

OPINION NO. 68-048**Syllabus:**

The residue of the undivided classified property tax fund shall be distributed, after the second settlement distributions as provided by Subdivisions (1), (2), (3) and (4) of Division (E), Section 5707.05, Revised Code, to any board of public library trustees and the school districts of the county. The budget commission may determine the amount to be distributed to each participant from the residue, except that any amount allowed to school districts shall constitute the county school tax fund and be distributed among all the school districts in the county, except the county school district, in the manner provided by law.

To: Everett Burton, Scioto County Pros. Atty., Portsmouth, Ohio
By: William B. Saxbe, Attorney General, March 14, 1968

Your letter requesting my opinion presents the following question:

May a County Budget Commission distribute the residue of the undivided classified property tax fund for a given year, after the second settlement, as supplemental receipts apportioned on the same basis as the original allocation of said fund for the given year, or must such residue fund be distributed to any board of public library trustees and the school districts of the County, as the County Budget Commission may determine.

By way of background, your letter also states:

"On December 28, 1967, the Budget Commission of Scioto County, Ohio, apportioned the residue of the undivided classified property tax fund for 1966, after the second settlement,

in the amount of \$18,407.88, on the same percentage basis as the original 1966 allocation, as follows:

Library	\$13,465.39
Portsmouth corporation	4,324.01
Scioto County	493.31
South Webster	79.15
Otway Village	46.02

"On December 28, 1967, the Budget Commission of Scioto County, Ohio apportioned the residue of the undivided classified property tax fund for 1967, after the second settlement, in the amount of \$3267.83, on the same percentage basis as the original 1967 allocation, as follows:

Library	\$2,390.39
Portsmouth corporation	767.61
Scioto County	87.62
South Webster	14.05
Otway Village	8.16

"In making the distribution of the respective residues of the undivided classified property tax fund, the Budget Commission of Scioto County considered the residues as supplemental receipts to be apportioned on the same percentage basis as the original allocation, analogous to and within the intentment of the second paragraph of the Syllabus 1964 Ohio Attorney General's Opinion No. 1521 * * *"

In the law which provides for the levying of taxes upon intangible property at classified rates there are two separate classified intangible tax provisions. Section 5707.03, Revised Code, provides for a State collected intangible tax. Section 5707.04, Revised Code, provides for a County collected intangible tax.

Section 5707.03, Revised Code, provides in pertinent part:

"Annual taxes are hereby levied on the kinds of intangible property, enumerated in this section, on the intangible property tax list in the office of the auditor of state and the duplicate thereof in the office of treasurer of state * * *

"The object and distribution of such taxes shall be as provided in section 5725.24 of the Revised Code."

Opinion No. 1521, Opinions of the Attorney General for the year 1964, to which your letter refers, relates to the distribution of revenue derived from Section 5707.03, Revised Code, as provided in Section 5725.24, Revised Code. The above-mentioned opinion has no application to Section 5707.04, Revised Code, to which your letter refers.

It is county-classified intangible property tax levied under the provisions of Section 5707.04, Revised Code, that we are concerned with here. Said Section provides in pertinent part:

"Annual taxes are hereby levied on the kinds

of intangible property, enumerated in this section, on the classified tax list in the office of the county auditor and the duplicate thereof in the office of the county treasurer * * *

"The object and distribution of the taxes so levied shall be as provided in section 5707.05 of the Revised Code."

Section 5707.05, Revised Code, provides that at the first settlement of undivided classified property taxes, the county treasurer shall distribute the undivided classified property tax fund in the county treasury pursuant to Divisions (A), (B), (C) and (D) of such Section.

Division (E) of Section 5707.05, Revised Code, provides that the residue in said undivided classified 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 pursuant to Subdivisions (1), (2), (3) and (4) of Division (E), Section 5707.05, Revised Code. Note particularly that the fund distributions pursuant to Subdivisions (2), (3) and (4), Division (E), Section 5707.05, Revised Code, are limited in amount to one-half of such amount as the budget commission has allowed as a receipt from such source determined pursuant to the provisions of Section 5705.32, Revised Code. The balance, if any, after such second settlement distributions pursuant to Subdivisions (1), (2), (3) and (4), Division (E), Section 5707.05, Revised Code, constitutes the residue to be distributed as further provided by Division (E), Section 5707.05, Revised Code, which reads as follows:

"The residue of the undivided classified property tax fund shall be distributed to any board of public library trustees and the school districts of the county. The budget commission may determine the amount to be distributed to each participant from the residue, except that any amount allowed to school districts shall constitute the county school tax fund, and be distributed among all the school districts in the county, except the county school district, in the manner provided by law." (Emphasis added)

The distribution of the residue after the second settlement distributions as provided by Subdivisions (1), (2), (3) and (4) of Division (E), Section 5707.05, Revised Code, is mandatory. The county budget commission may not cause such residue to be distributed as supplemental receipts apportioned on the same basis as the original allocation of estimated funds for the given year.

I am of the opinion and you are advised that the residue of the undivided classified property tax fund shall be distributed, after the second settlement distributions as provided by Subdivisions (1), (2), (3) and (4) of Division (E), Section 5707.05, Revised Code, to any board of public library trustees and the school districts of the county. The budget commission may determine the amount to be distributed to each participant from the residue, except that any amount allowed to school districts shall constitute the county school tax fund and be distributed

among all the school districts in the county, except the county school district, in the manner provided by law.