January 29, 1998

OPINION NO. 98-008

The Honorable Joseph A. Flautt
Perry County Prosecuting Attorney
Peoples National Bank Building
P.O. Box 569
New Lexington, Ohio 43764

Dear Prosecutor Flautt:

I have before me your request for an opinion concerning the use of county motor vehicle license and fuel tax revenues to pay a portion of the cost of purchasing an existing warehouse, part of which will be used to house and maintain the county's road machinery and equipment. You have informed us that the county engineer would like to purchase a 16-acre parcel of land, including a warehouse which the engineer proposes to use, in part, to house and maintain the county's road equipment and, in part, to provide office space for the county engineer and his staff. The engineer would like to use moneys from the county's share of motor vehicle license and fuel tax revenues to pay the portion of the purchase price attributable to the part of the warehouse that will be used to maintain and store road machinery, equipment, and supplies. You question whether a county may use its share of motor vehicle license and fuel tax revenues for this purpose.

In order to answer your question, it is first necessary to discuss the limitations imposed by the Ohio Constitution and by statute upon the purposes for which motor vehicle fuel and license tax revenues may be expended. As summarized by the court in *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one), "[s]ection 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes directly connected with the construction, maintenance and repair of highways and the enforcement of traffic laws...."[1] In accordance with this constitutional limitation,

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[1] Ohio Const. art. XII, § 5a states:

> No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for

the General Assembly has enacted various statutes that authorize the levy of such taxes and further specify the purposes for which the revenues from those taxes may be used. *See, e.g.*, R.C. 4501.04 (distribution of receipts of the tax levied by R.C. 4503.02 and purposes for which those moneys may be used); R.C. 4503.02 (levy of annual motor vehicle license tax and purposes for which the revenues may be used); R.C. 5735.05 (levy of motor vehicle fuel excise tax); R.C. 5735.25 (levy of additional motor vehicle fuel excise tax); R.C. 5735.26 (crediting of additional motor vehicle fuel excise tax); R.C. 5735.27 (distribution and use of the motor vehicle fuel tax fund and highway operating fund). Whether the county may expend motor vehicle license and fuel tax moneys for the purpose you describe, therefore, depends upon whether the statutes authorizing the levy and distribution of such moneys to the counties authorize the proposed use. *See generally* Ohio Const. art. XII, § 5 (stating, in part, "every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied").

Let us begin by examining R.C. 4501.04, which prescribes the manner of distribution of the state motor vehicle license tax levied under R.C. 4503.02.[2] Concerning the share of the tax apportioned to counties, R.C. 4501.04 states in pertinent part:

> (A) Thirty-four per cent of all such moneys are for the use of the municipal corporation or county which constitutes the district of registration....
> The county portion of such funds shall be retained in the county treasury and shall be used for the planning, maintenance, repair, construction, and repaving of public streets, and maintaining and repairing bridges and viaducts; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or

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> construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

[2] R.C. 4503.02 authorizes the levy of the state motor vehicle license tax for certain purposes, including, among others:

> enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles; planning, constructing, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the counties' proportion of the cost and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the counties' portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying the principal, interest, and charges on county bonds and other obligations issued pursuant to [R.C. Chapter 133] for highway improvements.... (Emphasis added.)

> viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter; *and for no other purpose*.
>
> ....
>
> (C) Forty-seven per cent of all such moneys shall be for the use of the county in which the owner resides or in which the place is located at which the established business or branch business in connection with which the motor vehicle registered is used, for the planning, construction, reconstruction, improvement, maintenance, and repair of roads and highways; maintaining and repairing bridges and viaducts; and the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter.
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> (D) Nine per cent of all such moneys shall be for the use of the several counties for the purposes specified in division (C) of this section.... (Emphasis added.)

Thus, a county's share of the state motor vehicle license tax may be used only for the purposes set forth in R.C. 4503.02 and R.C. 4501.04, which relate primarily to the construction and repair of streets and roads, the maintenance and repair of bridges and viaducts, and the payment of charges on certain bonds issued for highway improvements. None of the purposes described in R.C. 4501.04 or R.C. 4503.02, however, includes the purchase of a building to be used to house county road machinery and equipment or to furnish office space for the county engineer. In the absence of mention in either R.C. 4501.04 or R.C. 4503.02 of the use of motor vehicle license tax revenues to provide a facility to house road machinery or to provide office space for the county engineer, we find no authority for a county to use its share of such revenues toward the purchase of any such facility. *See* 1988 Op. Att'y Gen. No. 88-004 (syllabus, paragraph two) ("[m]oneys derived from the state motor vehicle license tax imposed by R.C. 4503.02 may be expended only for the purposes specified in that section and in R.C. 4501.04, and such moneys may not be expended to construct any type of facility for the county engineer").

A county may also receive motor vehicle license tax revenues from a local tax levied under R.C. 4504.02 for various highway related purposes.[3] Not included in R.C. 4504.02 as one of the

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[3] R.C. 4504.02 specifies the purposes for which a county may levy a tax thereunder, in part, as follows:

> paying the costs of enforcing and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the county's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the county's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying any costs apportioned to the county under [R.C. 4907.47 (apportionment of

purposes for which the local motor vehicle license tax may be used, however, is the provision of any type of building, regardless of the proposed use of the building. *See* 1988 Op. Att'y Gen. No. 88-004 n. 5 at 2-13; *see also* R.C. 4504.15 and R.C. 4504.16 (authorizing a county to levy annual license taxes "[f]or the purpose of paying the costs of enforcing and administering the tax provided for in this section; for the various purposes stated in [R.C. 4504.02]; and to supplement revenue already available for those purposes"). We must conclude, therefore, that a county is without authority to use either state or local motor vehicle license tax revenues to purchase, or to pay any portion of the purchase price of, a facility to be used by the county engineer as office space or to house road machinery.

Having determined that a county may not use motor vehicle license tax revenues to purchase a building for use by the county engineer, let us consider whether a county may use its share of state motor vehicle fuel tax revenues for such purpose.[4] The purposes for which a county may expend its portion of state motor vehicle fuel tax revenues are prescribed by R.C. 5735.27(A)(3),[5] as follows:

> planning, maintaining, and repairing the county system of public roads and highways within such county; the planning, construction, and repair of walks or paths along county roads in congested areas; *the planning, construction, and maintenance of suitable buildings for the housing of county road machinery*; the payment of costs apportioned to the county under [R.C. 4907.47 (apportionment of the cost of railway crossing devices)]; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or

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> the cost of railway crossing devices)]; paying debt service charges on notes or bonds of the county issued for such purposes; ... purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting, and maintaining traffic lights and signals; and to supplement revenue already available for such purposes....

[4] R.C. 5735.05 provides for the imposition of a motor vehicle fuel excise tax for various highway-related purposes and for the purpose of paying the expenses of administering and enforcing state law relating to the registration and operation of motor vehicles. *See generally* R.C. 5735.23 (crediting of receipts from tax levied by R.C. 5735.05)

[5] R.C. 5735.27(A)(4) specifies that the county's share of the additional motor vehicle fuel excise tax levied under R.C. 5735.25 may be used "for the purposes of planning, maintaining, constructing, widening, and reconstructing the county system of public roads and highways; paying principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter; and paying costs apportioned to the county under [R.C. 4907.47 (apportionment of the cost of railway crossing devices)]." The purposes set forth in division (A)(4) are similar to, but more limited than, the purposes listed in R.C. 5735.27(A)(3). For ease of discussion, this opinion will focus upon the purposes described in R.C. 5735.27(A)(3).

> constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under that chapter; and the purchase, installation, and maintenance of traffic signal lights. (Emphasis added.)

It appears that the portion of R.C. 5735.27(A)(3) which describes "the planning, construction, and maintenance of suitable buildings for the housing of county road machinery" as a permissible use of a county's share of motor vehicle fuel tax revenues and the interpretation of this phrase in prior Attorney General opinions form the basis for your questioning the county engineer's proposal.

As mentioned in your opinion request, of particular concern to you is 1964 Op. Att'y Gen. No. 1499, p. 2-388, which considered whether a township's authority to use its share of motor vehicle fuel tax revenues for, among other things, "the construction and maintenance of suitable buildings for housing road machinery and equipment," former R.C. 5735.27(D) (now at R.C. 5735.27(A)(5)), included the authority to purchase real estate as a site for such a building. Referring to the restrictions upon the use of motor vehicle license and fuel tax revenues prescribed by Ohio Const. art. XII, § 5a, 1964 Op. Att'y Gen. No. 1499, p. 2-388, adopted a strict construction of the statutorily permitted uses of a township's share of fuel tax revenues and determined that, in the absence of statutory language expressly describing the purchase of a site on which to construct buildings to house road machinery as a permissible expenditure of fuel tax revenues, a strict reading of the statute did not provide such authority by implication.[6] 1964 Op. Att'y Gen. No. 1499, p. 2-388 (syllabus, paragraph three).

The proposal you describe, however, differs from that considered in 1964 Op. Att'y Gen. No. 1499, p. 2-388, in that, under your proposal, the warehouse and site will be appraised and the total purchase price will be divided into three separate parts -- the value of the site, the value of the portion of the warehouse to be used for housing county road machinery, and the value of the remaining portion of the warehouse.[7] Motor vehicle fuel tax revenues would be used to pay only that part of the purchase price attributable to the portion of the warehouse to be used to house county road machinery, the remaining two parts to be paid from moneys other than motor vehicle fuel or license tax revenues. Because the engineer does not plan to use motor vehicle fuel tax revenues to pay any part of the purchase price attributable to the real estate on which the warehouse is located, the conclusion reached in 1964 Op. Att'y Gen. No. 1499, p. 2-388, does not appear to conflict with the engineer's proposal.[8] Several aspects of the county engineer's proposal, however, remain to be examined.

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[6] Based upon this analysis, 1964 Op. Att'y Gen. No. 1499, p. 2-388, modified 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph two), in which it was concluded that a county's authority to use motor vehicle fuel tax revenues for the purpose of constructing and maintaining a building to house county road machinery included, among other things, the implied authority to purchase real estate on which to locate such building. *See also* note ten, *infra*.

[7] Whether it is possible to value the building and site in such a manner that the value of the part of the building to be used to house the road machinery may reasonably be determined apart

Both 1988 Op. Att'y Gen. No. 88-004 and 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph three), concluded that, even though the planning, construction, and maintenance of buildings to house county road machinery is a permissible use of motor vehicle fuel tax revenues, a county may not use such moneys to construct a multi-purpose facility for the county engineer. The proposal you describe, however, differs from the situations addressed in these opinions, in that your proposal contemplates the purchase of an existing building, and, although the building to be purchased will be used for multiple purposes, fuel tax revenues would be used to pay only that part of the purchase price attributable to the portion of the building that will be used to house the county's road machinery and equipment. *See* note seven, *supra*. It is, therefore, necessary to examine the reasoning of these prior opinions to determine their application to the proposal you describe.

In finding that a county was *not* permitted to use motor vehicle fuel tax revenues "for construction of a *multiple-purpose building* to provide offices for the county engineer and to house equipment and county road machinery," 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph three) (emphasis added), reasoned as follows:

> [M]oney derived pursuant to [former R.C. 5735.23][9] may be used for the construction and maintenance of buildings to house county road machinery. This express power *impliedly* carries with it the authority to expend funds necessary for the *purchase of a building site* and for architectural and engineering plans and specifications, and to pay for all labor and materials required in actual construction. *By its own terms, however, and by force of [Ohio Const. art. XII, § 5a], expenditures for construction of a building under this section are limited to a single purpose building to house county road machinery and may not be for a combination or multiple-purpose building such as is suggested by your request*.

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from the remainder of the building and the land on which the building is situated is a matter that cannot be resolved by means of an Attorney General opinion. For purposes of discussion, however, this opinion will assume that such a valuation is possible.

[8] Whether or not this office would find the purchase of a site to be included within the purpose of planning, constructing, and maintaining suitable buildings to house road machinery is a question that need not be reconsidered at this time because the proposal you describe does not contemplate the expenditure of fuel tax revenues toward the purchase of a site.

[9] At the time, R.C. 5735.23, rather than R.C. 5735.27, included as a purpose for which a county could use its share of state motor vehicle fuel tax revenues "the planning, construction and maintenance of suitable buildings for the housing of county road machinery." 1979-1980 Ohio Laws, Part I, 1915, 2110 and 2113 (Am. Sub. H.B. 204, eff., in pertinent part, July 30, 1979), however, amended both statutes, deleting from R.C. 5735.23 the above-quoted phrase and inserting that language in R.C. 5735.27(A)(3).

1963 Op. Att'y Gen. No. 152 at 234 (footnote and emphasis added).[10]

The conclusion set forth in 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph three) was followed by 1988 Op. Att'y Gen. No. 88-004. In accordance with the rule of statutory construction that the specification of one thing implies the exclusion of another, 1988 Op. Att'y Gen. No. 88-004 at 2-11 reasoned that, "since [R.C. 5735.27(A)(3)] expressly authorizes construction of only one specific type of building with fuel tax moneys, ... the General Assembly did not intend to authorize the construction of other types of buildings with such moneys." 1988 Op. Att'y Gen. No. 88-004, therefore, concluded that a county could not use motor vehicle fuel tax revenues "to construct a facility for the county engineer other than a building suitable for the housing of road machinery and equipment." 1988 Op. Att'y Gen. No. 88-004 (syllabus, paragraph one). Because the proposal you describe contemplates using motor vehicle fuel tax revenues to pay only that part of the purchase price attributable to the portion of the building to be used to house road machinery, 1988 Op. Att'y Gen. No. 88-004 and 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph three) do not appear to prohibit the proposed transaction. *See* note seven, *supra*.

There is, however, another aspect of your proposal that must be examined -- the proposed purchase of an existing facility. In examining this aspect of the proposed transaction, it is necessary to determine the scope of the phrase, "the planning, construction, and maintenance of suitable buildings for the housing of county road machinery," as used in R.C. 5735.27(A)(3). In this regard, it is interesting to note the differences in wording used within that paragraph of the statute to describe the specific projects a county may fund with its share of state motor vehicle fuel tax revenues and the manner in which those projects may be accomplished. Regarding the use of fuel tax moneys for the county system of roads and highways, R.C. 5735.27(A)(3) authorizes a county to plan, maintain, and repair that system. With respect to walks along certain county roads, R.C. 5735.27(A)(3) authorizes a county to use such revenues not only for planning and repair, but also for construction. Concerning traffic signal lights, R.C. 5735.27(A)(3) authorizes the use of motor vehicle fuel tax revenues for "the purchase, installation, and maintenance" of such lights. Also within R.C. 5735.27(A)(3), the General Assembly authorizes a county to use its share of motor vehicle fuel tax revenues for "the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of *acquiring or constructing* roads, highways, bridges, or viaducts or acquiring or making other highway improvements...." (Emphasis added.) In contrast, with respect to buildings for the housing of county road machinery, R.C. 5735.27(A)(3) authorizes a county to use its share of state motor vehicle fuel tax revenues only for "planning, construction, and maintenance," but not for the "purchase" or other acquisition of such buildings.

The precise manner in which R.C. 5735.27(A)(3) describes the permitted uses of a county's

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[10] Although 1964 Op. Att'y Gen. No. 1499, p. 2-388, modified paragraph two of the syllabus of 1963 Op. Att'y Gen. No. 152, p. 230, *see* note six, *supra*, it did not alter the conclusion set forth in 1963 Op. Att'y Gen. No. 152, p. 230 (syllabus, paragraph three), that a county may not use its share of motor vehicle fuel tax revenues to construct a multiple-purpose facility for the county engineer.

share of state motor vehicle fuel tax revenues suggests that, had the General Assembly intended to authorize the use of such revenues for the purpose of purchasing an existing building to house county road machinery, it could easily have expressed that intention through the use of language appearing elsewhere within the same paragraph. *See Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) ("[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended"); *see generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948) ("it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"). Having omitted the words "purchase" or "acquire" from the phrase concerning buildings for the housing of county road machinery, the General Assembly does not appear to have intended that a county use its share of motor vehicle fuel tax revenues to pay the cost of acquiring such a building through the purchase of an existing structure.[11] Rather, should the county decide to provide a facility for the housing of county road machinery through construction of such a facility, R.C. 5735.27(A)(3) permits a county to use motor vehicle fuel tax revenues to pay for such construction, as well as for planning and maintenance of such facility. *See* 1986 Op. Att'y Gen. No. 86-031 (although a local board of education may build, enlarge, repair, and furnish necessary schoolhouses and purchase or lease sites therefor, such authority does not include the power to acquire a schoolhouse through a lease-purchase agreement).

Such a restrictive reading of the purposes for which the General Assembly has authorized counties to use moneys distributed to them under R.C. 5735.27(A)(3) is further supported by comparing the language of R.C. 5735.27(A)(3) with that of other statutes that expressly authorize the county commissioners to purchase various facilities, *e.g.*, R.C. 302.13(E) (authorizing county commissioners to "[a]cquire, construct, maintain, administer, rent, and lease property including buildings and other public improvements as provided by law"); R.C. 307.02 (in providing facilities for, among others, county officers, county commissioners may "purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish" such facilities); R.C. 339.01(B) (authorizing county commissioners to "purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof"). Thus, it is apparent that, where the General Assembly has intended to permit a county to acquire facilities through means other than construction, it has expressly so stated.[12]

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[11] This opinion does not address the question of whether the "purchase" of an existing structure for the housing of county road machinery would be a permissible use of motor vehicle fuel tax revenues under Ohio Const. art. XII, § 5a, but considers only whether the General Assembly has authorized such use in R.C. 5735.27(A)(3).

[12] *See also, e.g.*, R.C. 152.19(A) (authorizing the Ohio Building Authority to "acquire, purchase, construct, reconstruct, rehabilitate, remodel, renovate, enlarge, improve, alter, maintain, equip, furnish, repair, paint, decorate, manage, and operate capital facilities for the use of state agencies on one or more sites within the state"); R.C. 154.06 (A) and (B) (authorizing the Ohio Public Facilities Commission to "[a]cquire by appropriation, subject to [R.C. Chapter 163], or by

We must conclude, therefore, that R.C. 5735.27(A)(3) does not authorize a county to use its share of state motor vehicle fuel tax revenues for the purchase of an existing building for the housing of county road machinery. Similarly, where a county proposes to purchase an existing building that will be used, in part, to house road machinery, R.C. 5735.27(A)(3) does not authorize the county to use its share of state motor vehicle fuel tax revenues to pay the part of the purchase price attributable to the portion of the building that will be used to house road machinery.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. A county may not use either state or local motor vehicle license tax revenues to purchase, or to pay any portion of the purchase price of, an existing building to be used in part to house county road machinery and in part to provide office space for the county engineer.

2. A county may not use its share of state motor vehicle fuel tax revenues to purchase, or to pay any portion of the purchase price of, an existing building to be used in part to house county road machinery and in part to provide office space for the county engineer.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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gift, grant, lease, or purchase, or combination thereof, and hold, lease, and dispose of real estate and interests therein and personal property for the purposes of [R.C. Chapter 154]" and to "[a]quire, purchase, construct, reconstruct, equip, furnish, improve, alter, enlarge, remodel, renovate, rehabilitate, maintain, repair, and operate capital facilities for the purposes set forth in [R.C. Chapter 154]").

January 29, 1998

The Honorable Joseph A. Flautt
Perry County Prosecuting Attorney
Peoples National Bank Building
P.O. Box 569
New Lexington, Ohio 43764

SYLLABUS: 98-008

1.A county may not use either state or local motor vehicle license tax revenues to purchase, or to pay any portion of the purchase price of, an existing building to be used in part to house county road machinery and in part to provide office space for the county engineer.

2.A county may not use its share of state motor vehicle fuel tax revenues to purchase, or to pay any portion of the purchase price of, an existing building to be used in part to house county road machinery and in part to provide office space for the county engineer.