

OPINION NO. 2010-026**Syllabus:**

2010-026

An educational service center is not a subdivision for purposes of R.C. 3501.17 and, therefore, is not subject to the payment of apportioned expenses associated with an election conducted pursuant to R.C. 3311.054, R.C. 3313.01, or R.C. 3513.256.

To: David L. Landefeld, Fairfield County Prosecuting Attorney, Lancaster, Ohio

By: Richard Cordray, Ohio Attorney General, November 3, 2010

You have requested an opinion whether an educational service center (ESC) is responsible for paying, in accordance with R.C. 3501.17, the apportioned expenses associated with an election conducted pursuant to R.C. 3311.054, R.C. 3313.01, or R.C. 3513.256.¹

R.C. 3501.17 provides for the payment of election expenses. Under this

¹ R.C. 3311.054 and R.C. 3313.01 provide for the election of persons to the governing board of an ESC. R.C. 3513.256 authorizes an ESC to conduct nonpartisan primary elections for nominating candidates for positions on the governing board of an ESC.

statute, the expenses of a county board of elections in conducting an election are generally “paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid.” R.C. 3501.17(A); *see also* R.C. 3501.17(B).

However, in certain situations the expenses of an election are apportioned among the county and other subdivisions in which the election is held. *See* R.C. 3501.17(A); *see also* R.C. 3501.17(B). In this regard, R.C. 3501.17(C) provides that the compensation of judges of elections and intermittent employees of the board of elections, “the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof . . . ; the cost of printing and delivering ballots, cards of instructions, registration lists required under [R.C. 3505.23], and other election supplies . . . ; the cost of contractors engaged by the board to prepare, program, test, and operate voting machines, marking devices, and automatic tabulating equipment; and *all other expenses of conducting primaries and elections in the odd-numbered years shall be charged to the subdivisions in and for which such primaries or elections are held.*”² (Emphasis added.)

In addition, R.C. 3501.17(D) states that “[w]here a special election is held on the same day as a primary or general election in an odd-numbered year, the *subdivision* submitting the special election shall be charged for the cost of ballots and advertising for such special election, *in addition to the charges prorated to such subdivision for the election or nomination of candidates in each precinct within the subdivision, as set forth in [R.C. 3501.17(C)].*” (Emphasis added.) R.C. 3501.17(E) also provides:

Where a special election is held on the day specified by [R.C. 3501.01(E)] for the holding of a primary election, for the purpose of submitting to the voters of the state constitutional amendments proposed by the general assembly, and a subdivision conducts a special election on the same day, the entire cost of the special election shall be divided proportionally between the state and the subdivision based upon a ratio determined by the number of issues placed on the ballot by each, except

² R.C. 3501.17(C) sets forth the following formula for apportioning election expenses between the county and other subdivisions for each primary or general election in odd-numbered years:

[F]irst, the total cost of all chargeable items used in conducting such elections shall be ascertained; second, the total charge shall be divided by the number of precincts participating in such election, in order to fix the cost per precinct; third, the cost per precinct shall be prorated by the board of elections to the subdivisions conducting elections for the nomination or election of officers in such precinct; fourth, the total cost for each subdivision shall be determined by adding the charges prorated to it in each precinct within the subdivision.

as otherwise provided in [R.C. 3501.17(G)] . . . *If a primary election is also being conducted in the subdivision, the costs shall be apportioned as otherwise provided in this section.* (Emphasis added.)

Thus, pursuant to R.C. 3501.17, in certain prescribed circumstances the costs associated with conducting an election are apportioned among the county and other subdivisions in which the election is held.

For purposes of R.C. 3501.17, the word “subdivision” includes boards of county commissioners, boards of township trustees, legislative authorities of municipal corporations, boards of education, and other boards, commissions, districts, and authorities that are “empowered to levy taxes or permitted to receive the proceeds of a tax levy, regardless of whether the entity receives tax settlement moneys as described in [R.C. 3501.17(A)].” R.C. 3501.17(J)(1). This means that, if an ESC is empowered to levy taxes or permitted to receive the proceeds of a tax levy, then the ESC is a subdivision that is subject to the payment of apportioned expenses associated with an election conducted pursuant to R.C. 3311.054, R.C. 3313.01, or R.C. 3513.256.

A review of the provisions of law governing the funding scheme for an ESC discloses that an ESC does not have the authority to either levy taxes or receive the proceeds of a tax levy for the ESC. *See* 1957 Op. Att’y Gen. No. 638, p. 209, at 212-13 (“none of the funds provided for the operating budget of the county board of education is derived from funds which are distributed by the county auditor following each semi-annual tax settlement, within the meaning of [R.C. 3501.17]”); 1928 Op. Att’y Gen. No. 3130, vol. IV, p. 3054, at 3055 (“[t]here is, in my opinion, no provision of law that can be construed as authorizing the county board of education to levy taxes”).³ *Compare* R.C. 3311.50(B) (the governing board of an ESC that creates a county school financing district shall serve as the taxing authority of the district and may levy taxes for the county school financing district) *and* R.C. 5705.215 (the governing board of an ESC that creates a county school financing district may submit tax levies to the electors on behalf of the county school financing district) *with* R.C. 5705.01(C) (an ESC that does not serve as the taxing authority of a county school financing district is not a “taxing authority” for purposes of R.C. Chapter 5705 (tax levy law)).

Instead, an ESC receives operating funds from the state, participating school districts, and service contracts. *See, e.g.,* R.C. 3313.42; R.C. 3313.843; R.C. 3313.844; R.C. 3313.845; R.C. 3314.022; R.C. 3317.11; R.C. 3326.45. An ESC may also fund its operations with moneys received from a county school financing district and private individuals and trusts. *See, e.g.,* R.C. 3311.50-.51; R.C. 3313.36; R.C. 3315.40. Therefore, since an ESC is not empowered to levy taxes or permitted to receive the proceeds of a tax levy, an ESC is not a subdivision for purposes of R.C. 3501.17 that is subject to the payment of apportioned expenses associated with

³ County school districts were the predecessors of ESCs. *See* 1995-1996 Ohio Laws, Part I, 898 (Am. Sub. H.B. 117, eff. June 30, 1995, with certain sections effective on other dates).

an election conducted pursuant to R.C. 3311.054, R.C. 3313.01, or R.C. 3513.256. *See* 1957 Op. Att’y Gen. No. 638, p. 209; 1928 Op. Att’y Gen. No. 3130, vol. IV, p. 3054.

However, an ESC may create a special taxing district called a county school financing district for the purpose of levying taxes for the county school financing district. *See* R.C. 3311.50-.51; R.C. 5705.215. The governing board of the ESC is the taxing authority of the county school financing district and is thus empowered under R.C. 5705.215 to submit to the electors of the county school financing district the question of levying taxes for the use of the county school financing district. *See also* R.C. 3311.50(B); R.C. 5705.01(C). Proceeds of a tax levied by a county school financing district are collected as other taxes and are distributed to the county school financing district following tax settlement. *See* R.C. 321.31.

A county school financing district is an entity separate and distinct from the ESC that created it. *See* R.C. 3311.50(E) (an ESC “does not lose its separate identity or legal existence by reason of creating a county school financing district that accepts or loses territory under [R.C. 3311.50]”); *see also* R.C. 3311.50(B)(3) (a governing board of an ESC may create more than one county school financing district). This is the case even though the governing board of the ESC that created the county school financing district is the taxing authority of the county school financing district and is responsible for expending the tax proceeds received by the county school financing district under R.C. 5705.215. *See* R.C. 3311.50-.51; *see also* R.C. 5705.01(C).

As a separate and distinct entity, a county school financing district, rather than the ESC that created it, is empowered to levy taxes and entitled to the proceeds from such tax levies. *See* R.C. 3311.50-.51; *see also* R.C. 321.31. The governing board of an ESC merely acts on behalf of a county school financing district when levying taxes for the county school financing district. *See* R.C. 3311.50-.51; R.C. 5705.01(C). In other words, a county school financing district is a separate taxing district operated by the ESC that created it. A county school financing district, therefore, is a district that is empowered to levy taxes and permitted to receive the proceeds of such tax levies pursuant to R.C. 321.31.

As stated previously, for purposes of R.C. 3501.17, the word “subdivision” includes a “district . . . that is empowered to levy taxes or permitted to receive the proceeds of a tax levy.” R.C. 3501.17(J)(1). Thus, a county school financing district, rather than the ESC that created the district, is a subdivision for purposes of R.C. 3501.17 that is subject to the payment of apportioned expenses associated with the conducting of elections. Accordingly, an ESC is not a subdivision for purposes of R.C. 3501.17 that is subject to the payment of apportioned expenses associated with the conducting of elections when the ESC has created a county school financing district.

In conclusion, it is my opinion, and you are hereby advised that an educational service center is not a subdivision for purposes of R.C. 3501.17 and, therefore, is not subject to the payment of apportioned expenses associated with an election conducted pursuant to R.C. 3311.054, R.C. 3313.01, or R.C. 3513.256.