May 20, 1997

OPINION NO. 97-030

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
69 North South Street, Suite 200
Wilmington, Ohio 45177

Dear Prosecutor Peelle:

We have received your request for an opinion concerning the issue whether, upon collection, delinquent taxes are to be applied to the levies on which the delinquencies arose or whether the delinquent taxes are to be applied to the levies in effect at the time of the collection of the back taxes. Your question may be stated in these terms: must revenue derived from payment of delinquent taxes based upon a now-expired levy be distributed to the fund previously established for the purpose of the levy, or should the revenue from the now-expired levy be distributed to the general fund?

Your request relates to a five-year levy for 1.4 mills that was adopted in Clinton County for the years 1989 through 1993 and was not renewed. The levy was for the purpose of children services and, thus, was a special levy. *See, e.g.*, R.C. 5705.04; R.C. 5705.24. While the levy was in effect, a particular taxpayer was being audited for personal property tax returns. Each year, the taxpayer paid taxes at the rate on the returns prior to the audit, but additional taxes continued to accrue on the matters in controversy. The audit was concluded in 1994 when a settlement was reached. At that time, the taxpayer began to make payments on the additional taxes that had accrued for the years 1989 through 1993 and had become delinquent. The taxpayer made payments voluntarily and not through foreclosure or other litigation. The county children services board has asked how much of the money collected from back taxes should be directed to county children services.

In order to answer your question, it is necessary to look at the provisions of the Ohio Constitution and the Ohio Revised Code that relate to the distribution and expenditure of moneys derived from tax levies. The Ohio Constitution states plainly that "[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." Ohio Const. art. XII, §5. It is, therefore, 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. *See, e.g.*, 1990 Op. Att'y Gen. No. 90-069; 1940 Op. Att'y Gen. No. 1747, p. 92, at 95.

The Ohio Constitution sets no time limit on this requirement. Whether a tax is paid in a timely manner or is collected at a later date as a delinquent tax, it comes within the constitutional requirement that the proceeds must be applied to the purpose for which the tax was levied. Hence, under this provision of the Ohio Constitution, all moneys derived from a tax levy for children services must be used for children services, even if they are collected as delinquent taxes.

The statutory provisions governing the assessment and collection of taxes are consistent with this conclusion. A taxing authority, in this case the board of county commissioners, is authorized to levy taxes on real and personal property within the subdivision. R.C. 5705.01(A), (C); R.C. 5705.03. The taxes are extended on the tax list and duplicate[1] and are collected by the county treasurer. R.C. 319.28-.29; R.C. 5705.03; R.C. 5709.01.

Personal property taxes that are not paid in a timely manner, together with penalties, are entered on the delinquent personal and classified property tax list, prepared by the county auditor and delivered to the county treasurer. R.C. 5711.33(C); R.C. 5719.04. The tax list includes "all taxes assessed by the tax commissioner pursuant to law which were not charged upon the tax lists and duplicates...nor previously charged upon a delinquent tax list." R.C. 5719.04. The county auditor adds to the delinquent taxes "all such taxes omitted in a previous year when assessed by him or finally assessed by the tax commissioner pursuant to law." R.C. 5719.04; *see also* R.C. 5711.26; R.C. 5711.32. The delinquent tax list is "cumulatively kept," so that it shows all amounts of delinquent taxes and penalties charged against a person. R.C. 5719.06. There is a procedure for striking items from the cumulative tax list if they are determined to be uncollectible after they have appeared on the list for five years. *Id*.

The county treasurer is charged with the duty of collecting taxes and penalties on the delinquent personal and classified property tax list, together with any applicable interest. R.C. 5719.05; *see also* R.C. 5719.041. When the proceeds of a tax levy are received by the fiscal officer of the subdivision, in this case the county treasurer, they must be deposited in the subdivision's treasury "to the credit of the appropriate fund." R.C. 5705.03. The "appropriate fund" is the fund that receives the proceeds of the levy that generated the tax. R.C. 5719.05, which deals with the collection of amounts charged on the delinquent personal and classified property tax list and permits arrangements for installment payments, states expressly that such payments, when received "shall be apportioned among the various funds, for which the taxes were levied." *See generally State ex rel. City of Cleveland Heights v. Davis*, 131 Ohio St. 380, 3 N.E.2d 49 (1936); 1945 Op. Att'y Gen. No. 311, p. 320, at 321 (syllabus) (under relevant statutes, proceeds of a forfeited land sale that are applied to delinquent taxes should be distributed to subdivisions in proportion to the amount of taxes

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[1] For purposes of this opinion, the term "tax list" is used to refer also to the duplicate of the list. *See, e.g.*, R.C. 319.28-.29; R.C. 5719.04.

due and "should be allotted to the respective funds of the subdivision for which the taxes and assessments were levied").

Provisions of statute require that each subdivision establish a special fund for each special levy. R.C. 5705.09(D). "All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made" and "shall be used only for the purposes for which such fund is established." R.C. 5705.10; *see also, e.g.*, 1994 Op. Att'y Gen. No. 94-004.

Pursuant to Ohio Const art. XII, §5, R.C. 5705.09, and R.C. 5705.10, therefore, revenue derived from the collection of delinquent taxes levied under a special levy must be paid into a special fund for the purpose for which that special levy was made, even if the levy expires before the revenue is collected. As described above, the levy in question is a special levy for children services. The conclusion that delinquent taxes must be used for the purpose for which they were originally levied means that the taxes collected pursuant to that levy must be paid into a special fund for the purpose of children services.[2]

There are statutory provisions for transferring moneys in a special fund to a different fund if the purpose for which the special levy was adopted has terminated and all obligations have been met. R.C. 5705.14(D). In the situation that you have described, however, the county children services board continues to exist and to perform children services functions. Therefore, proceeds of a levy for children services can be spent for the authorized purpose and may not be transferred pursuant to R.C. 5705.14(D). *Cf. In re Petition for Transfer of Funds*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988) (because the need for fire protection continues, moneys derived from a special levy for fire protection purposes cannot be transferred to a different use); 1994 Op. Att'y Gen. No. 94-015. *See generally* R.C. 5705.15-.16 (providing other methods for transfers of funds in certain circumstances); 1990 Op. Att'y Gen. No. 90-069.

For the reasons discussed above, it is my opinion, and you are advised, that pursuant to Ohio Const. art. XII, §5, R.C. 5705.09, and R.C. 5705.10, revenue derived from the collection

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[2] It should be noted that the collection of delinquent taxes does not necessarily provide a net increase in funds to the entity that receives the delinquent taxes. It is possible that proceeds from other sources may be reduced correspondingly. *See, e.g., State ex rel. City of Cleveland Heights v. Davis*, 131 Ohio St. 380, 3 N.E.2d 49 (1936).

of delinquent taxes levied under a special levy must be paid into a special fund for the purpose for which that special levy was made, even if the levy expires before the revenue is collected.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

May 20, 1997

The Honorable William E. Peelle
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SYLLABUS: 97-030

Pursuant to Ohio Const. art. XII, §5, R.C. 5705.09, and R.C. 5705.10, revenue derived from the collection of delinquent taxes levied under a special levy must be paid into a special fund for the purpose for which that special levy was made, even if the levy expires before the revenue is collected.