

Note from the Attorney General's Office:

2008 Op. Att'y Gen. No. 2008-009 was overruled by
2009 Op. Att'y Gen. No. 2009-054.

April 2, 2008

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

SYLLABUS:

2008-009

1. The provisions of R.C. 5705.05 and R.C. 5705.06 excluding road and bridge expenditures from the purposes for which proceeds of the general levy for current expenses (“general levy”) may be used prevent the direct expenditure of township general levy moneys for road and bridge purposes. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes, provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.
2. R.C. 5705.14(E), which states that money may be transferred from the general fund to any other fund of a subdivision, does not authorize the board of trustees of a township to transfer to the road and bridge fund proceeds of the general levy for current expenses because of the provisions of R.C. 5705.05 and R.C. 5705.06 that expressly exclude road and bridge expenditures from the purposes for which the proceeds of the general levy for current expenses may be used and the provision of Ohio Const. art. XII, § 5 requiring that proceeds of a tax be expended only for the purpose for which the tax is levied. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be transferred to the road and bridge fund in accordance with R.C. 5705.14(E), provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.



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

April 2, 2008

OPINION NO. 2008-009

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street
Fourth Floor
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

We have received your inquiry concerning the ability of a township to use money from its general fund for road and bridge purposes. You have asked for an opinion as to whether R.C. 5705.05 prohibits the transfer of moneys from the township general fund to the township road and bridge fund in light of the fact that R.C. 5705.14(E) states that money may be transferred from the general fund to any other fund of the subdivision. If the answer to the first question is that the transfer is prohibited, then you also request an opinion as to whether general fund moneys could be used directly to pay costs of road maintenance. In order to provide a complete analysis of these issues, we address both of your questions, beginning with the second question.

For the reasons set forth below, we conclude that the provisions of R.C. 5705.05 and R.C. 5705.06 excluding road and bridge expenditures from the purposes for which proceeds of the general levy for current expenses ("general levy") may be used prevent the direct expenditure of township general levy moneys for road and bridge purposes. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes, provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes. We conclude further that R.C. 5705.14(E), which states that money may be transferred from the general fund to any other fund of a subdivision, does not authorize the board of trustees of a township to transfer to the road and bridge fund proceeds of the general levy for current expenses because of the provisions of R.C. 5705.05 and R.C. 5705.06 that expressly exclude road and bridge expenditures from the purposes for which the proceeds of the general levy for current expenses may be used and the provision of Ohio Const. art. XII, § 5 requiring

that proceeds of a tax be expended only for the purpose for which the tax is levied. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be transferred to the road and bridge fund in accordance with R.C. 5705.14(E), provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.

Background Information

You have informed us that on July 8, 2007, the Clearcreek Board of Trustees voted to use \$50,000.00 from the township general fund for road chip-and-seal. The decision was made because the township road and bridge fund did not have sufficient funds to complete the road chip-and-seal project as the board of trustees determined it should be completed. While attempting to implement this decision, the township was informed by the legal department of the Auditor of State that general fund moneys could not be used in this manner for reasons set forth in 1981 Op. Att’y Gen. No. 81-035, which relied upon the provisions of R.C. 5705.05 stating that general levy moneys may be used for some permanent improvements but not for the construction or repair of roads. You have asked about the application to this situation of R.C. 5705.14(E), which specifically states that money may be transferred from the general fund to any other fund of the subdivision.

It is an established principle of Ohio law that townships and their activities are governed by relevant provisions of statute. Boards of township trustees may exercise only the powers expressly conferred by statute and the powers necessarily implied from those express powers. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Trustees of Brown Township*, 13 Ohio St. 311, 324 (1862); 2007 Op. Att’y Gen. No. 2007-043.¹ The building, repair, and maintenance of roads and bridges is a lawful power of a board of township trustees. *See* R.C. 505.26; R.C. 5535.01; R.C. 5535.08; R.C. 5549.21; R.C. 5571.01-.02; R.C. 5571.12; 2002 Op. Att’y Gen. No. 2002-009, at 2-50.

It is, further, firmly established under Ohio law that moneys held by a township are public funds held in trust for the benefit of the public. Public funds may be expended only by clear authority of law and in accordance with applicable statutory provisions. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys . . . constitute a public trust fund Said trust fund can be disbursed only by clear authority of law”); 2002 Op. Att’y Gen. No. 2002-031, at 2-206 to 2-207. Any doubt as to the authority to expend public funds must be resolved in favor of the preservation of public assets and against the grant of authority to make an expenditure. *State ex*

¹ Townships are granted statutory authority to adopt a limited home rule government under R.C. Chapter 504. This opinion does not consider the powers of a township that has adopted a limited home rule government. *See, e.g.,* R.C. 504.04; 2007 Op. Att’y Gen. No. 2007-036, at 2-373 n.10; 2005 Op. Att’y Gen. No. 2005-042.

rel. A. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2007 Op. Att’y Gen. No. 2007-043; 2007 Op. Att’y Gen. No. 2007-036; 2002 Op. Att’y Gen. No. 2002-031, at 2-207.

In addition, the use of certain public funds is restricted by statute or constitution. Expenditures may be made only from funds that are available for the particular expenditure intended. *See, e.g.*, Ohio Const. art. XII, § 5 (“[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”); R.C. 5705.09; R.C. 5705.10; 2007 Op. Att’y Gen. No. 2007-002, at 2-18; 2006 Op. Att’y Gen. No. 2006-009, at 2-78 to 2-80; 2004 Op. Att’y Gen. No. 2004-047; 2003 Op. Att’y Gen. No. 2003-009, at 2-66; 2002 Op. Att’y Gen. No. 2002-031, at 2-207 n.2; 2000 Op. Att’y Gen. No. 2000-039, at 2-240 (“[i]t is a long-established principle that where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions”); 1997 Op. Att’y Gen. No. 97-030, at 2-176 (it 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”).

Therefore, a board of township trustees may undertake road maintenance only pursuant to clear statutory authority and with funds that are available for road maintenance purposes. *See generally* 2007 Op. Att’y Gen. No. 2007-043 (syllabus, paragraph 1) (“[a] board of township trustees may donate money to a local school district only if the board has statutory authority to make a donation and the township has funds that are available for that purpose”); 2000 Op. Att’y Gen. No. 2000-048, at 2-297 (“[a]s required by Ohio Const. art. XII, § 5, the various provisions of R.C. Chapter 5705 which empower taxing authorities to levy taxes . . . specifically set forth the purpose or purposes for which each tax shall be levied. The revenue therefrom may be spent for only the purpose or purposes thus specified”); *see also, e.g.*, R.C. 5535.08(A) (a township may “expend any funds available for road construction, improvement, or repair upon roads inside a village”).

General Levy and General Fund of a Township

In order to address your questions it is necessary first to understand some basic principles about the financial operations of a township, including the distinction between the *general fund* and the *general levy*. Townships are included as subdivisions for purposes of R.C. Chapter 5705, which governs the levying of property taxes. R.C. 5705.01(A). A subdivision may levy property taxes in an amount up to 10 mills without the vote of the electorate and may levy taxes in excess of the 10-mill limitation when authorized by law or by vote of the electorate. Ohio Const. art. XII, § 2; R.C. 5705.02-.03. The property taxes are divided into various levies, including the *general levy for current expenses* within the 10-mill limitation (commonly known as the *general levy*), special levies authorized by R.C. 5705.01-.47 within the 10-mill limitation, levies for debt charges, and special or general levies authorized by law or by vote of the people in excess of the 10-mill limitation. R.C. 5705.04.

Each subdivision is required to establish several funds to hold its moneys. Among these funds are the *general fund*, a special fund for each special levy, and a special fund for each class of revenues derived from a source other than the general property tax which the law requires to be used for a particular purpose. R.C. 5705.09. Proceeds of the *general levy* for current expenses within the 10-mill limitation are paid into the *general fund*. However, the *general fund* also holds amounts other than *general levy* moneys. See R.C. 5705.10(A) (“[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general revenue fund”); see also, e.g., R.C. 5747.51(J) (“[a]ll money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision”); 2006 Op. Att’y Gen. No. 2006-009, at 2-78 to 2-79; 2000 Op. Att’y Gen. No. 2000-039, at 2-240 (“proceeds from the sale of property disposed of pursuant to R.C. 2933.41 must be deposited into an account within a county’s or township’s general fund for use by the county’s or township’s law enforcement agencies”); 1981 Op. Att’y Gen. No. 81-035. R.C. 5705.10(H) mandates that “[m]oney paid into any fund shall be used only for the purposes for which such fund is established.”

Permissible Uses of Township General Levy for Current Expenses and Township General Fund

The general levy for current expenses is governed by R.C. 5705.05, which states in part:

The purpose and intent of the *general levy for current expenses* is to provide *one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made*, and the taxing authority of a political subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but *excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships* and the payment of debt charges. (Emphasis added.)

The general levy for current expenses is thus made available for “current expenses of any kind.” The taxing authority is also authorized to include in the general levy amounts needed to carry into effect any general or special powers of the subdivision, including the acquisition or construction of permanent improvements, but expressly excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships. See 1981 Op. Att’y Gen. No. 81-035, at 2-134. Thus, when a township prepares and submits its budget, the township is not permitted to include in the general levy for current expenses within the 10-mill limitation amounts needed for road and bridge purposes. See R.C. 5705.28-.35 (budget process for townships, other subdivisions, and taxing units).

The exclusion from the general levy of amounts needed for road and bridge construction, reconstruction, resurfacing, or repair is part of a broader statutory system that provides for a special levy for road and bridge purposes. R.C. 5705.06 authorizes several types of special levies without the vote of the people, including, “[i]n the case of a township, a levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, including the township’s portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges.” R.C. 5705.06(F). These levies come within the 10-mill limitation and are subject to the control of the county budget commission under R.C. 5705.01-.47. R.C. 5705.06. In accordance with R.C. 5705.09, proceeds of a township levy under R.C. 5705.06(F) for road and bridge purposes are deposited in the township road and bridge fund. *See* 1969 Op. Att’y Gen. No. 69-055, at 2-124 (overruled in part on other grounds in 1988 Op. Att’y Gen. No. 88-036).²

R.C. 5705.06 states that any authority granted by the Revised Code to levy a special tax within the 10-mill limitation for a current expense “shall be construed as authority to provide for such expense by the general levy for current expenses,” but provides an express exception for the special levies authorized in R.C. 5705.06, including a tax levy for township roads and bridges under division (F). Thus, R.C. 5705.06 declines to authorize a township to provide for road and bridge expenses by the general levy for current expenses. Under both R.C. 5705.05 and R.C. 5705.06, therefore, the township’s budget is required to exclude road and bridge expenses from amounts included in its general levy for current expenses. Accordingly, it has been found that proceeds of the general levy for current expenses may not be expended for road and bridge purposes. 1981 Op. Att’y Gen. No. 81-035; 1957 Op. Att’y Gen. No. 1122, p. 504, at 507 (funds derived from a general tax levy for current expenses are unavailable for use for road purposes).

As discussed above, the general levy for current expenses is held in the general fund, which also holds other moneys. The limitation on the expenditure of general levy moneys set forth in R.C. 5705.05 and R.C. 5705.06 applies only to proceeds of the general levy and does not extend to other moneys in the general fund. Certain other moneys in the general fund may, however, be subject to other restrictions upon their use. *See, e.g.*, R.C. 5747.51(J) (“[a]ll money received into the treasury of a subdivision from the undivided local government fund in a county

² A township is authorized to raise moneys for road and bridge purposes under various statutory provisions in addition to R.C. 5705.06. *See, e.g.*, R.C. 5573.13; R.C. 5573.14; R.C. 5575.10. Proceeds of any tax levied for road or bridge purposes must be placed in an appropriate fund. R.C. 5705.09; R.C. 5705.10; *see also, e.g.*, R.C. 5573.13 (township road improvement expenses are paid “out of any road improvement fund available” for the purpose); R.C. 5575.10 (requiring the board of township trustees to provide annually by taxation under R.C. 5575.10 or R.C. 5573.13 or both “an adequate fund for the maintenance and repair of township roads”); 1969 Op. Att’y Gen. No. 69-055 (overruled in part on other grounds in 1988 Op. Att’y Gen. No. 88-036) (distinguishing between levies for road purposes and levies for road and bridge purposes).

treasury shall be paid into the general fund and used for the current operating expenses of the subdivision”); 1981 Op. Att’y Gen. No. 81-035. To the extent that the general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes, provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes. *See, e.g.*, R.C. 5705.10; 1981 Op. Att’y Gen. No. 81-035 (syllabus, paragraph 1) (“[c]ounty general fund moneys may be used for the construction of bridges in the county provided that the use of the particular funds for such purpose is not proscribed by law, and provided that the particular moneys have not been commingled with general fund moneys which may not be used for the construction of bridges”);³

³ With respect to the issue of commingling, 1981 Op. Att’y Gen. No. 81-035 (in connection with a question concerning bridge construction by a county) stated:

Although . . . the use of some of the revenue deposited in the general fund of a subdivision is not restricted by law (except, of course, by the public purpose requirement), it may, in fact, be restricted by practical considerations. Where moneys from various sources are deposited in the general fund and thereafter become commingled, it may be difficult or impossible from a practical standpoint to insure that general levy revenues or any other similarly restricted revenues would not be included within a proposed expenditure for bridge construction, repair, etc. Any doubt with regard to the legality of a proposed expenditure would necessarily be resolved against the expenditure. . . . Therefore, a county wishing to spend moneys in its general fund directly for the purpose of bridge construction must be able to establish that no restricted funds are being so used.

To avoid the difficult task of making a showing that general fund moneys sought to be used for bridge construction are not restricted funds, there are at least two procedures of which I am aware which may be useful. These procedures would permit certain moneys which are ordinarily accounted for in the general fund to be used for road and bridge purposes while avoiding the difficulties entailed with segregating moneys within the general fund or attempting to establish the origin of particular moneys once they have been commingled with other general fund moneys. R.C. 5705.12 provides that, with the approval of the Bureau of Inspection and Supervision of Public Offices [now with the approval of the Auditor of State, who must consult with the Tax Commissioner], the taxing authority of a subdivision may set up special funds directly into which moneys from sources other than the general property tax may be paid. See 1956 Op. No. 6183. Such a procedure would prevent such moneys . . . from becoming commingled with other restricted moneys within the general fund, and would thus alleviate the potential problem with distinguishing sources.

1957 Op. Att’y Gen. No. 1122, p. 504 (because the use of inheritance tax proceeds paid into the general fund of a township is not restricted by law, a township may use them for road and bridge building and repair).

We conclude, accordingly, that the provisions of R.C. 5705.05 and R.C. 5705.06 excluding road and bridge expenditures from the purposes for which proceeds of the *general levy for current expenses* may be used prevent the direct expenditure of township general levy moneys for road and bridge purposes. However, to the extent that the township *general fund* contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes, provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.

Transfer of Moneys from the Township General Fund to a Fund for Township Road and Bridge Purposes

The Ohio Revised Code establishes two statutory procedures by which moneys may be transferred from one fund of a subdivision to another fund of the subdivision. The first, discussed more fully below, is set forth in R.C. 5705.14, which authorizes the taxing authority of a subdivision, acting by resolution, to transfer moneys from certain funds to other specified funds in the circumstances prescribed in its provisions. The second procedure, established under R.C.

Where moneys have been paid into the general fund of a county, and have been commingled to the extent that the board of county commissioners can no longer distinguish the particular source from which the moneys originated, such moneys may be used for road and bridge purposes only after they have been transferred to an appropriate fund pursuant to R.C. 5705.15 and 5705.16. . . . As stated above, however, moneys in a county’s general fund which are not restricted as to use for bridge construction may be used directly from the general fund for such purposes. Such moneys may be used only where the board of county commissioners can establish that they do not include any revenues derived from a general levy for current expenses, the local government fund, or any other similarly restricted revenues.

1981 Op. Att’y Gen. No. 81-035, at 2-137 to 2-138. *See generally* 2004 Op. Att’y Gen. No. 2004-017, at 2-141 (“it is appropriate for funds and accounts to be structured to enable public officials to expend public moneys in accordance with the provisions of law governing the expenditure of those moneys”); 1986 Op. Att’y Gen. No. 86-054, at 2-296 to 2-297; note 2, *supra*. As discussed in footnote 5, *infra*, moneys may no longer be transferred from the general fund under R.C. 5705.15-.16. Rather, all transfers from the general fund are now covered by R.C. 5705.14(E).

5705.15 and R.C. 5705.16, provides (with limited exceptions⁴) for transfers in addition to those authorized in R.C. 5705.14 to be made by petition of the taxing authority to the court of common pleas. This procedure requires approval by the Tax Commissioner and a judicial finding “that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom.” R.C. 5705.16; *see* R.C. 5575.10 (the fund produced by levies under R.C. 5573.13 and R.C. 5575.10 for township road maintenance and repair purposes “shall be subject to transfer, in the manner provided in sections 5705.15 and 5705.16 of the Revised Code”). *See generally* 1986 Op. Att’y Gen. No. 86-082.⁵

⁴ R.C. 5705.15 provides that, in addition to the transfers authorized in R.C. 5705.14, the taxing authority may, in the manner provided in R.C. 5705.15 and R.C. 5705.16:

transfer from one fund to another any public funds under its supervision, except the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose.

The moneys named in R.C. 5705.15 are thus excluded from moneys that may be transferred to another fund in accordance with R.C. 5705.16.

⁵ At least one court has held that the provisions of R.C. 5705.15 and R.C. 5705.16 cannot constitutionally be applied to permit tax moneys to be used for purposes other than the purposes for which they were levied. *See In re Petition for Transfer of Funds by Perry Township*, 52 Ohio App. 3d 1, 3, 556 N.E.2d 191 (Montgomery County 1988) (“as applied to funds from special levies enacted for a particular purpose being moved to funds which may be expended for a different purpose, R.C. 5705.15 is unconstitutional” under Ohio Const. art. XII, § 5); *see also* 1999 Op. Att’y Gen. No. 99-054, at 2-333 to 2-334 (considering the possible transfer under R.C. 5705.15 and R.C. 5705.16 of money from a delinquent tax and assessment collection fund created under R.C. 321.261 and stating: “there is serious question whether such transfer would ever be permitted, given the source of the money and the continuing nature of the statutory purpose of the DETAC fund. We are informed as a matter of fact that the tax commissioner has refused to approve transfers of money from a DETAC fund to the county general fund” (citations omitted)); 1990 Op. Att’y Gen. No. 90-069, at 2-293 n.6 (when “the moneys that are transferred are to be used for purposes that are permitted by the special levy, there would be no violation of [Ohio Const. art. XII, § 5]”).

However, some authorities indicate that tax moneys may be transferred to funds for other purposes under R.C. 5705.15 and R.C. 5705.16. *See, e.g.*, R.C. 5575.10 (the fund produced by levies under R.C. 5573.13 and R.C. 5575.10 for township road maintenance and repair purposes “shall be subject to transfer, in the manner provided in sections 5705.15 and 5705.16 of the Revised Code”); 1999 Op. Att’y Gen. No. 99-054 (syllabus, paragraph 3) (“[i]f money in a

The remaining question here at issue is whether the township may transfer moneys from the township general fund to the township road and bridge fund under R.C. 5705.14(E), which states: “Money may be transferred from the general fund to any other fund of the subdivision.” Under division (E), transfers may be made pursuant to resolution of the taxing authority passed with the affirmative vote of a majority of the members.⁶ The board of township trustees is the taxing authority of a township. R.C. 5705.01(C).

Division (E) of R.C. 5705.14 states in general terms that money may be transferred from the general fund to any other fund of the subdivision. It does not exclude from the transfer moneys from a particular source (such as the general levy for current expenses) nor does it exclude particular funds (such as the road and bridge fund) from being recipients of the moneys so transferred. Thus, a reading of the plain language of R.C. 5705.14(E) indicates that any moneys in the general fund for current expenses may be transferred to the road and bridge fund.

county delinquent tax and assessment collection fund may be transferred from that fund, such transfer may be made only pursuant to the provisions of R.C. 5705.15 and R.C. 5705.16, upon a resolution of the board of county commissioners declaring the necessity for the transfer of funds, with the approval of the tax commissioner, and upon a finding by the court of common pleas that there is good reason or necessity for the transfer and that no injury will result. (1994 Op. Att’y Gen. No. 94-015, approved and followed.)”).

Under R.C. 5705.15, the transfer procedure set forth in R.C. 5705.15-.16 is “[i]n addition to the transfers authorized” in R.C. 5705.14 and applies only to transfers not covered by R.C. 5705.14. *See In re Margaretta Local Sch. Dist.*, 20 Ohio Misc. 243, 253 N.E.2d 836 (C.P. Erie County 1969) (a transfer of funds from a bond retirement fund may be made exclusively under R.C. 5705.14(C) and cannot be made under R.C. 5705.15-.16). R.C. 5705.14 has been amended as discussed more fully later in this opinion, and R.C. 5705.14(E) currently covers all transfers from the general fund. Therefore, no transfers from the general fund may be made under R.C. 5705.15-.16. Accordingly, the conclusion reached in earlier opinions that moneys could be transferred from the general fund under R.C. 5705.15-.16, *see, e.g.*, 1986 Op. Att’y Gen. No. 86-082, at 2-463; 1981 Op. Att’y Gen. No. 81-035, at 2-138, is not valid under R.C. 5705.14(E) as currently in effect. *See also* note 3, *supra*.

⁶ R.C. 5705.14 states in its final paragraph that, except in the case of transfer pursuant to division (E), transfers authorized by R.C. 5705.14 “shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members.” It has been found that this language (previously referring to divisions (E) and (F), which were replaced by the current division (E)) means that a transfer may be made pursuant to resolution of the taxing authority passed with the affirmative vote of a majority of the members. 1986 Op. Att’y Gen. No. 86-082, at 2-461; 1989 Op. Att’y Gen. No. 89-075, at 2-346.

It has been suggested that this plain reading of the statute must be rejected on the basis of 1981 Op. Att’y Gen. No. 81-035. When the 1981 opinion was issued, the current version of division (E) had not yet been enacted. Instead, R.C. 5705.14 then contained divisions (E) and (F), which stated:

(E) Money may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

(F) Money appropriated for the general fund may be transferred from such fund to a fund authorized by section 5705.12 or 5705.13 of the Revised Code or to the proper fund of a district authority.

This version of R.C. 5705.14(E) and (F) was in effect from the enactment of the Ohio Revised Code in 1953 until the current version of division (E) took effect in 1989. *See* 1987-1988 Ohio Laws, Part I, 1163, 1164 (S.B. 293, eff. Mar. 17, 1989); 1953-1954 Ohio Laws 7 (Am. H.B. 1, eff. Oct. 1, 1953).

Under the earlier version of R.C. 5705.14(E) and (F) in effect in 1981, the taxing authority of a subdivision was permitted to transfer general fund moneys only to particular funds of the subdivision: the sinking fund or the bond retirement fund to meet a deficiency; a fund authorized by R.C. 5705.12 or R.C. 5705.13; or the proper fund of a district authority. The funds to which a township could transfer moneys under these provisions did not include the township road and bridge fund. Therefore, when 1981 Op. Att’y Gen. No. 81-035 was issued, existing statutes provided no authority for a township, by its own action, to transfer general fund moneys into the road and bridge fund. Instead, the opinion concluded that such a transfer could be made only through the process and with the approvals established under R.C. 5705.15 and R.C. 5705.16, stating:

A transfer from a county general fund to a road or bridge fund may not be made by mere resolution of the board of county commissioners [under R.C. 5705.14], but, rather, must be effected pursuant to R.C. 5705.16 by petition to a court of common pleas and the board of tax appeals [now the Tax Commissioner]. *See* 1940 Op. Att’y Gen. No. 1949, p. 235; 1939 Op. Att’y Gen. No. 791, p. 996. If there is any doubt as to the nature of the particular moneys in a county’s general fund which are to be used for bridge construction, a board of county commissioners may not expend such moneys directly from the general fund; rather, transfer must be made pursuant to R.C. 5705.15 and 5705.16.

1981 Op. Att’y Gen. No. 81-035, at 2-138; *see also* notes 3 and 5, *supra*.

The 1981 opinion was consistent with a number of earlier opinions, each of which concluded under the version of R.C. 5705.14 or its predecessor then in effect that no transfers could be made from the general fund to the road and bridge fund under R.C. 5705.14 and that transfers could be made only under R.C. 5705.15-.16 or their predecessors with the approval required by those provisions. *See, e.g.,* 1940 Op. Att’y Gen. No. 1949, vol. I, p. 235; 1939 Op. Att’y Gen. No. 791, vol. II, p. 996; 1934 Op. Att’y Gen. No. 3285, vol. II, p. 1438. Therefore, it

was accurate in 1981 to conclude that no general fund moneys could be transferred to the road and bridge fund under R.C. 5705.14(E) or (F) as then in effect. The current language of R.C. 5705.14(E) does not support this conclusion, for it plainly authorizes the transfer of money from the general fund to any other fund of the subdivision and does not exclude the road and bridge fund.

There remains the question whether the plain language of R.C. 5705.14(E) may be read literally to permit a township to transfer to its road and bridge fund any moneys in the general fund, including general levy moneys, or whether there are restrictions that prevent the transfer of general levy moneys to the road and bridge fund.

Constitutional Restrictions on the Use of Tax Proceeds and Effect of Transfer of Moneys to Other Funds

Ohio Const. art. XII, § 5 states 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.” This provision prohibits the expenditure of tax proceeds for any purpose other than the purpose for which the tax is levied. *See, e.g.*, 1997 Op. Att’y Gen. No. 97-030; 1990 Op. Att’y Gen. No. 90-069, at 2-289 to 2-290. As discussed above, R.C. 5705.05 and R.C. 5705.06 establish the purposes for which proceeds of the township general levy for current expenses may be used and prohibit a township from including in its general levy for current expenses the amounts needed for road or bridge purposes or from making direct expenditures of general levy moneys for road or bridge purposes. It is necessary, therefore, to determine whether Ohio Const. art. XII, § 5, R.C. 5705.05, and R.C. 5705.06 prevent proceeds of a township general levy for current expenses from being transferred to another fund to be used for road or bridge purposes.

In 1986 Op. Att’y Gen. No. 86-082 the Attorney General considered the transfer of moneys from the general fund to another fund of the subdivision under R.C. 5705.14(E) and (F) as then in effect, which was the same version considered in 1981 Op. Att’y Gen. No. 81-035, as quoted above. The 1986 opinion concluded that a transfer could be made under division (E) or (F) pursuant to resolution of the taxing authority passed with the affirmative vote of a majority of the members without any other approval, but only to the funds specified in divisions (E) and (F), which did not include the road and bridge fund. 1986 Op. Att’y Gen. No. 86-082; *accord* Ohio Legislative Service Comm’n, Analysis, 117th Gen. A., S.B. 293 (As Reported by H. Local Government);⁷ 1989 Op. Att’y Gen. No. 89-075, at 2-346. The 1986 opinion also stated that in

⁷ Ohio Legislative Service Comm’n, Analysis, 117th Gen. A., S.B. 293 (As Reported by H. Local Government) states, in part:

Approval of transfers. The Attorney General has held that under the statute amended by the bill (sec. 5709.14 [*sic*; R.C. 5705.14 was the only statute amended by the bill]), the transfer of funds from the general fund to a sinking or bond retirement fund, or of moneys appropriated for the general fund to a special

addition to the transfers authorized in R.C. 5705.14, the taxing authority of a political subdivision could make transfers as provided in R.C. 5705.15 and R.C. 5705.16. “[I]f a subdivision transfers moneys from its general fund to another fund, in a manner other than as provided in R.C. 5705.14(E) and (F), the subdivision must comply with R.C. 5705.15 and R.C. 5705.16.” 1986 Op. Att’y Gen. No. 86-082, at 2-463. As noted above, the current version of division (E) took effect in 1989. 1987-1988 Ohio Laws, Part I, 1163, 1164 (S.B. 293, eff. Mar. 17, 1989).

In reaching its conclusions, the 1986 opinion relied upon 1939 Op. Att’y Gen. No. 791, vol. II, p. 996. The 1939 opinion states, in part:

It must be conceded that if the legislature meant to *give the taxing authority of a political subdivision the power to transfer from the general fund any unencumbered balance therein to any other fund simply by passing a resolution to that effect*, it certainly did not say so in Section 5625-13, paragraph (f) [subsequently R.C. 5705.14(F)]. It is a fundamental rule of statutory construction that the intention of the legislature must be gathered from what it says and not from what it intended to say. Had it been the intention to give taxing authorities free rein in transferring from its general fund without application to the Tax Commission and the courts as provided by Sections 5625-13a et seq., General Code [now R.C. 5705.15-.16], the authority extended by the said paragraph (f) would not have been limited as it was. It appears to me that the very purpose of the enactment in part at least, was to preserve the general fund for possible necessary needs in the future.

Moreover, it might well have been within the legislative mind that inasmuch as the special funds enumerated in Section 5625-9, General Code [now R.C. 5705.09], other than the general fund, are for special purposes, and special tax levies or other special means were provided for their creation, they fulfill their intended purpose when the revenues so specifically provided are exhausted and that those revenues should not need to be supplemented by transfers from the general revenue fund or from any other source to carry out the purposes of the existence of the funds, except in *special instances which would merit the more mature consideration that would be given to such a transfer upon application to the Tax Commission and the Common Pleas Court*.

1939 Op. Att’y Gen. No. 791, vol. II, p. 996, at 1000-01 (emphasis added).

fund or district authority fund, may be made pursuant to a resolution of the taxing authority passed with the affirmative vote of a majority of the members, without requiring any further approval. 86 OAG 082.

The first of the two paragraphs quoted above was quoted also in 1986 Op. Att’y Gen. No. 86-082, at 2-463 to 2-464, and the 1986 opinion was cited in the Ohio Legislative Service Commission’s analysis of S.B. 293, which amended R.C. 5705.14 to create the current version of division (E). *See* note 7, *supra*. It thus may be that by enacting this amendment, the General Assembly intended to delete the limitations then set forth in R.C. 5705.14(E) and (F) and to give each taxing authority the power the Attorney General said that it currently lacked – that is, “the power to transfer from the general fund any unencumbered balance therein to any other fund simply by passing a resolution to that effect.” 1986 Op. Att’y Gen. No. 86-082, at 2-463 (quoting 1939 Op. Att’y Gen. No. 791, vol. II, p. 996, at 1000).

We are left with no indication as to whether or to what extent the General Assembly weighed the other factors set forth in the 1939 opinion – the interest in preserving the general fund for possible needs in the future and the decision to decline to use general revenue funds to supplement funds for special purposes except in accordance with the approval required under R.C. 5705.15 and R.C. 5705.16 – or the provisions of Ohio Const. art. XII, § 5. *See Wachendorf v. Shaver*, 149 Ohio St. 231, 236, 78 N.E.2d 370 (1948) (“[t]he courts may not speculate, apart from the words, as to the probable intent of the Legislature”). The plain language of R.C. 5705.14(E) would permit the transfer of money from the general fund of the subdivision to any other fund of the subdivision with no requirement for consideration of any other factors. This provision clearly authorizes the board of township trustees to transfer to the road and bridge fund any moneys in the general fund that are not restricted from being used for road and bridge purposes. The remaining question is whether it also authorizes the transfer of proceeds of the general levy for current expenses. Our analysis, considering R.C. 5705.05, R.C. 5705.06, and Ohio Const. art. XII, § 5, indicates that it does not.

Prior to the General Assembly’s amendment of R.C. 5705.14(E), the Court of Appeals for Montgomery County considered whether moneys in a township special fund for fire district purposes could be transferred to the township general fund to be expended for non-fire district purposes. *In re Petition for Transfer of Funds by Perry Township*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988). No transfer was authorized under R.C. 5705.14, and the court refused to construe R.C. 5705.15 as authorizing the transfer, finding R.C. 5705.15 unconstitutional as applied to the transfer of funds from a special levy enacted for a particular purpose to a fund that may be used for a different purpose. The court stated:

While it seems that this provision [R.C. 5705.15] would allow the transfer of funds from any special levy to a general fund in addition to the method provided in R.C. 5705.14(D), allowing this type of transfer would be unconstitutional according to Section 5, Article XII of the Ohio Constitution, prohibiting the use of funds raised by a levy for a specific purpose for any other purpose than that specified. This is exactly the type of transfer the Constitution intended to prohibit. *See State, ex rel. Walton, v. Edmondson* (1913), 89 Ohio St. 351, 364, 106 N.E. 41, 45. Therefore, as applied to funds from special levies enacted for a particular purpose being moved to funds which may be expended for

a different purpose, R.C. 5705.15 is unconstitutional and we refuse to allow the requested transfer in this case.

In re Petition for Transfer of Funds by Perry Township, 52 Ohio App. 3d at 3.

By its terms the general levy for current expenses is a general levy rather than a special levy. Nonetheless, it imposes a tax for specified purposes and thus is subject to the provisions of Ohio Const. art. XII, § 5 stating 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.”

R.C. 5705.05 and R.C. 5705.06 plainly allow the use of proceeds of the general levy for a myriad of purposes of the subdivision, expressly excluding only limited uses, among them road and bridge purposes. A construction of R.C. 5705.14(E) that permits the subdivision to transfer general levy moneys to the road and bridge fund would conflict with these restrictions and bring into question the constitutionality of the statutory scheme. *See In re Petition for Transfer of Funds by Perry Township*; 1957 Op. Att’y Gen. No. 772, p. 287, at 289 (“[i]nasmuch as statutes having more than one possible interpretation must be so interpreted as to avoid unconstitutionality, I am compelled to conclude that no section of Chapter 5705., Revised Code, may be so interpreted as to authorize the expenditure of funds derived from the tax levied [for operating expenses of a joint township hospital district] under Section 513.13, Revised Code, for construction of permanent improvements”); *see also, e.g., note 5, supra.*⁸

Instead, the current language of R.C. 5705.14(E) must be read in conjunction with the Ohio Constitution to retain restrictions limiting the expenditure of the proceeds of a tax to the purposes for which the tax was levied. *See* R.C. 1.47 (“[i]n enacting a statute, it is presumed that: . . . (A) Compliance with the constitutions of the state and of the United States is intended”); *State v. Sinito*, 43 Ohio St. 2d 98, 101, 330 N.E.2d 896 (1975) (“[i]t is . . . a well-settled principle of statutory construction that where constitutional questions are raised, courts

⁸ It might be argued that because R.C. 5705.14(E) is part of the statutory scheme under which a township levies its general levy for current expenses, the purposes of the general levy include the possible transfer to any fund in accordance with R.C. 5705.14(E). Under this argument, the transfer to any other fund (including the road and bridge fund) is included as a permissible use of general levy moneys for purposes of Ohio Const. art. XII, § 5 and there is no requirement to limit transfers to avoid such a use. We reject this argument because it would conflict with the language of Ohio Const. art. XII, § 5 requiring that the purpose of a tax be stated in the law imposing the tax. *See generally Walker v. City of Cincinnati*, 21 Ohio St. 14, 53 (1871) (the Ohio Constitution “is to be construed according to its intention, where that is clear; and that which clearly falls within the reason of the prohibition may be regarded as embodied in it”); *cf. R.C. 5575.10* (stating expressly that the fund produced by levies under R.C. 5573.13 and R.C. 5575.10 for township road maintenance and repair purposes is subject to transfer as provided in R.C. 5705.15 and R.C. 5705.16).

will liberally construe a statute to save it from constitutional infirmities”); *Co-operative Legislative Comm. of the Transp. Brotherhoods v. P.U.C.O.*, 177 Ohio St. 101, 202 N.E.2d 699 (1964) (syllabus, paragraph 2) (“[w]here reasonably possible, a statute should be given a construction which will avoid rather than a construction which will raise serious questions as to its constitutionality”); *State ex rel. Mack v. Guckenberger*, 139 Ohio St. 273, 39 N.E.2d 840 (1942) (syllabus, paragraph 2) (“[o]ne of the tests of the constitutionality of a statute is whether it attempts to validate and legalize a course of conduct, the effect of which the Constitution specifically forbids”); *Hopkins v. Kissinger*, 31 Ohio App. 229, 233, 166 N.E. 916 (Mahoning County 1928) (“[a]nother universal principle applied in considering constitutional questions is that a law will be so construed, if possible, as to avoid conflict with the Constitution, although such a construction may not be the most obvious or natural one”); 2001 Op. Att’y Gen. No. 2001-010, at 2-60.⁹ Statutory restrictions on the purposes for which particular funds may be expended cannot be disregarded when questions of transfer are presented.

In reaching this conclusion, it is instructive also to examine the other provisions of R.C. 5705.14. Apart from division (E), R.C. 5705.14 contains a number of provisions authorizing the transfer of moneys from one fund of a subdivision to another fund of the same subdivision. Where this statute authorizes the transfer of moneys whose purposes are restricted by statute, it generally authorizes their transfer only if they are not needed for their initial purpose and then authorizes their transfer only to other funds having related purposes or, if this is not possible, requires court approval for transfer to another fund. *See* 1994 Op. Att’y Gen. No. 94-015; 1994 Op. Att’y Gen. No. 94-004.

For example, division (A) of R.C. 5705.14 provides that the unexpended balance in a bond fund that is no longer needed for the purposes for which the fund was created “shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.” Division (C) of R.C. 5705.14 provides that the unexpended balance in the sinking fund or bond retirement fund, after all obligations for the payment of which the fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund, and in the case of the bond retirement fund to the sinking fund, but if the transfer is impossible because of the nonexistence of the fund to receive the transfer, the unexpended balance, with the approval of

⁹ It might be argued that R.C. 5705.14(E) permits the transfer of township general levy moneys to the road and bridge fund, but that the moneys retain the expenditure restrictions of R.C. 5705.05 and R.C. 5705.06 and, therefore, cannot be spent for road and bridge purposes. We reject this interpretation because it would provide for a useless act (the transfer of moneys to a fund that may be used only for purposes for which the transferred moneys may not be used) that would need to be undone to permit the use of the moneys for a proper purpose. *See State ex rel. McLeary v. Hilty*, 139 Ohio St. 39, 45, 38 N.E.2d 198 (1941) (“[s]urely [the statute] was not intended to require the treasurer to perform a wholly vain act by placing in its own general fund money the county under no circumstances could use”); *see also* R.C. 5705.10(H) (“[m]oney paid into any fund shall be used only for the purposes for which such fund is established”).

the court of common pleas, may be transferred to any other fund of the subdivision. Under division (D) of R.C. 5705.14, the unexpended balance in certain special funds may be transferred to the general fund or the sinking or bond retirement fund after the termination of the undertaking for which the special fund existed, but only after the payment of all obligations incurred and payable from the special fund. *See also* R.C. 5705.14(B) (transfer of unexpended balance in specific permanent improvement fund after the payment of all obligations to the sinking or bond retirement fund of the subdivision, or to a special fund for the acquisition of permanent improvements, or with court approval to the general fund); R.C. 5705.14(F) and (G) (transfer of moneys retained by a county or municipal corporation from the state auto registration distribution fund or the state gasoline excise tax fund to the sinking or bond retirement fund from which any principal, interest, or charges for which the money may be used is payable).

Division (H) of R.C. 5705.14 contains detailed provisions authorizing transfers from the county mental retardation and developmental disabilities general fund and the county mental retardation and developmental disabilities capital fund or any other fund for the purposes of the county board of mental retardation and developmental disabilities “so long as money in the fund to which the money is transferred can be spent for the particular purpose of the transferred money.” R.C. 5705.14(H)(1). An unexpended balance may be transferred back to the county board’s general fund “if the unexpended balance is no longer needed for its particular purpose and all outstanding obligations have been paid,” and shall be credited to an account for current expenses. R.C. 5705.14(H)(2).

Thus, it is apparent that other provisions of R.C. 5705.14 respect the requirement of Ohio Const. art. XII, § 5 that the expenditure of proceeds of a tax be restricted to the purpose for which the tax is levied. It is appropriate to give similar deference to the purposes of the township general levy and to construe division (E) of R.C. 5705.14 as respecting the limitations against expenditure of township general levy moneys for road and bridge purposes, in accordance with R.C. 5705.05, R.C. 5705.06, and Ohio Const. art. XII, § 5.

To reach a contrary conclusion would invite the charge that, in contravention of established Ohio law, a township is permitted to do indirectly (that is, through transfer under R.C. 5705.14(E)) that which it may not do directly (that is, to expend general levy moneys for road and bridge purposes). *See State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 67, 285 N.E.2d 362 (1972) (“this court looks through the form to the substance of the proposed transaction”); *Teale v. Stillinger*, 95 Ohio St. 129, 136, 115 N.E. 1010 (1916) (syllabus, paragraph 1) (“[a] county treasurer . . . cannot . . . do indirectly during his term of office what he is prohibited from doing directly”); *Taylor v. Comm’rs of Ross County*, 23 Ohio St. 22 (1872) (syllabus, paragraph 2) (“[w]hat the general assembly is . . . thus prohibited from doing directly, it has no power to do indirectly”); 1998 Op. Att’y Gen. No. 98-034, at 2-201 (“[i]t is clear that the Department [of Development] cannot do indirectly what it cannot do directly – that is, use a

private enterprise to acquire interests in stock for or on behalf of the state”); 1985 Op. Att’y Gen. No. 85-016, at 2-64 n.3 (“a county may not do indirectly that which it may not do directly”).¹⁰

¹⁰ It might be argued that the plain language of R.C. 5705.14(E) must be read literally to authorize the transfer of any general fund moneys to any other fund of the subdivision and must be construed as adopting a legislative construction of Ohio Const. art. XII, § 5 that permits this reading. There is a presumption that legislation enacted by the General Assembly is in compliance with the Ohio Constitution. R.C. 1.47(A); *State v. Hochhausler*, 76 Ohio St. 3d 455, 458, 668 N.E.2d 457 (1996) (“[i]t is a well-settled rule that an Act of the General Assembly is entitled to a strong presumption of constitutionality”). Accepting this presumption, it might be argued that because the language of division (E) is plain and sets forth no limitations on transfers from the general fund, we are compelled to construe it in accordance with its terms and refuse to recognize any limitations on transfers from the general fund. *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) (“[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court’s only task is to give effect to the words used”).

A similar conclusion was reached in 1985 Op. Att’y Gen. No. 85-072 when the Attorney General then serving found it necessary to overrule an opinion of a predecessor and to adopt a more narrow reading of Ohio Const. art. XII, § 5 than was reached in the earlier opinion. The earlier opinion had concluded that Ohio Const. art. XII, § 5 required that interest earned on the proceeds of a tax levy could be used only for the purposes for which proceeds of the tax levy could be used. 1980 Op. Att’y Gen. No. 80-003. Based upon the plain language of subsequent legislation, the 1985 opinion expressed the necessity of accepting the constitutional interpretation adopted by the General Assembly, stating, at 2-284:

I realize that Op. No. 80-003 concluded that the result reached therein was required by Ohio Const. art. XII, §5. . . . The General Assembly has acted since the issuance of Op. No. 80-003 and has clearly expressed its belief that interest earned on moneys included within a special fund may constitutionally be placed to the credit of the general fund. See R.C. 1.47 (“[i]n enacting a statute, it is presumed that : (A) [c]ompliance with the constitutions of the state and of the United States is intended”). In light of the plain meaning of the amendment to R.C. 5705.10 made by Am. Sub. H.B. 230, an amendment which renders R.C. 5705.10 inconsistent with the interpretation of Ohio Const. art. XII, §5 set forth in Op. No. 80-003, I am unable to adopt a broad reading of art. XII, §5. See 1981 Op. Att’y Gen. No. 81-100 at 2-377 (it is not the function of this office to opine on the constitutionality of state statutes. If a statute is clear, executive officers must act in accordance with its plain meaning, on the assumption that the statute is constitutional). See also Northern Ohio Patrolmen’s Benevolent Association v.

The limitation on the expenditure of general levy moneys set forth in R.C. 5705.05 and R.C. 5705.06 applies only to proceeds of the general levy and does not extend to other moneys in the general fund. Of course, certain other moneys in the general fund may be subject to other restrictions upon their use. *See, e.g.*, R.C. 5747.51 (money received from the undivided local government fund and paid into the general fund may be used only for the current operating expenses of the subdivision); 1981 Op. Att’y Gen. No. 81-035. However, to the extent that the general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be transferred to the road and bridge fund under R.C. 5705.14(E), provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes. *See, e.g.*, R.C. 5705.10; 1981 Op. Att’y Gen. No. 81-035; 1957 Op. Att’y Gen. No. 1122, p. 504 (because the use of inheritance tax proceeds paid into the general fund of a township is not restricted by law, a township may use them for road and bridge building and repair).

We conclude, therefore, that R.C. 5705.14(E), which states that money may be transferred from the general fund to any other fund of a subdivision, does not authorize the board of trustees of a township to transfer to the road and bridge fund proceeds of the general levy for current expenses because of the provisions of R.C. 5705.05 and R.C. 5705.06 that expressly exclude road and bridge expenditures from the purposes for which the proceeds of the general levy for current expenses may be used and the provision of Ohio Const. art. XII, § 5 requiring that proceeds of a tax be expended only for the purpose for which the tax is levied. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be transferred to the road and bridge fund in accordance with R.C. 5705.14(E), provided that those moneys can be

City of Parma, 61 Ohio St. 2d 375, 377, 402 N.E.2d 519, 521 (1980) (enactments of the General Assembly have a strong presumption of constitutionality). I believe that the plain language of R.C. 135.21 and R.C. 5705.10 requires that the interest earned on moneys included within a bond retirement fund be credited to the general fund. Thus, I overrule Op. No. 80-003 to the extent that it is inconsistent with this opinion.

Unlike the statutory language at issue in 1985 Op. Att’y Gen. No. 85-072, the language of R.C. 5705.14(E) is susceptible of being read in a manner that makes it consistent with our longstanding interpretation of Ohio Const. art. XII, § 5 and we find it appropriate to construe the language in this manner to avoid possible conflict with the Ohio Constitution. We conclude, accordingly, that in light of Ohio Const. art. XII, § 5 and *In re Petition for Transfer of Funds by Perry Township*, it is appropriate to construe the restrictions imposed by R.C. 5705.05 and R.C. 5705.06 as preventing a board of township trustees from transferring general levy moneys to the road and bridge fund under R.C. 5705.14(E).

separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.

Conclusions

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

1. The provisions of R.C. 5705.05 and R.C. 5705.06 excluding road and bridge expenditures from the purposes for which proceeds of the general levy for current expenses (“general levy”) may be used prevent the direct expenditure of township general levy moneys for road and bridge purposes. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes, provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.
2. R.C. 5705.14(E), which states that money may be transferred from the general fund to any other fund of a subdivision, does not authorize the board of trustees of a township to transfer to the road and bridge fund proceeds of the general levy for current expenses because of the provisions of R.C. 5705.05 and R.C. 5705.06 that expressly exclude road and bridge expenditures from the purposes for which the proceeds of the general levy for current expenses may be used and the provision of Ohio Const. art. XII, § 5 requiring that proceeds of a tax be expended only for the purpose for which the tax is levied. However, to the extent that the township general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be transferred to the road and bridge fund in accordance with R.C. 5705.14(E), provided that those moneys can be separately identified and have not been commingled with general levy moneys or other moneys that cannot be used for road and bridge purposes.

Respectfully,



MARC DANN
Attorney General