

OPINION NO. 72-110

Syllabus:

1. Under Section 5707.05, Revised Code, no portion of the undivided classified property tax fund may be distributed to any political subdivision until all the needs of public libraries qualified to receive such funds, as determined by the county budget commission and the Board of Tax Appeals, are met.

2. Under Section 5707.05, Revised Code, the state is entitled to one-fourth of one per cent of the undivided classified property tax fund at each settlement, prior to any distribution to public libraries or political subdivisions.

3. "Residue", as used in the last paragraph of Section 5707.05, Revised Code, does not include delinquent classified property taxes collected subsequently to the second tax settlement. Such delinquent collections are to be added to the fund for distribution at the first settlement in the following year. (Opinion No. 4218, Opinions of the Attorney General for 1935, approved and followed.)

To: George C. Smith, Franklin County Pros. Atty., Columbus, Ohio

By: William J. Brown, Attorney General, November 22, 1972

Your request for my opinion poses the following questions:

"1. May the County Treasurer distribute any portion of the classified property tax fund in the county treasury under Section 5707.05 of the Revised Code to any political subdivision enumerated in Revised Code Section 5707.05 (A), (C) or (D) if there remain unmet 'needs' of the public libraries qualified to receive these monies as determined by the County Budget Commission under Section 5705.32 of the Revised Code or by the Board of Tax Appeals upon appeal from the decision of the County Budget Commission?

"2. (a) Does the 'residue' of the undivided classified property tax fund, as the word is used in the last paragraph of Section 5707.05 of the Revised Code, include funds collected from payment of delinquent classified property taxes as well as collections of current classified property taxes in excess of anticipated collections, and

(b) May the County Treasurer distribute any portion of the 'residue' of the undivided classified property tax fund under the last paragraph of Section 5707.05 of the Revised Code to any political subdivision enumerated in Section 5707.05 (A), (C), or (D) if there remain any unmet 'needs' of the public libraries qualified to receive these monies, as determined by the County Budget Commission or by the Board of Tax Appeals upon appeal from the decision of the County Budget Commission?"

The pertinent portions of Section 5707.05, Revised Code, with which all of your questions are concerned, read as follows:

"At the first settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury as follows:

"(A) To the state, one fourth of one per cent thereof, which, when paid into the state treasury in the manner provided by law, shall constitute a fund for the use of the tax commissioner in administering the system of assessment of tangible and intangible personal property and shall not be used or appropriated for any other purpose;

"(B) To each board of public library trustees in the county, which has qualified for participation in such fund, fifty per cent of the amount set forth in the annual budget and allowed by the budget commission as a receipt from this source. The amount so distributed, together with the fees of the county auditor and county treasurer, shall be deducted pro rata from the shares of the undivided classified property taxes originating in the municipal corporations in the county, and in the territory outside of the municipal corporations therein, respectively;

"(C) To each municipal corporation in the county, one half of such amount, out of the remainder of such undivided taxes originating in such municipal corporation, after making the deductions required by division (A) of this section, as the budget commission has allowed as a receipt from this source; but if the budget commission has allowed to the board of township park commissioners of a township park district, the boundaries of which are coextensive with or contained within the boundaries of any municipal corporation, an amount as a receipt from this source, the amount so allowed shall be deducted from the share of such municipal corporation and distributed to such board of township park commissioners, and the balance only shall be distributed to such municipal corporation;

"(D) To the county, one half of such amount, out of the remainder of such undivided taxes originating in such county, outside the limits of municipal corporations therein, as the budget commission has allowed as a receipt from this source; but if the budget commission has allowed to the board of township park commissioners of a township park district, the boundaries of which are not coextensive with or contained within those of any municipal corporation in the county, an amount as a receipt from this source, the amount so allowed shall be deducted from the share of the county and distributed to such board of township park commissioners, and the balance shall be distributed to the county.

"(E) The residue in said undivided clas-

sified property tax fund, after making the deductions required by divisions (A), (B), (C), and (D) of this section, shall remain in the undivided classified property tax fund and shall be distributed as a part of said fund at the second settlement of undivided classified property taxes, as follows:

[Subsections (1), (2), (3), and (4) under (E) are identical with subsections (A), (B), (C) and (D), supra.]

"The residue of the undivided classified property tax fund shall be distributed to any board of public library trustees, municipal, corporation, the county, and any board of township park commissioners in the same manner and proportions as provided for in this section for distribution of the fund."

1. The answer to your first question appears in several opinions of the Supreme Court. In State, ex rel. Rice v. Lutz, 129 Ohio St. 201 (1935), the Court held:

"Under the provisions of amended Section 5639, General Code (115 Ohio Laws, 592) [now Section 5707.05, Revised Code], qualified public libraries are entitled to priority over municipal corporations, the county and school districts in the semi-annual distribution of the undivided classified property tax fund in the county treasury."

Since 1935 there have been some amendments to Section 5707.05, but none of these in any way lessen the priority of the libraries.

In Cleveland Public Library v. Cuyahoga County Budget Commission, 23 Ohio St. 2d 27 (1970), the Court said, in part, at page 28:

"All parties agree that the amount of money available for distribution in Cuyahoga County under R.C. 5707.32 for 1970 is \$14,500,000. There are nine public libraries in Cuyahoga County which are qualified under R.C. 5705.28 to participate in the proceeds of classified property taxes collected by the county.

"If the 'needs' of those libraries exceed the total proceeds of classified property taxes collected within the county, all of it must be distributed to the libraries, and none may be distributed to political subdivisions which, otherwise, might share in such distribution, R.C. 5705.32; County of Montgomery v. Budget Comm. (1953), 160 Ohio St. 263; Board of Trustees of Ross County District Library v. Budget Comm. (1958), 168 Ohio St. 108."

In discussing determination of priorities among libraries of the county the Court said (at pages 30-31):

"What 'the needs of' a library are is a question of fact upon which each library has the burden of proof. In the first instance, the trier of the facts is the budget commission. Where a hearing de novo is held by the Board of Tax Appeals, it then becomes the trier of the facts. Unless its determination of the fact of

'the needs of' a particular library is unreasonable, this court will not disturb such determination.'

"The statement by this court as to distribution of the local government fund among eligible political subdivisions of a county in Ed. of Co. Comms. v. Willoughby Hills (1968), 14 Ohio St. 2d 163, is equally applicable to the allocation of classified property tax funds among eligible public libraries within a county. We said there:

"There is just so much money in the undivided local government fund for distribution among the eligible political subdivisions of a county. It is difficult to attain absolute accuracy in allocating that fund. If the division made by the Board of Tax Appeals is fair and impartial and is determined upon the basis of actual need as established by the evidence, a reviewing court may not disturb the allocation. It is only when it is apparent that the board has proceeded in an unreasonable or unlawful manner that a court may intervene."

See also Opinion No. 5954, Opinions of the Attorney General for 1955.

The foregoing answers your first question in the negative. It should be noted, however, that public libraries have priority over political subdivisions only, and not over the state. The plain words of subsections (A) and (E) (1) of Section 5707.05 (which are identical) entitle the state to one-fourth of one per cent of the fund for administrative expenses, which sum "shall not be used or appropriated for any other purpose." Clearly, the legislature intended the state to have priority over both public libraries and political subdivisions.

2. Your second question is whether the "residue" in the undivided classified property tax fund, includes funds collected from payment of delinquent classified property taxes after the second settlement provided by Section 5707.05. Delinquent taxes, when collected, are "distributed in proper proportions to the appropriate funds." Section 5719.05, Revised Code. But there appears to be no provision for distribution of the classified property tax fund or residue otherwise than at the two settlements. In Opinion No. 4218, Opinions of the Attorney General for 1935, my predecessor construed Section 5639, General Code, the forerunner of Section 5707.05. This Section has been amended several times since 1935, but apparently not in any way which would affect my predecessor's conclusion. He reasoned as follows:

"* * * I find no authority for distributing the undivided classified property tax fund except as set forth in Section 5639, supra, at the time of the May and October settlements. The amount which then may be distributed to boards of public library trustees is therein limited to fifty per cent of the amount set forth in the annual budget and allowed by the budget commission. No specific provision is made for further distribution of the proceeds of delinquent intangible taxes as such which are subsequently collected, but, on the contrary, it appears that such proceeds shall be placed in the undivided classified property tax fund in the county treasury. It was apparently contemplated that excess funds representing such delinquent taxes collected may be taken into

consideration by the budget commission the following year, after such delinquent taxes are collected, in fixing a somewhat greater amount to be distributed to public library trustees under the provisions of the portion of Section 5625-24. supra. [Section 5705.32, Revised Code.] (Emphasis added.)

He concluded that the delinquent taxes would be added to the fund, which would be distributed in the next settlement. As his reasoning appears sound, I approve and follow Opinion No. 4218, supra. When the delinquent taxes are distributed in the first settlement of the following year, the rule of public libraries' priority will, of course, still apply.

3. Your third question asks whether any of the "residue" may be distributed to any political subdivision if there remain any unmet "needs" of the public libraries.

"Residue" is not defined, but in the context of this Section, it appears to mean the amount left in the fund after the required distributions are made at the two settlements. The total required distribution at each settlement is one-half of the total amount set forth in the annual budget and allowed by the budget commission. This amount is based on estimated tax receipts and the needs of the libraries, municipal corporations and counties, and is fixed pursuant to Section 5705.32, Revised Code. A political subdivision or library which is dissatisfied with any action of the budget commission may appeal to the Board of Tax Appeals under Section 5705.37, Revised Code, and the finding of the Board is substituted for that of the commission. If the tax proceeds are not enough to pay the allotted share of each library and political subdivision, the libraries have priority, as previously discussed. If the total tax proceeds are greater than the sum of the allotted amounts, there is a "residue".

Subsection (E) of Section 5707.05 provides for the residue from the first settlement. That residue remains in the fund, and is distributed in the second settlement. The last paragraph of the Section states that the residue from the second settlement is distributed "in the same manner and proportions as provided for in this section for distribution of the fund." Hence, the rule of priority of public libraries, which applies to distribution of the fund, also applies to distribution of the residue. Accordingly, the answer to your third question is that none of the residue may be distributed to political subdivisions if the needs of the public libraries, as determined by the county budget commission or the Board of Tax Appeals, have not been met. However, as discussed previously, the public libraries do not have priority over the state, which receives one-fourth of one per cent of the fund.

In specific answer to your question it is my opinion, and you are so advised, that:

1. Under Section 5707.05, Revised Code, no portion of the undivided classified property tax fund may be distributed to any political subdivision until all the needs of public libraries qualified to receive such funds, as determined by the county budget commission and the Board of Tax Appeals, are met.

2. Under Section 5707.05, Revised Code, the state is entitled to one-fourth of one percent of the undivided classified property tax fund at each settlement, prior to any distribution to public libraries or political subdivisions.

3. "Residue", as used in the last paragraph of Section 5707.05, Revised Code, does not include delinquent classified property taxes collected subsequently to the second tax settlement. Such delinquent collections are to be added to the fund for distribution at the first settlement in the following year. (Opinion No. 4218, Opinions of the Attorney General for 1935, approved and followed.)