any reasonable manner to public schools that serve residents of the county.

For the reasons discussed above, it is my opinion that:

1. The term "common schools" has been used in Ohio law for many years and is ordinarily understood to mean "public schools," or schools that are administered by public agencies and maintained from public funds. Precisely which schools are included as common schools under a particular statute depends on the intent of the legislature in enacting that statute.
2. R.C. 2105.07 does not indicate which entities should be included as common schools for purposes of distributing escheated funds. Therefore, any reasonable definition of "common schools" may be adopted.
3. In the absence of statutory direction, the county may distribute funds under R.C. 2105.07 to the support of the common schools of the county in any manner that it determines to be fair and equitable.
4. The provisions of R.C. 3315.32, repealed by 1985-1986 Ohio Laws, Part I, 1760, 2640 (Sub. H.B. 201, eff. July 1, 1985, with repeal eff. Aug. 1, 1985), might provide some guidance as to an interpretation of R.C. 2105.07 that could be considered reasonable.

Respectfully,

BETTY D. MONTGOMERY  
Assistant Attorney General

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105 South Market Street  
Lisbon, Ohio 44432

SYLLABUS:

95-031

1. The term "common schools" has been used in Ohio law for many years and is ordinarily understood to mean "public schools," or schools that are administered by public agencies and maintained from public funds. Precisely which schools are included as common schools under a particular statute depends on the intent of the legislature in enacting that statute.
2. R.C. 2105.07 does not indicate which entities should be included as common schools for purposes of distributing escheated funds. Therefore, any reasonable definition of "common schools" may be adopted.
3. In the absence of statutory direction, the county may distribute funds under R.C. 2105.07 to the support of the common schools of the county in any manner that it determines to be fair and equitable.
4. The provisions of R.C. 3315.32, repealed by 1985-1986 Ohio Laws, Part I, 1760, 2640 (Sub. H.B. 201, eff. July 1, 1985, with repeal eff. Aug. 1, 1985), might provide some guidance as to an interpretation of R.C. 2105.07 that could be considered reasonable.