

March 1, 2018

The Honorable Justin Lovett
Jackson County Prosecuting Attorney
295 Broadway Street
Suite 100
Jackson, Ohio 45640

SYLLABUS:

2018-005

A board of county commissioners may, in the reasonable exercise of its discretion, transfer money from a County and Transit Authority Medicaid Sales Tax Transition Fund, created pursuant to Am. Sub. H.B. 49, 132nd Gen. A. (2017) (eff., in part, June 29, 2017) (section 387.20, uncodified), to any fund currently receiving a lawful portion of the county's sales and use tax revenue, at any time and in any amount the board, by resolution, decides.



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OPINION NO. 2018-005

The Honorable Justin Lovett
Jackson County Prosecuting Attorney
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Dear Prosecutor Lovett:

You have requested an opinion about the scope of a board of county commissioner's discretion to transfer money from a County and Transit Authority Medicaid Sales Tax Transition Fund, created pursuant to Am. Sub. H.B. 49, 132nd Gen. A. (2017) (eff., in part, June 29, 2017) (section 387.20, uncodified). In determining the degree of discretion enjoyed by a board of county commissioners in making transfers from a County and Transit Authority Medicaid Sales Tax Transition Fund, it will be helpful to first examine the background of Am. Sub. H.B. 49.

Background of Am. Sub. H.B. 49, Section 387.20

In 2017, the General Assembly enacted Am. Sub. H.B. 49, which created the operating budget for the State of Ohio for fiscal years 2018-2019. As part of the biennial budget, and in response to the cessation of collection of the Medicaid provider sales tax,¹ the General Assembly established the Medicaid Local Sales Tax Transition Fund ("state fund") to provide money to

¹ Ohio ceased collection of all sales tax on Medicaid managed care services due to the legal jeopardy the collection faced under federal law. See Ohio Legislative Service Comm'n, Final Bill Analysis, Am. Sub. H.B. 49, at p. 569 (2017). The sales tax collection was found to be an impermissible health care related tax under section 1903(w) of the Social Security Act, 42 U.S.C.A. § 1396b(w) (West 2012 & Supp. 2017), by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, because the tax applied only to Medicaid managed care organization (MCO) services, rather than all managed care services in Ohio. See R.C. 5739.01(B)(11)(b); *Responsibly Replacing the Medicaid MCO Sales Tax*, <http://budget.ohio.gov/MedicaidSalesTax.aspx> (last visited Feb. 27, 2018) ("[i]n 2014, the federal Centers for Medicare and Medicaid Services (CMS) declared that, as of July 2017, Ohio's Medicaid MCO sale[s] tax would no longer be a permissible taxing method used to draw down Medicaid matching funds from the federal government").

counties and affected transit authorities. Money from the state fund would be used to assist counties and transit authorities in offsetting the loss of sales tax revenue that each jurisdiction had been receiving as a result of the sales tax on Medicaid managed care services. The General Assembly described the purpose of the state fund as follows:

MEDICAID LOCAL SALES TAX TRANSITION FUND

There is hereby created in the state treasury the Medicaid Local Sales Tax Transition Fund. The fund shall consist of money transferred to it. The fund shall be used to mitigate the effects of, and assist in the adjustment to, the reduced sales tax revenues of counties and affected transit authorities caused by the repeal of sales tax collected by Medicaid health insuring corporations on health care service transactions.

Am. Sub. H.B. 49, section 387.20(A) (uncodified). Money transferred to each jurisdiction from the state fund was intended to cover the full loss of sales tax revenue from Medicaid provider transactions for calendar year 2017. The legislation stated that

[a]mounts provided to counties and transit authorities under this section from the Medicaid Local Sales Tax Transition Fund use the jurisdictions' annualized Medicaid sales tax revenues during the calendar year 2015 and 2016 periods. Based on these figures, the payments provided in this section provide *full replacement of the calculated forgone Medicaid sales tax revenues in calendar year 2017*, which will occur during the October 2017 through December 2017 period.

Id. (emphasis added).

By enacting section 387.20 of Am. Sub. H.B. 49, the General Assembly not only provided counties and affected transit authorities enough money to fully offset the loss of Medicaid sales tax revenue in calendar year 2017. The legislature also provided each affected jurisdiction enough money to partially offset the loss of Medicaid sales tax revenue in future calendar years, until each jurisdiction could reasonably absorb the loss of revenue. To arrive at the amount of money each jurisdiction would receive, the legislature developed a formula that took into account each jurisdiction's reasonable ability to absorb the lost revenue over time:

The payments under this section also reflect a computation of the ability of the counties and transit authorities to reasonably adjust to the effects of forgone Medicaid sales tax revenues. Over time, each jurisdiction will be able to absorb an increasing portion of its forgone Medicaid sales tax revenue until it has adjusted to the full forgone revenue. Before such full adjustment to the Medicaid sales tax change finally occurs, for each year in which the jurisdiction's annualized Medicaid sales tax revenue exceeds the amount it is computed as being able to reasonably absorb in that year, such difference becomes part of the overall distribution provided under this section. *The amount the jurisdiction is*

able to absorb in a given year is the product derived from multiplying the jurisdiction's annualized total sales tax revenues for calendar years 2015 and 2016 by the total absorption rate assigned to the jurisdiction. The absorption rate, which grows by the same increment each year, is initially established at a level that takes into account the relative sales tax capacity of a jurisdiction; the assigned initial absorption rate is four percent but is a smaller amount to the extent the jurisdiction's sales tax capacity is below statewide average sales tax capacity.

Id. (emphasis added). Thus, the General Assembly intended to provide each county and affected transit authority enough money so that each jurisdiction could offset the loss of Medicaid sales tax revenue over a period of several years. In other words, the legislature provided each jurisdiction with enough money to not only cover the jurisdiction's forgone revenue in calendar year 2017, but also enough money to cover each jurisdiction's forgone *future* revenue, taking into account each jurisdiction's fiscal capacity to absorb the forgone revenue.

County Transition Fund

Under Am. Sub. H.B. 49, each jurisdiction that levied a qualifying tax as of January 1, 2017, was required to create a County and Transit Authority Medicaid Sales Tax Transition Fund ("County Transition Fund") in order to receive money from the state fund.² *See* Am. Sub. H.B. 49, section 387.20(C) (uncodified). The Tax Commissioner was to then provide for payment in full to each county in two equal installments. *See* Am. Sub. H.B. 49, section 387.20(D) (uncodified). These installments were to be deposited into each respective County Transition Fund by the county's treasurer or transit authority's fiscal officer. *See id.* Jackson County, for instance, was to receive a total of \$1,628,743 from the state fund. *See* Am. Sub. H.B. 49, section

² Under Am. Sub. H.B. 49, section 387.20(C) (uncodified), qualifying taxes are any sales and use taxes levied under any one or more of the following sections of the Revised Code: R.C. 5739.021 (county sales tax to provide additional general revenues for the county, support criminal and administrative justice services, or fund a qualifying regional transportation improvement project); R.C. 5739.023 (transit authority sales tax to provide additional general revenues for the transit authority or fund a qualifying regional transportation improvement project); R.C. 5739.026 (county sales tax to fund various items, including funding to a community improvements board for permanent improvements in accordance with R.C. 307.283 and R.C. 307.284); R.C. 5741.021 (county use tax to provide additional general revenues for the county, support criminal and administrative justice services, or fund a qualifying regional transportation improvement project); R.C. 5741.022 (transit authority use tax to provide additional general revenues for the transit authority or fund a qualifying regional transportation improvement project); or R.C. 5741.023 (county use tax to fund various items, including funding to a community improvements board for permanent improvements in accordance with R.C. 307.283 and R.C. 307.284).

387.20(E) (uncodified) (listing distribution amounts for each county and affected transit authority).³

Included within section 387.20 of Am. Sub. H.B. 49 is a provision describing what a county or transit authority may do with the money it receives from the state fund:

On or before October 15, 2017, each county and transit authority that as of January 1, 2017, levies any tax under sections 5739.021, 5739.023, 5739.026, 5741.021, 5741.022, and 5741.023 of the Revised Code shall establish a County and Transit Authority Medicaid Sales Tax Transition Fund. The fund shall consist of money distributed to it under this section. Money provided to such fund shall be transferred to the general fund or other fund that receives a lawful portion of the county's or transit authority's sales tax revenue in accordance with a resolution adopted by the board of county commissioners, the county transit board, or trustees of a regional transit authority, as appropriate. Money may be transferred from the County and Transit Authority Medicaid Sales Tax Transition Fund at any time and in any quantity as indicated by the resolution.

Am. Sub. H.B. 49, section 387.20(C) (uncodified).

You have asked whether the above language authorizes a board of county commissioners to transfer money from its County Transition Fund at the board's complete discretion, even though the current county sales and use tax revenue distribution divides sales and use tax revenue among multiple funds. You have indicated that Jackson County has a combined sales and use tax of 1.5%. Jackson County voters approved, in 1987, two separate tax levies upon every retail sale in the county and upon the use or consumption of tangible personal property in the county. Pursuant to these two tax levies, one third of the total county sales and use tax revenue (a 0.5% sales and use tax) is dedicated to the county's general fund; another one third of the total county sales and use tax revenue (a 0.5% sales and use tax) is dedicated to the Jackson

³ The General Assembly later amended section 387.20 of Am. Sub. H.B. 49 to include additional transition payments to counties and affected transit authorities for transfer from each jurisdiction's County Transition Fund. Sub. H.B. 69, 132nd Gen. A. (2017) (eff., in part, Dec. 22, 2017) (section 387.20, uncodified). Under the new legislation, each jurisdiction was to receive an additional payment between January 1, 2018, and February 1, 2018. Sub. H.B. 69, section 387.20(F) (uncodified). Jackson County, for instance, was to receive \$739,743 under Sub. H.B. 69, in addition to the \$1,628,743 under Am. Sub. H.B. 49. *Id.* Each county and affected transit authority will also receive a to-be-determined transition payment between August 1, 2018, and September 1, 2018. *See* Sub. H.B. 69, section 387.20(G) (uncodified); *see also* Ohio Legislative Service Comm'n, Final Bill Analysis, Sub. H.B. 69, at pp. 6-7 (2017). The enactment of Sub. H.B. 69 (2017) and the additional payments provided to counties and affected transit authorities thereunder do not alter the conclusion reached in this opinion.

County Township and Municipal Community Improvements Board created under R.C. 307.282. Pursuant to another levy approved by Jackson County voters in 1997, the remaining one third of the total county sales and use tax (a 0.5% sales and use tax) was levied for the purpose of constructing, operating, and maintaining the county jail, court facilities, and sheriff's office ("county jail fund"). Each levy was placed on the ballot by means of a resolution adopted by the Jackson County Board of Commissioners.⁴

You have asked whether the Jackson County Board of Commissioners must distribute the money in the County Transition Fund in the same proportions as the current county sales and use tax revenue distribution, or whether the Board has the discretion to distribute the \$1,628,743 in the County Transition Fund in the manner it deems best. In other words, must the Jackson County Board of Commissioners divide the \$1,628,743 in the County Transition Fund equally among the county's general fund, the Township and Municipal Community Improvement Board, and the county jail fund (in keeping with the existing tax distribution percentages in the county)? Or, may the Jackson County Board of Commissioners distribute the money in the County Transition Fund at its complete discretion, without regard to the current sales and use tax revenue distribution?

The answer to your question depends, in part, on the meaning of the following language found in Am. Sub. H.B. 49, excerpted from section 387.20(C), above:

Money provided to such [County Transition Fund] shall be transferred to the general fund or other fund that receives a lawful portion of the county's or transit authority's sales tax revenue in accordance with a resolution adopted by the board of county commissioners, the county transit board, or trustees of a regional transit

⁴ The Jackson County Board of Commissioners placed on the 1987 General Election ballot a permissive sales and use tax levy pursuant to R.C. 5739.021 and R.C. 5741.021 for a 0.5% increase in the county sales and use tax, with levy revenue dedicated to the county general fund; the Board of Commissioners also placed on the 1987 General Election ballot a permissive sales and use tax levy pursuant R.C. 5739.026 and R.C. 5741.023 for another 0.5% increase in the county sales and use tax, with levy revenue dedicated to the Jackson County Township and Municipal Community Improvements Board created under R.C. 307.282. *See* Jackson County Board of Commissioners Resolutions 87-48 and 87-49. Finally, the Jackson County Board of Commissioners placed on the 1997 General Election ballot a permissive sales and use tax levy pursuant to R.C. 5739.021 and R.C. 5741.021, for another 0.5% increase in the county sales and use tax, with levy revenue dedicated to the county jail fund. *See* Jackson County Board of Commissioners Resolution 183-97. With voters' approval of these three levies, the county began receiving sales and use tax revenue under R.C. 5739.021, R.C. 5739.026, R.C. 5741.021, and R.C. 5741.023. Thus, the taxes levied by Jackson County are qualifying taxes for purposes of Am. Sub. H.B. 49, section 387.20(C) (uncodified). *See* note 2, *supra*.

authority, as appropriate. Money may be transferred from the [County Transition Fund] at any time and in any quantity as indicated by the resolution.

A board of county commissioners is a creature of statute and has only those powers that are granted to it by law, either expressly or by necessary implication. 2016 Op. Att’y Gen. No. 2016-016, at 2-157; 2004 Op. Att’y Gen. No. 2004-031, at 2-281. To determine what powers the above language grants a board of county commissioners in transferring money from a County Transition Fund, we must first decide the meaning of section 387.20(C).

Ambiguity of Am. Sub. H.B. 49, Section 387.20(C)

The language of section 387.20(C) is subject to two reasonable interpretations. The first interpretation leads to the conclusion that a county must transfer the money in a County Transition Fund in the same proportions as the county’s existing sales and use tax revenue distribution. Under this interpretation, the phrase “in accordance with a resolution adopted by the board of county commissioners” refers to any resolution that the board adopted prior to the enactment of section 387.20 to levy a tax under any of the six provisions of the Revised Code enumerated in section 387.20(C). Following this interpretation, Jackson County would be required to transfer the \$1,628,743 in its County Transition Fund in accordance with Jackson County Board of Commissioners Resolutions 87-48, 87-49, and 183-97 (*i.e.*, one third to the county general fund, one third to the Township and Municipal Community Improvement Board, and one third to the county jail fund). The final sentence of division (C), therefore, would be read to mean that money may be transferred “in any quantity,” whatever the quantity identified by the previously passed resolutions happens to be.

The second interpretation of section 387.20(C) leads to the conclusion that a county may transfer money in a County Transition Fund at the county’s discretion, without regard to either the amount of the transfer or their destinations as specified in the previously adopted resolutions of a board of county commissioners. Under this interpretation, the phrase “in accordance with a resolution adopted by the board of county commissioners” refers to a new resolution that the board adopts to transfer County Transition Fund money to funds that currently receive a portion of the county’s sales and use tax revenue. The newly passed resolution, therefore, serves as an accounting mechanism for transferring County Transition Fund dollars to the funds identified in the newly passed resolution. The final sentence of division (C), stating that County Transition Fund money “may be transferred ... at any time and in any quantity as indicated by the resolution,” would then be read to grant the board of county commissioners discretion in transferring the money in the manner the board deems best.⁵

In light of the two reasonable interpretations of section 387.20(C), the language contained in division (C) is ambiguous. “It is firmly established that a statute is ambiguous when its

⁵ The term “resolution” is not defined in section 387.20 of Am. Sub. H.B. 49, nor elsewhere in Am. Sub. H.B. 49.

language is subject to more than one reasonable interpretation.” *Family Med. Found., Inc. v. Bright*, 96 Ohio St. 3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, at ¶ 8. Factors that may be considered in determining the intention of the General Assembly when it enacts a statute containing language that is ambiguous include the circumstances under which the statute was enacted, the object the legislature sought to attain, and the consequences of a particular construction. *See* R.C. 1.49; *Ohio Podiatric Med. Assn. v. Taylor*, 2012-Ohio-2732, 972 N.E.2d 1065, at ¶ 19 (10th Dist. Franklin County). Moreover, “[i]n enacting a statute, it is presumed that ... [t]he entire statute is intended to be effective.” R.C. 1.47(B). “[W]ords in a statute do not exist in a vacuum. [A court] must presume that in enacting a statute, the General Assembly intended for the entire statute to be effective. R.C. 1.47(B). Thus, all words should have effect and no part should be disregarded.” *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶ 19.

Accordingly, we must examine the circumstances of the enactment of Am. Sub. H.B. 49, section 387.20, the object the legislature sought to attain in its enactment, and the consequences of particular constructions of section 387.20, as well as the entirety of the legislative scheme, in order to determine the scope of discretion, if any, that a board of county commissioners enjoys in transferring money from a County Transition Fund.

Discretion of a Board of County Commissioners in Transferring Money from a County Transition Fund

The circumstances of the enactment of section 387.20 of Am. Sub. H.B. 49 help illustrate the intent of the legislature in providing County Transition Fund money to affected jurisdictions. As noted above, Ohio ceased collection of the Medicaid provider sales tax in light of the legal jeopardy that such sales tax collection faced under federal law. *See* note 1, *supra*; Ohio Legislative Service Comm’n, Final Bill Analysis, Am. Sub. H.B. 49, at p. 569 (2017). Prior to the cessation of such collection, counties and transit authorities received sales tax revenue on Medicaid managed care services transactions. In Jackson County, for example, these transactions were taxed at the prevailing county sales and use tax rate of 1.5%, and the tax revenue was distributed to the funds entitled to receive sales and use tax revenue per Jackson County Board of Commissioners Resolutions 87-48, 87-49, and 183-97. When Ohio ceased collection of the Medicaid provider sales tax, the funds previously receiving sales tax revenue experienced, in equal measure, a decline in overall revenue. To make up for this decline, the General Assembly enacted section 387.20 of Am. Sub. H.B. 49 to provide jurisdictions with transition money while the jurisdictions adjusted to the forgone Medicaid sales tax revenue. The General Assembly presumably was aware of the impact of the Medicaid sales tax revenue on individual local government funds, such as the three Jackson County funds, when it enacted section 387.20. Accordingly, the circumstances of the enactment of section 387.20 tend to weigh in favor of a reading of the statute that requires transfers of money from a County Transition Fund in the same proportions as the current sales and use tax distribution.

The General Assembly clarified the object it sought to attain by means of language included in division (A) of section 387.20. There, the legislature wrote that “the payments provided in this section provide *full replacement* of the calculated forgone Medicaid sales tax revenues in calendar year 2017.”

(Emphasis added.) In other words, in making payments to counties and affected transit authorities, the General Assembly sought to provide each affected jurisdiction with the full amount of the jurisdiction's lost Medicaid sales tax revenue for calendar year 2017. For future years, the payments made to each affected jurisdiction would assist the jurisdiction in absorbing the lost revenue, taking into account the individual jurisdiction's fiscal capacity to absorb the forgone revenue:

The payments under this section also reflect a computation of the ability of the counties and transit authorities to reasonably adjust to the effects of forgone Medicaid sales tax revenues. Over time, each jurisdiction will be able to absorb an increasing portion of its forgone Medicaid sales tax revenue until it has adjusted to the *full forgone revenue*.

Am. Sub. H.B. 49, section 387.20(A) (uncodified) (emphasis added). Use of the terms "full replacement" and "full forgone revenue" in division (A) are indicative of the legislature's intent as to how a jurisdiction should transfer County Transition Fund money.

To understand how the terms "full replacement" and "full forgone revenue" manifest legislative intent, it is useful to consider a counterfactual example. If Ohio were still collecting the Medicaid provider sales tax, individual local government funds would be entitled to that portion of the sales tax revenue derived from Medicaid provider transactions that the funds were receiving pursuant to resolution adopted by the legislative authority of an affected jurisdiction. In Jackson County, the county jail fund would still be receiving the full portion of what the fund was entitled to receive from the sales tax on Medicaid provider transactions, *i.e.*, 0.5% of the cost of Medicaid provider transactions. Similarly, the county general fund and Township and Municipal Community Improvement Board would each be entitled to 0.5% of the total cost of Medicaid provider transactions. If, under division (C) of section 387.20, a board of county commissioners were allowed to transfer County Transition Fund money to funds in whatever amount that the board decides, without regard to the proportions of sales and use tax revenue that the funds currently receive, then a fund that received Medicaid sales tax revenue might receive nothing, and lost revenue from the forgone Medicaid sales tax would not be "fully replaced." Such a construction of division (C) would be contrary to the apparent intent of the legislature as stated in division (A).

Another hypothetical construction of section 387.20 also sheds light on the meaning of the law, taking into account the expression of legislative intent in division (A). Granting a board of county commissioners discretion to transfer County Transition Fund money, without regard to the proportion of sales and use tax revenue that an individual local government fund currently receives, would ignore the mandatory nature of the third sentence of division (C) as well as the legislative intent found in division (A). Division (C) states that County Transition Fund money "*shall* be transferred to the general fund or other fund that receives a lawful portion of the county's ... sales tax revenue." (Emphasis added.) Use of the word "shall" indicates an obligation on the part of a board of county commissioners to distribute County Transition Fund money in a particular manner. *See Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) ("[i]t is axiomatic that when it is used in a statute, the word 'shall' denotes that compliance with the commands of that statute is *mandatory* ... 'unless

there appears a clear and unequivocal legislative intent that [the word] receive a construction other than [its] ordinary usage”) (emphasis in original) (quoting *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1)).

Given the legislature’s stated goal in division (A) to provide “full replacement” of affected jurisdictions’ forgone Medicaid sales tax revenue from calendar year 2017, and help jurisdictions to adjust to the “full forgone revenue” over time, it would appear inconsistent to permit a board of county commissioners to transfer money to funds receiving a portion of the county’s sales and use tax revenue in disregard of the current proportions of revenue these funds receive. Under these circumstances, particularly in light of the use of the mandatory word “shall,” the third sentence of division (C) should most reasonably be read to require *some* distribution of money to each fund that currently receives a portion of a jurisdiction’s sales tax revenue. Accordingly, the third sentence should be read as “[m]oney provided to such [County Transition Fund] shall be transferred to the general fund *and* other fund[s] that receive[] a lawful portion of the county’s ... sales tax revenue in accordance with a resolution adopted by the board of county commissioners.” See R.C. 1.02(F) (“[a]nd’ may be read ‘or,’ and ‘or’ may be read ‘and’ if the sense requires it”); see also *In re Marrs*, 95 Ohio St. 95, 99, 107 N.E.2d 148 (1952) (“[t]he word, ‘and,’ or, ‘or’, will not be given its literal meaning where such meaning would do violence to the evident intent and purpose of the lawmakers and the other meaning would give effect to such intent”). To give effect to the legislative intent under division 387.20(A), the third sentence of division (C) should be construed as requiring the transfer of County Transition Fund money to each fund that currently receives a portion of a county’s sales and use tax revenue. Therefore, it is proper to conclude that the General Assembly intended to require a board of county commissioners to make a distribution from its County Transition Fund to those funds that are currently receiving a portion of the jurisdiction’s sales and use tax revenue.

Requiring a board of county commissioners to transfer County Transition Fund money in the *exact* same proportions as the existing county sales and use tax revenue distribution, however, ignores the discretionary language of the final sentence of division (C), which declares that County Transition Fund money “*may* be transferred ... at any time and in any quantity as indicated by the resolution.” (Emphasis added.) The use of the word “may” indicates discretion on the part of a board of county commissioners. See *Dennison v. Dennison*, 165 Ohio St. 146, 149, 134 N.E.2d 574 (1956) (“[o]rdinarily, the word ‘shall,’ is a mandatory one, whereas ‘may’ denotes the granting of discretion”). Further, the terms “at any time” and “in any quantity” in the final sentence of division (C) indicate that discretion may be exercised with respect to those aspects of a transfer. See 2004 Op. Att’y Gen. No. 2004-031, at 2-281 (“[u]se of the word ‘any’ indicates that the grant of authority is broad, encompassing any or all powers or duties of the type described”); see also 2016 Op. Att’y Gen. No. 2016-016, at 2-159 to 2-160; 1989 Op. Att’y Gen. No. 89-079, at 2-367 to 2-368. Use of the word “any” should be read to mean “that the General Assembly did not intend that limitations to the statute should be implied.” See 1979 Op. Att’y Gen. No. 79-105, at 2-327 (concluding that a county sheriff in Ohio may serve process to a defendant when ordered to do so by an out-of-state authority under statutory language that states “any proper and lawful authority” may order a county sheriff to serve process).

Use of the phrase “any time” in division (C), apart from its discretionary tone, also recognizes the nature of the payments from the state treasury to County Transition Funds. The General Assembly not only provided counties and affected transit authorities enough funds to cover the full forgone Medicaid sales tax revenue for calendar year 2017; the legislature also provided enough funds for counties and affected transit authorities to absorb the forgone revenue over *several years*. See Am. Sub. H.B. 49, section 387.20(A) (“[t]he amount the jurisdiction is able to absorb in a given year is the product derived from multiplying the jurisdiction’s annualized total sales tax revenues for calendar years 2015 and 2016 by the total absorption rate assigned to the jurisdiction”). Thus, the General Assembly provided jurisdictions with enough County Transition Fund money for the jurisdictions to transfer money over time, if they desired, rather than in a single disbursement. Accordingly, the phrase “any time” lends further support to the proposition that a board of county commissioners has been given discretion in transferring money from its County Transition Fund.

It is axiomatic that all words in a statute should be given effect and that no part of the statute should be disregarded. See R.C. 1.47(B); *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶ 19. To conclude that division (C) requires a board of county commissioners to transfer County Transition Fund money in the same proportions as the county’s existing sales and use revenue tax distribution would be to ignore entirely the final sentence of division (C), and its discretionary tone. Therefore, we conclude that a board of county commissioners is not required to make transfers of money from its County Transition Fund in the same proportions as the existing county sales and use tax revenue distribution. Rather, a board of county commissioners has discretion to determine the amount of money to be transferred from its County Transition Fund to a particular fund currently receiving a portion of the county’s sales and use tax revenue.⁶ Following this conclusion, the term “resolution” in division (C) refers to a newly passed resolution by a board of county commissioners that serves as a mechanism for transferring County Transition Fund money and documenting such transfer.

Abuse of Discretion Standard

Having determined that a board of county commissioners has discretion in transferring money from its County Transition Fund, we must next determine the exact scope of that discretion. Under section 387.20 of Am. Sub. H.B. 49, the General Assembly has mandated transfers of money to funds currently receiving a portion of a jurisdiction’s sales and use tax revenue, as evidenced by the legislative intent of section 387.20(A). However, the General Assembly has not mandated a specific amount to be appropriated to each fund, but has chosen to

⁶ Money transferred from a County Transition Fund may be transferred only to those funds that currently receive a lawful portion of the county’s sales and use tax revenue pursuant to the six sections of the Revised Code enumerated in section 387.20(C). See note 2, *supra*.

leave the exact amount to be transferred to each fund up to the discretion of each jurisdiction, as evidenced by the language in the final sentence of section 387.20(C). The final question, then, is how much discretion the General Assembly intended to give each jurisdiction, such as a board of county commissioners, in making transfers of money from a County Transition Fund.

In the context of annual county budget appropriations, boards of county commissioners enjoy *reasonable* discretion in making appropriations where a statute mandates an appropriation but sets no specific amount to be appropriated. As explained in 2008 Op. Att’y Gen. No. 2008-014, at 2-157:

[I]f a statute mandates an appropriation for a specific purpose and no statute sets the amount of the appropriation or requires a board of county commissioners to appropriate an amount established by another entity, a board of county commissioners is required to make an appropriation for that specific purpose and has discretion in establishing the amount to be appropriated, subject to an abuse of discretion standard.

Moreover, “where no statute mandates a particular appropriation, a legislative authority has broad discretion in establishing the amount of an agency’s appropriation, subject to an abuse of discretion standard.” 2006 Op. Att’y Gen. No. 2006-013, at 2-110. In general, boards of county commissioners are accustomed to exercising their reasonable discretion in budgetary and fiscal matters. It would, therefore, be appropriate for the General Assembly to authorize boards of county commissioners to exercise their reasonable discretion in transferring money from a County Transition Fund. In short, the General Assembly has required that jurisdictions provide County Transition Fund money to each fund currently receiving a portion of the jurisdiction’s sales and use tax revenue, but has granted each jurisdiction the ability to exercise its reasonable discretion in deciding the exact amount of money to transfer to each fund and the timing of the transfer. *See generally State ex rel. Village of Botkins v. Laws*, 69 Ohio St. 3d 383, 385-386, 632 N.E.2d 897 (1994) (holding that a board of county commissioners was required to compensate a village solicitor for his services but that the amount of compensation was within the discretion of the board where R.C. 1901.34(C) required the board to compensate the solicitor but did not specify the amount of compensation).

Whether a board of county commissioners has acted in its reasonable discretion is subject to an abuse of discretion standard of review. The abuse of discretion standard is well established in the law. “An abuse of discretion connotes an unreasonable, arbitrary, or unconscionable attitude.” *State ex rel. Lee v. Montgomery*, 88 Ohio St. 3d 233, 235, 724 N.E.2d 1148 (2000). “An abuse of discretion ‘implies not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency.’” *Bartchy v. State Bd. of Educ.*, 120 Ohio St. 3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, at ¶ 41 (quoting *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster*, 22 Ohio St. 3d 191, 193, 489 N.E.2d 288 (1986)). Absent an abuse of discretion, therefore, a board of county commissioners may transfer money from a County Transition Fund to any fund currently receiving a portion of the county’s sales and use tax revenue in an amount and at a time the board deems best. Under the abuse of discretion

standard, a transfer of money by a board of county commissioners from a County Transition Fund must be reasonable. Whether any particular transfer of money amounts to a reasonable transfer is dependent upon questions of fact that are beyond the scope of an Attorney General opinion. It should be noted, however, that a board of county commissioner's discretion should not extend so far as to permit the board to transfer no money to a fund currently receiving a portion of the county's sales and use tax revenue. In other words, it presumably is unreasonable for a board of county commissioners to entirely withhold County Transition Fund money from a fund currently receiving a lawful portion of the county's sales and use tax revenue; a board should, in the reasonable exercise of its discretion, make some transfer of money to each fund currently receiving a portion of the county's sales and use tax revenue before its County Transition Fund is depleted.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners may, in the reasonable exercise of its discretion, transfer money from a County and Transit Authority Medicaid Sales Tax Transition Fund, created pursuant to Am. Sub. H.B. 49, 132nd Gen. A. (2017) (eff., in part, June 29, 2017) (section 387.20, uncodified), to any fund currently receiving a lawful portion of the county's sales and use tax revenue, at any time and in any amount the board, by resolution, decides.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General