March 18, 1994

OPINION NO. 94-007

The Honorable Michael G. Spahr
Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

Dear Prosecutor Spahr:

You have requested an opinion whether bodies receiving their appropriations from the board of county commissioners as the taxing authority of a county must obtain permission from the board of county commissioners to transfer funds from one item to another item within the appropriated budget.

A Board of County Commissioners Must Pass an Annual Appropriation Measure Based on the Revised Tax Budget and the Official Certificate of Estimated Resources

The manner in which appropriations of public funds are made by a board of county commissioners is governed by statute. The appropriations are based on the revised tax budget and the official certificate of estimated resources, or amendments of that certificate. R.C. 5705.38(A).

A tax budget must be adopted annually by the taxing authority of each subdivision. R.C. 5705.28(A). For purposes of R.C. Chapter 5705, a county is a "subdivision," and the "taxing authority" of the county is the board of county commissioners. R.C. 5705.01(A), (C). Thus, a board of county commissioners must adopt an annual tax budget on behalf of the county. The tax budget must present, "in such detail as is prescribed by the auditor of state," a large quantity of information, including "[a] statement of the necessary current operating expenses for the ensuing fiscal year for *each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made*." R.C. 5705.29(A)(1) (emphasis added).[1]

---

[1] R.C. 5705.29 also requires the tax budget adopted by the board of county commissioners to include the following information:

---

(2) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, exclusive of any expense to be paid from bond issues, classified as to the improvements contemplated by the subdivision and the fund from which such expenditures are to be made;
(3) The amounts required for the payment of final judgments;
(4) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;
(5) Comparative statements, so far as possible, in parallel columns of corresponding items of expenditures for the current fiscal year and the two preceding fiscal years.
(B)(1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited;
(2) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditure from the fund and the estimated receipts, as provided in this section. The section of the Revised Code under which the tax is authorized shall be set forth.
(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenues for the current fiscal year and the two preceding fiscal years.
(C)(1) The amount required for debt charges;
(2) The estimated receipts from sources other than the tax levy for payment of such debt charges, including the proceeds of refunding bonds to be issued to refund bonds maturing in the next succeeding fiscal year;
(3) The net amount for which a tax levy shall be made, classified as to bonds authorized and issued prior to January 1, 1922, and those authorized and issued subsequent to such date, and as to what portion of the levy will be within and what in excess of the ten-mill limitation.
(D) An estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the sections of the Revised Code under which each such tax is exempted from all limitations on the tax rate.

After its adoption by the board of county commissioners, the tax budget must be submitted to the county auditor, R.C. 5705.30, who presents to the county budget commission[2] "the annual tax budgets submitted to him under [R.C. 5705.01-.47]." R.C. 5705.31. The county budget commission then, *inter alia*, "adjust[s] the estimated amounts required from the general property tax for each fund, as shown by budgets, so as to bring the tax levies required therefor within the limitations specified in [R.C. 5705.01-.47], for such levies, but no levy shall be reduced below a minimum fixed by law. The commission may revise and adjust the estimate of balances and receipts from all sources for each fund and *shall determine the total appropriations that may be made therefrom*." R.C. 5705.32 (emphasis added). The budget commission then certifies its action to the taxing authority of each subdivision or taxing unit. R.C. 5705.34.

The certification of the budget commission includes a document known as the "official certificate of estimated resources." R.C. 5705.35(A). This certificate "shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer." *Id.* Amendments of the official certificate of estimated resources are made by the budget commission in accordance with R.C. 5705.36.

Pursuant to R.C. 5705.38(A):

> [o]n or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate.

Amendments of or supplements to the appropriation measure "shall comply with all provisions of law governing the taxing authority in making an original appropriation." R.C. 5705.40.

R.C. 5705.40 Provides That Transfers May Be Made from One Appropriation Item to Another By Resolution or Ordinance

R.C. 5705.40 specifically provides that "(t)ransfers may be made by *resolution* or *ordinance* from one appropriation item to another." (Emphasis added.) This language provides the sole authority for transfers from one appropriation item to another and limits the method by which such transfers may be accomplished. R.C. 5705.40 is plain and unambiguous in this respect: a transfer from one appropriation item to another requires a resolution or ordinance. With respect to appropriations made by a county, therefore, the board of county commissioners alone has the authority to transfer funds among appropriation items. *See* 1966 Op. Att'y Gen. No. 66-170 at 2-362 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008) (citing R.C. 5705.40 and

---

[2] The county budget commission consists of the county auditor, the county treasurer, and the prosecuting attorney. In counties that have so determined by election, the county budget commission includes two additional members from among the electors of the county. R.C. 5705.27.

determining that "by statute it is the county commissioners who are authorized to transfer funds from one item of an appropriation to another item of the same appropriation"); 1950 Op. Att'y Gen. No. 1554, p. 148.[3]

In your request letter, you note that 1969 Op. Att'y Gen. No. 69-158 determined that a board of elections is not required to request a board of county commissioners for a transfer from one item to another item of its appropriation. This opinion, which appears to be in direct conflict with R.C. 5705.40, was based on two earlier opinions concerning the authority of county boards of elections, 1930 Op. Att'y Gen. No. 1961, vol. II, p. 887 and 1932 Op. Att'y Gen. No. 4023, vol. I, p. 154.

Neither 1930 Op. No. 1961 nor 1932 Op. No. 4023 addressed the issue of whether a county board of elections may transfer funds between appropriation items. 1930 Op. No. 1961 determined that G.C. 5625-33 (now R.C. 5705.41), which required subdivisions and taxing units to attach a certificate of the fiscal officer of the subdivision attesting to the fact that the amount required to meet the obligation had been appropriated and was in the treasury or in the process of collection, free from previous encumbrances, was not applicable to county boards of elections as a county board of elections was neither a "subdivision" or "taxing unit" for purposes of G.C. 5625-33. *See* 1984 Op. Att'y Gen. No. 84-091. The opinion did not discuss the applicability of G.C. 5625-32 (now R.C. 5705.40). 1932 Op. No. 4023 concerned the authority of a board of elections to fix the amount of revenue it was to receive from the county. The opinion concluded that because a county board of elections had the right to fix the amount of revenue it received from the appropriations by the county, the county commissioners did not have the authority "to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board and substitute their own arbitrary figures in lieu of the amounts requested." *Id.* at 157. 1932 Op. No. 4023 did not consider, however, the authority of a board of elections to transfer funds among appropriation items once the board of county commissioners had passed the annual appropriation measure.

On the basis of these opinions, neither of which addressed the issue of transfers among appropriation items, Op. No. 69-158 concluded that because a county board of elections had authority to fix the amount of revenue it received from the county to the extent sufficient to provide for the necessary and proper expenses of the board, "there would appear to be no reason for requiring a board [of elections] to return to the commissioners for transfers from one item to another of its appropriation." *Id.* at 2-336. In reaching this conclusion, Op. No. 69-158 neither acknowledged nor discussed R.C. 5705.40, which specifically addresses transfers among appropriation items.[4] For this reason, I find Op. No. 69-158 unpersuasive with respect to your

---

[3] Although a transfer from one appropriation item to another item within the annual appropriation measure passed by a board of county commissioners requires a resolution of the board, once the appropriation has been made by the board of county commissioners and the funds allocated to a county board or agency, the authority to disburse funds *within* each itemized amount is within the discretion of the board or agency. *See* 1966 Op. Att'y Gen. No. 66-170 at 2-362.

[4] Compare 1966 Op. Att'y Gen. No. 66-170, which addressed the question of whether a

question.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that pursuant to R.C. 5705.40, transfers from one appropriation item to another appropriation item within the annual appropriation measure passed by a board of county commissioners under R.C. 5705.38 must be made by resolution of the board.

Respectfully,

LEE FISHER
Attorney General

---

soldiers' relief commission had the authority to transfer funds from one item to another of its appropriation. The opinion discussed R.C. 5705.40 and determined that it precluded the soldiers' relief commission from making such transfers. "[B]y statute it is the county commissioners who are authorized to transfer funds from one item of an appropriation to another item of the same appropriation." Op. No. 66-170 at 2-362.

March 18, 1994

The Honorable Michael G. Spahr
Washington County Prosecuting Attorney
205 Putnam Street
Marietta, Ohio 45750

SYLLABUS: 94-007

Pursuant to R.C. 5705.40, transfers from one appropriation item to another appropriation item within the annual appropriation measure passed by a board of county commissioners under R.C. 5705.38 must be made by resolution of the board.