August 30, 1994

OPINION NO. 94-058

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Corbin:

You have requested an opinion concerning R.C. 5731.90 and the confidentiality of estate tax information. Your specific question is whether, when the county treasurer reports the collection of estate tax to the township clerk, the treasurer is permitted to reveal the identity of the taxpayer.

1992 Op. Att'y Gen. No. 92-076 discussed the confidentiality provisions of R.C. 5731.90 and concluded that a township clerk had no right of access to estate tax information made confidential by R.C. 5731.90. Since the issuance of Op. No. 92-076, however, R.C. 5731.90 has been amended, *see* Sub. S.B. 128, 120th Gen. A. (1994) (eff. Jan. 18, 1994), and your question must be considered in light of the amended language.

Confidentiality Under R.C. 5731.90

R.C. 5731.90 establishes the confidentiality of estate tax returns, generation-skipping tax returns, and other tax returns filed pursuant to R.C. Chapter 5731, all documents and other records that pertain to the determination of a decedent's taxable estate that is the subject of one of those returns, and the amount of taxes paid or payable in connection with such an estate. The statute states that, except as provided in division (A)(2), to the extent that any of such material or information is "in the possession of a probate court, the department of taxation, a county auditor or county treasurer, *the fiscal officer of a* municipal corporation or *township*, the attorney general, or other authorized person" as specified in R.C. Chapter 5731, the material and its contents are confidential, are not subject to inspection or copying as public records under R.C. 149.43, and may be inspected or copied by members of the general public only upon order of a probate court for good cause shown. R.C. 5731.90(A)(1) (emphasis added). R.C. 5731.90(A)(2) specifies that the provisions of R.C. 5731.90(A)(1) do not preclude the inspection, copying, and use of the confidential information:

> by the tax commissioner, county auditors and treasurers, *fiscal officers of* municipal corporations or *townships*, probate judges, the attorney general, and other authorized persons as specified in [R.C. Chapter 5731], in connection with their duties and responsibilities as described in [R.C. Chapter 5731], including, but not limited to, the determination and collection of an estate, generation-skipping or other tax....

R.C. 5731.90(A)(2)(a) (emphasis added). No person may permit the inspection or copying of documents or records made confidential by R.C. 5731.90 or divulge the amount of the tax or other information in the documents or records except as provided in R.C. 5731.90(A). R.C. 5731.90(B). Exceptions to the confidentiality provisions of R.C. 5731.90 apply to certain estate tax information contained in a certificate that is available to the public, *see* R.C. 5731.21(A)(5), .90(A)(2)(c); Op. No. 92-076 at 2-320, and in other circumstances specified by statute, *see* R.C. 5731.90(A)(2)(b), (d).

Sub. S.B. 128 added to R.C. 5731.90(A)(1) and (2) the references to fiscal officers of municipal corporations or townships, thereby indicating that when estate tax material or information is in the possession of such fiscal officers, the material or information is confidential, and also indicating that the fiscal officers may inspect, copy, and use the material or information in connection with their duties and responsibilities as described in R.C. Chapter 5731. The title of Sub. S.B. 128 states as one of the purposes of the legislation: "to provide municipal and township fiscal officers access to estate tax records." Since the township clerk is the fiscal officer of a township, *see* R.C. 507.07, .11(B); R.C. 5705.01(D), it is evident that the General Assembly intended that township clerks should have access to any material or information concerning estate tax that is relevant to their duties and responsibilities.

Collection and Distribution of Estate Tax

Estate taxes are collected as provided in R.C. Chapter 5731. When an estate tax return is filed with the probate court, the court forwards a copy to the Tax Commissioner and notifies the county auditor, who certifies a duplicate of the charge to the county treasurer for collection. R.C. 5731.21(A), .23. The Tax Commissioner determines the correctness of the return and notifies the person filing the return of any adjustments. R.C. 5731.26, .27, .30.

Under Ohio law, a percentage of the proceeds of tax from each estate is for the use of the municipal corporation or township in which the tax originates. R.C. 5731.48; *see also* Ohio Const. art. XII, §9. In the case of a township, the board of township trustees may determine whether estate tax proceeds are credited to the general revenue fund of the township or to the board of education of the school district of which the township is a part. R.C. 5731.48(C). The remainder of the estate tax, after the deduction of fees and costs, is paid to the state. R.C. 5731.48.

When the property transferred is real estate or tangible personal property within Ohio, the tax is deemed to have originated in the municipal corporation or township in which the property is physically located. If real estate is located in more than one municipal corporation or township, the tax is apportioned between the municipal corporations or townships in which it is located in the proportions in which the tract is assessed for general property taxation. R.C. 5731.50. Tax on the transfer of intangible property or tangible personal property outside the state from a resident of the state is deemed to have originated in the municipal corporation or township in which the decedent was domiciled. Tax on the transfer of the intangible property of a nonresident is deemed to have originated where the property was in custody or where the depository had its principal place of business or place of residence. R.C. 5731.51. Thus there will be instances in which it is necessary to allocate estate taxes among townships and municipal corporations and in which issues of proper allocation may arise. *See* Op. No. 92-076.

When the county treasurer receives payment for any taxes due under R.C. Chapter 5731, he is required to notify the taxing authority of the township or municipal corporation entitled to share in the proceeds. R.C. 321.341. The statute states that the notice "shall identify the estate for which the tax was paid and the portion of the estate's total tax credited to that subdivision in the undivided estate tax fund." *Id.* The fiscal officer of the township -- that is, the township clerk -- is authorized to request payment to the township of an amount not to exceed seventy-five percent of the taxes to the credit of the township. *Id.*

The county treasurer is required to keep accounts of all taxes and interest received under R.C. Chapter 5731. Twice each year, the county treasurer settles with the county auditor for that money, showing for which estate the money was paid, by whom, and when. R.C. 5731.46. At each semiannual settlement, the county auditor makes settlement of the amount due to each municipal corporation or township, within or outside the county. The amount so due "shall be paid upon the warrant of the county auditor to the county treasurer or other proper officer of such municipal corporation or township." R.C. 5731.49. In the case of a township, the clerk is the fiscal officer with authority to receive such payment. Statutory provision is made for adjustments of refunds chargeable against a municipal corporation or township. *Id.*

Authority of a Township Clerk to Have Access to Estate Tax Material or Information Made Confidential by R.C. 5731.90

As noted in the foregoing discussion, there are two statutes relating to estate taxes that directly involve a township clerk. The first is R.C. 321.341, which states:

> *Immediately upon receipt of payment* for any taxes due under Chapter 5731. of the Revised Code, *the county treasurer shall notify the taxing authority of the township* or municipal corporation entitled to share in the proceeds thereof. *The notice shall identify the estate for which the tax was paid and the portion of the estate's total tax credited to that subdivision in the undivided estate tax fund. At any time prior to a settlement under section 5731.46 of the Revised Code, the fiscal officer of* a municipal corporation or *a township may request the county auditor to make*

> *payment to such subdivision from the fund of an amount not to exceed seventy-five per cent of taxes paid into such fund and standing to the credit of the subdivision*, including both taxes with respect to which a final determination has been made under section 5731.27 of the Revised Code and taxes subject to review and final determination under section 5731.26 of the Revised Code. Within five days of the receipt of such request the auditor shall draw a warrant in such amount upon such fund, payable to the subdivision. (Emphasis added.)

The undivided estate tax fund is a fund within the county treasury that holds estate tax proceeds. *See* R.C. 319.14, 321.08. R.C. 321.341 requires the county treasurer to notify a township when the treasurer receives estate taxes that are credited to the township. Notice is to be made to the taxing authority of the township, which is the board of township trustees. *See* R.C. 5705.01(C); note 1, *infra*. The township clerk is given authority to request the county auditor to make payment prior to settlement of up to seventy-five percent of the taxes credited to the subdivision. The statute does not specify that notice of the treasurer's receipt of estate taxes credited to the township must be made to the township clerk, but it is clear that the clerk must receive that information in order to be able to request payment prior to settlement.

The other statute giving a township clerk responsibilities with respect to estate taxes is R.C. 5731.49, which provides that, at each semiannual settlement, amounts of estate taxes due to a township shall be paid to the proper officer of the township. As the fiscal officer of the township, the township clerk is responsible for accepting estate tax revenues for the township.

In Op. No. 92-076, it was concluded that the township clerk was given no statutory responsibility for determining the amount of estate tax proceeds that should be credited to the township and that the clerk had no statutory duties or responsibilities that required access to material or information made confidential by R.C. 5731.90. The General Assembly's amendment of R.C. 5731.90 to reference the fiscal officer of the township, without any amendment of R.C. 321.341 or other provisions establishing the township clerk's duties, indicates that the General Assembly construes existing statutes as giving the township clerk duties and responsibilities that require access to material or information made confidential by R.C. 5731.90. Consequently, it is appropriate to construe the township clerk's authority to receive estate tax proceeds pursuant to R.C. 321.341 and R.C. 5731.49 as encompassing also the right to be informed of the estate for which the taxes are paid and the portion of the estate's total tax credited to the township in order to ascertain that the township is receiving the amount of taxes to which it is entitled. A township clerk's authority to have access to estate tax material and information thus follows by necessary implication from the clerk's duty to receive estate taxes on behalf of the township.

For the reasons discussed above, Op. No. 92-076 is overruled, and it is concluded that, in accordance with current law, a township clerk is authorized to have access to estate tax returns or other records or information made confidential by R.C. 5731.90 in connection with the duties and responsibilities of the clerk relating to the receipt of estate taxes on behalf of the township. This conclusion does not mean that a township clerk has a right of access to all material and information encompassed by R.C. 5731.90. Instead, the right of access extends only to that material or

information that is reasonably necessary for the performance of the duties and responsibilities of the township clerk. *See generally, e.g., Collins v. Ferguson*, 48 Ohio App. 2d 255, 357 N.E.2d 51 (Franklin County 1976) (denying the Auditor of State access to confidential records of the Department of Taxation because there was no demonstration that the records were needed for a purpose established by statute).

Authority of a County Treasurer to Reveal the Identity of a Taxpayer to a Township Clerk

You have asked specifically whether a county treasurer who reports to a township clerk that estate tax has been collected may reveal the identity of the taxpayer to the township clerk in the course of making that report. As discussed above, the recent amendments to R.C. 5731.90 indicate that the township clerk is permitted to know the identity of such a taxpayer and that such information is confidential when in the possession of a township clerk.

R.C. 5731.90(A)(1) lists the various types of estate tax materials and information that are confidential when in the possession of various officials, including township clerks and county treasurers. R.C. 5731.90(A)(2)(a) provides that division (A)(1) does not preclude the use of those materials and information by the various officials, including township clerks and county treasurers, "in connection with their duties and responsibilities as described in [R.C. Chapter 5731]." R.C. 5731.90(B) prohibits the disclosure of estate tax materials or information, including the amount of taxes paid or payable, except as provided in R.C. 5731.90(A).

The authority of a county treasurer to provide a township clerk with notice of estate tax payments at each semiannual settlement is granted by R.C. 5731.49 and is clearly covered by R.C. 5731.90(A)(2)(a). In contrast, the authority of a county treasurer to provide a township clerk with notice of estate tax payments prior to settlement so that the clerk may request payment to the township at that time arises under R.C. 321.341, rather than under the provisions of R.C. Chapter 5731, and it might be argued that such disclosure is not permitted under R.C. 5731.90(A)(2)(a). *See* R.C. 5731.90(B). If such an argument were accepted, it would lead to the result that a township clerk could receive information concerning the payer of estate taxes and the portion of estate taxes credited to the township at the semiannual settlement but not prior to that date; such a result would serve no useful purpose and would impede the performance of the clerk's duties under R.C. 321.341. The more reasonable argument in this instance is that the duties of a township clerk under R.C. 321.341 are so related to the clerk's duties under R.C. 5731.49 that the provisions of R.C. 5731.90(A)(2)(a) are applicable to both sets of duties. *See* R.C. 5731.90(B).

Your question assumes that the county treasurer gives the township clerk notice of the amount of estate tax credited to the township.[1] Such notice is clearly permitted pursuant to R.C. 5731.49 at each semiannual settlement, and the authority to give such notice may be implied from the provisions of R.C. 321.341, for it is clear that the township clerk must receive that information in order to request payment prior to settlement. The identity of the taxpayer is incidental to the amount of the tax paid, and knowledge of both is required for a township clerk to carry out the responsibility of determining that estate taxes are properly allocated, a responsibility that the General Assembly recognized in enacting Sub. S.B. 128. Further, the township clerk's knowledge of the identity of the taxpayer is made confidential pursuant to R.C. 5731.90(A)(1), and the provisions of R.C. 5731.90 permit the county treasurer to disclose to a township clerk estate tax information that is needed in connection with the clerk's duties. Accordingly, it is concluded that a county treasurer who reports the collection of estate tax to a township clerk is permitted, in accordance with R.C. 321.341, R.C. 5731.49, and R.C. 5731.90, to reveal the identity of the taxpayer to the township clerk in the course of making that report.

Confidentiality of Estate Tax Materials and Information

A refusal to extend access to estate tax materials beyond those officials clearly referenced in R.C. 5731.90(A) is required by the terms of R.C. 5731.90. That statute prohibits the disclosure of estate tax returns or other records or information made confidential by R.C. 5731.90 except as provided in R.C. 5731.90(A). Any such material or information that is in the possession of a county treasurer, a township clerk, or any other official referenced in R.C. 5731.90(A)(1) is confidential and

---

[1] R.C. 321.341 provides for notice to be made to the taxing authority -- that is, the board of township trustees -- rather than to the township clerk. Township trustees are not named in R.C. 5731.90(A) as officials in whose hands estate tax materials and information are confidential or as officials who are entitled to use such materials and information in connection with duties and responsibilities under R.C. Chapter 5731, and R.C. 5731.90(B) precludes the disclosure of estate tax materials or information except as provided in division (A). Thus, the language of R.C. 321.341 providing that estate tax information be given to township trustees raises questions concerning the application of R.C. 5731.90 in such circumstances. Township trustees are, however, given authority by R.C. 5731.48 to determine whether estate tax proceeds are credited to the general revenue fund of the township or to the board of education of the school district of which the township is a part. For that purpose, the township trustees are persons authorized to possess estate tax information as specified in R.C. Chapter 5731 and are subject to the confidentiality provisions of R.C. 5731.90. *See* R.C. 5731.90(A). If R.C. 321.341 and R.C. 5731.48 are read together, it may be argued that the notification required by R.C. 321.341 enables the trustees to perform their duties under R.C. 5731.48, so that the provisions of R.C. 5731.90 are applicable to actions taken under both provisions. This opinion does not address that argument in detail because you have not asked whether township trustees have any right of access to materials or information made confidential by R.C. 5731.90, or whether the county treasurer has authority to disclose any such materials or information to township trustees.

may not be disclosed except as provided by statute.

Conclusion

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

1. In accordance with Sub. S.B. 128, 120th Gen. A. (1994) (eff. Jan. 18, 1994), a township clerk is authorized to have access to estate tax returns or other records or information made confidential by R.C. 5731.90 in connection with the duties and responsibilities of the clerk. (1992 Op. Att'y Gen. No. 92-076 overruled on the basis of legislative change.)

2. In accordance with R.C. 321.341, R.C. 5731.49, and R.C. 5731.90, a county treasurer who reports the collection of estate tax to a township clerk is permitted to reveal the identity of the taxpayer to the township clerk in the course of making that report.

3. When a county treasurer, a township clerk, or any other official referenced in R.C. 5731.90(A)(1) is in possession of any estate tax returns or other estate tax records or information, the material or information is confidential and may not be disclosed except as provided by statute.

Respectfully,

LEE FISHER
Attorney General

August 30, 1994

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

SYLLABUS: 94-058

1. In accordance with Sub. S.B. 128, 120th Gen. A. (1994) (eff. Jan. 18, 1994), a township clerk is authorized to have access to estate tax returns or other records or information made confidential by R.C. 5731.90 in connection with the duties and responsibilities of the clerk. (1992 Op. Att'y Gen. No. 92-076 overruled on the basis of legislative change.)

2. In accordance with R.C. 321.341, R.C. 5731.49, and R.C. 5731.90, a county treasurer who reports the collection of estate tax to a township clerk is permitted to reveal the identity of the taxpayer to the township clerk in the course of making that report.

3. When a county treasurer, a township clerk, or any other official referenced in R.C. 5731.90(A)(1) is in possession of any estate tax returns or other estate tax records or information, the material or information is confidential and may not be disclosed except as provided by statute.