

April 22, 2021

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
241 South Chestnut Street
Ravenna, Ohio 44266

SYLLABUS:

2021-007

The transfer of money from the county general fund to an “elections revenue fund” is not authorized unless it is approved by a county board of commissioners’ resolution.



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OPINION NO. 2021-007

The Honorable Victor V. Vigluicci
Portage County Prosecuting Attorney
241 South Chestnut Street
Ravenna, Ohio 44266

Dear Prosecutor Vigluicci:

You have requested an opinion regarding certain expenses of a county board of elections—expenses apportioned to subdivisions and withheld in the county general fund by the county auditor at the time of tax settlement. I have framed your question in the following manner:

May boards of elections' expenses, which are apportioned and chargeable to each subdivision and withheld by the Auditor in the county general fund at the time of tax settlement pursuant to R.C. 3501.17(A), be directly paid into an elections revenue fund without the commissioners adopting a specific resolution authorizing the transfer of this amount from the county general fund into an elections revenue fund?

I conclude that the answer is “no”: a resolution authorizing transfer of the funds is necessary.

I

Based on your request, it is my understanding that the Board of Elections' expenses are presently sitting in the county general fund until further action is taken. The manner in which Commissioners may appropriate or "transfer" public funds is governed by statute. 1994 Op. Att'y Gen. No. 94-007, at 2-25; *See* R.C. 5705.14-.16. Annual appropriations are based on the county's revised tax budget, the official certificate of estimated resources certifying sufficient funds, and any amendments to that certificate. R.C. 5705.38(A); 1994 Op. Att'y Gen. No. 94-007, at 2-25. Every appropriation of county money must be made in accordance with R.C. Chapter 5705. R.C. 5705.41(A); 2017 Op. Att'y Gen. No. 2017-036, Slip Op. at 5; 2-356.

In general, money can be transferred from a county general fund to another county fund only if it is first authorized by a taxing authority. *See* R.C. 5705.14(E), 5705.15 and 5705.16; 1989 Op. Att'y Gen. No. 89-075, at 2-346; 1986 Op. Att'y Gen. No. 86-082, at 2-463. Pursuant to R.C. 5705.41(A), every annual appropriation of county money must accord with R.C. Chapter 5705. And pursuant to R.C. 5705.14(E), 5705.15, and 5705.16, money cannot be transferred from the county general fund to another county fund unless the county taxing authority authorizes the transfer. *See* 2017 Op. Att'y Gen. No. 2017-036, Slip Op. at 5; 2-356; R.C. 5705.14-.16; 1986 Op. Att'y Gen. No. 86-082, at 2-463; 1989 Op. Att'y Gen. No. 89-075, at 2-346. The board of county commissioners is the taxing authority for a county. R.C. 5705.01(C).

Accordingly, unless the election fund provisions of R.C. 3501.17 create their own procedure, the transfer of money from the county general fund to another county fund, including a transfer to an "elections revenue fund," is permissible *only if* it is first approved *by a resolution* of the county commissioners. *See* R.C. 5705.41(A) and 5705.12; 2017 Op. Att'y Gen. No. 2017-036, Slip Op. at 5; 2-356; R.C. 5705.14-.16; 1986 Op.

Att’y Gen. No. 86-082, at 2-463; 1989 Op. Att’y Gen. No. 89-075, at 2-346.

II

Nothing in the R.C. 3501.17 election provisions eliminates the requirement that money can only be transferred from a county general fund to another county fund only upon authorization by the county commissioners.

R.C. 3501.17(A) generally provides that the expenses of a county board of elections are paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses. However, in certain instances involving primary and general elections of odd-numbered years, the board of election expenses are apportioned among the county and various subdivisions. R.C. 3501.17(A) and (C); *See generally* 2004 Op. Att’y Gen. No. 2004-008, at 2-68. Should the Commissioners fail to appropriate a sufficient amount to provide for the necessary and proper expenses of the Board of Elections to conduct elections, then the Board of Elections may seek judicial intervention from the court of common pleas, which shall fix the amount necessary to be transferred to the Board of Elections. R.C. 3501.17(A).

In addressing your question, the term “apportioned” is not defined under R.C. 3501.17. But its meaning is well known. When used as a verb it means “to divide and assign in proportion.” *Webster’s Third New International Dictionary* 105 (2002). Once a county board of elections’ expenses are apportioned, these expenses are “chargeable to each subdivision,” as described under R.C. 3501.17(A) and (C), to cover the board of elections’ costs associated with conducting primary and general elections during odd-numbered years. R.C. 3501.17(A) and (C); *See generally* 2004 Op. Att’y Gen. No. 2004-008, at 2-68. In addition, these

expenses are withheld by the Auditor from moneys payable to subdivisions at the time of “tax settlement” pursuant to R.C. 3501.17(A). The term “tax settlement,” while not defined in R.C. 3501.17, generally refers to collected moneys, such as property or other residential taxes, which are *paid into the county general fund* and retained semi-annually by the Auditor. (Emphasis added.) See R.C. 3501.17(A); see also generally 2004 Op. Att’y Gen. No. 2004-008, at 2-70; 1928 Op. Att’y Gen. No. 3130, vol. IV, p. 3054, at 3055. Therefore, it follows that apportioned and chargeable Board of Elections’ expenses associated with conducting elections are retained in the county general fund at tax settlement by the Auditor until further action is taken. R.C. 3501.17(A) and (C); see generally 2004 Op. Att’y Gen. No. 2004-008, at 2-70; 1928 Op. Att’y Gen. No. 3130, vol. IV, p. 3054, at 3055.

Next, in reviewing the transfer of money from the county general fund into an “elections revenue fund” created in accordance with R.C. 3501.17(I)(1), subsection (a) plainly acknowledges that Commissioner authorization by resolution is required to create an “elections revenue fund.”

“At the request of a majority of the members of the board of elections, *the board of county commissioners may, by resolution, establish an elections revenue fund.* Except as otherwise provided in this division and in division (I)(2) of this section, the purpose of the fund shall be to accumulate revenue withheld by or paid to the county under this section for the payment of any expenses related to the duties of the board of elections specified in sections 3501.11 of the Revised Code...”

R.C. 3501.17(I)(1)(a). (Emphasis added.)

Moreover, subsection (b) begins by acknowledging the R.C. Chapter 5705 transfer of county money provisions, and goes on to conclude that Commissioners may transfer money into an “elections revenue fund” by resolution:

“Notwithstanding sections R.C. 5705.14, 5705.15, and 5705.16 of the Revised Code, *the board of county commissioners may, by resolution, transfer money to the elections revenue fund* from any other fund of the political subdivision from which such payments lawfully may be made.”

R.C. 3501.17(I)(1)(b). (Emphasis added.)

Both subsections of R.C. 3501.17(I)(1) acknowledge that an “elections revenue fund” maybe created only by a county commissioner resolution, and money may be transferred to the fund only by a county commissioner resolution. R.C. 3501.17(I)(1)(a) and (b).

Therefore, commissioners are required to authorize, *by resolution*, money being transferred from the county general fund to an “elections revenue fund” prior to the transfer occurring. 2017 Op. Att’y Gen. No. 2017-036, Slip Op. at 5; 2-356; R.C. 5705.14-.16; 1986 Op. Att’y Gen. No. 86-082, at 2-463; 1989 Op. Att’y Gen. No. 89-075, at 2-346.

Conclusion

Accordingly, it is my opinion, and you are hereby advised as follows:

The transfer of money from the county general fund to an "elections revenue fund" is not authorized unless it is approved by a county board of commissioners' resolution.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping initial "D".

DAVE YOST
Ohio Attorney General