

OPINION NO. 86-054

Syllabus:

1. Moneys derived from sources whose use is restricted by Ohio Const. art. XII, §5a may not be used to fund security and investigative activities of the State Highway Patrol that are ordinarily funded by the Security and Investigations Account.
2. If it can be established that certain moneys have been transferred to the Highway Safety Fund under R.C. 4507.50 and appropriated to the Operating Expense Account of the Division of State Highway Patrol, such moneys may be used to fund investigative activities of the Patrol, but may not be used for security detail purposes.
3. Except for those moneys referenced in paragraph two, above, moneys appropriated to the Operating Expense Account of the Division of State Highway Patrol by Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) are restricted by Ohio Const. art. XII, §5a or by provision of statute to purposes other than security and investigations and, therefore, may not be used to fund activities of the sort ordinarily funded by the Security and Investigations Account of the State Highway Patrol.

To: William M. Denihan, Director, Ohio Department of Highway Safety, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, July 29, 1986

You have requested an opinion concerning the moneys that are available to the State Highway Patrol for expenses relating to investigations and the security of state property. The information which you have provided indicates that the Patrol anticipates that its Security and Investigations Account will be depleted and wishes to know whether moneys from its Operating Expense Account may be used to fund activities that are ordinarily funded by its Security and Investigations Account. It is my understanding that your question relates to the appropriations made to the Division of State Highway Patrol for the 1985-1987 biennium. See generally R.C. 5503.01 (creating "in the department of highway safety a division of state highway patrol").

By section three (uncodified) of Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985), the General Assembly made appropriations to the Department of Highway Safety for the 1985-1987 biennium. All appropriations for the Division of State Highway Patrol were made from the Highway Safety Fund. Such appropriations included amounts for the Operating Expense Account and the Security and Investigations Account. Your question relates to restrictions imposed upon the purposes for which funds in the Operating Expense Account may be used. Those restrictions are of two types--restrictions imposed by the Constitution and restrictions imposed by act of the General Assembly.

Ohio Const. art. XII, §5a restricts the purposes for which moneys derived from highway-related fees, excises, and license taxes may be used, as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

It is firmly established that moneys which are subject to this provision may not be expended except for the purposes listed therein. See, e.g., Grandle v. Rhodes, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one) ("Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes directly connected with the construction, maintenance and repair of highways and the enforcement of traffic laws..."); 1983 Op. Att'y Gen. No. 83-031; 1975 Op. Att'y Gen. No. 75-088; 1969 Op. Att'y Gen. No. 69-121. It is, therefore, clear that moneys that are obtained from highway-related fees, excises, and license taxes may not be expended except for the purposes permitted under Ohio Const. art. XII, §5a.

In responding to your question, it is necessary for me to determine whether investigations or security functions are purposes for which those moneys specified in Ohio Const. art. XII, §5a may be spent. The purposes that are permitted under Ohio Const. art. XII, §5a include the costs of administering highway-related taxes, payment of highway obligations, costs of construction and maintenance of highways and bridges, expenses of state enforcement of traffic laws, expenditures authorized for hospitalization of indigent persons injured on the highways, and "other statutory highway purposes." Art. XII, §5a does not expressly authorize the use of moneys that are subject thereto for purposes of carrying out investigations or security functions. Therefore, moneys that are subject to art. XII, §5a may be used for the purposes of security and investigations only if such purposes are found to constitute "other statutory highway purposes." See State ex rel. Preston v. Ferguson, 170 Ohio St. 450, 461, 166 N.E.2d 365, 373 (1960) ("[t]o be a statutory highway purpose, such purpose must, first, be one which is authorized by statute and, second, be one which is so related to the development of the highway system that it is within the power of the General Assembly to authorize the expenditure of public funds therefor"). See generally 1985 Op. Att'y Gen. No. 85-094; 1964 Op. Att'y Gen. No. 1499, p. 2-388.

R.C. 5503.02 authorizes the State Highway Patrol to carry out security and investigative functions, as follows:

(E)(1) Subject to the availability of funds specifically appropriated by the general assembly for security detail purposes, the state highway patrol shall provide security as follows:

(a) For the governor.

(b) At the direction of the governor, for other officials of the state government of this state; officials of the state governments of other states who

are visiting this state; officials of the United States government who are visiting this state; officials of the governments of foreign countries or their political subdivisions who are visiting this state; or other officials or dignitaries who are visiting this state, including, but not limited to, members of trade missions.

(c) For the state capitol building.

(d) For other state property.

(2) To carry out the security responsibilities of the patrol listed in division (E)(1) of this section, the superintendent may assign patrolmen to a separate unit that is responsible for security details. The number of patrolmen assigned to particular security details shall be determined by the superintendent.

(3) The superintendent and any patrolman, when providing security pursuant to division (E)(1)(a) or (b) of this section, have the same arrest powers as other peace officers to apprehend offenders against the criminal laws who endanger or threaten the security of any person being protected, no matter where the offense occurs.

(F) The governor may order the state highway patrol to undertake major criminal investigations that involve state property interests. If an investigation undertaken pursuant to this division results in either the issuance of a no bill or the filing of an indictment, the superintendent shall file a complete and accurate report of the investigation with the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives within fifteen days after the issuance of the no bill or the filing of an indictment. If the investigation does not have as its result any prosecutorial action, the superintendent shall, upon reporting this fact to the governor, file a complete and accurate report of the investigation with the president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives. (Emphasis added.)

There is no indication that the General Assembly intended to designate the security and investigative functions of the State Highway Patrol as highway purposes. The provision of security for the Governor, for other officials or dignitaries, for the state capitol building, and for other state property bears no apparent relationship to highway purposes. R.C. 5503.02(E). The investigatory functions of the State Highway Patrol relate to possible crimes involving state property interests. R.C. 5503.02(F). Again, there is no apparent relationship to highway purposes.

It is, further, evident from the mechanism that the General Assembly used to fund the Security and Investigations Account of the Division of State Highway Patrol that the General Assembly did not consider the functions funded by that Account to be purposes that could constitutionally be funded by moneys that are subject to Ohio Const. art. XII, §5a. As noted above, Am. Sub. H.B. 348 granted appropriations for the Security and Investigations Account of the Division of State Highway Patrol, for the 1985-1987 biennium, from moneys to the credit of the Highway Safety Fund. The Highway Safety Fund contains taxes, fees, and fines levied, charged, or referred to in various

sections of the Revised Code that relate to motor vehicles, and provides that such moneys may be used "for the purpose of enforcing and paying the expenses of administering the law relative to the registration and operation of motor vehicles on the public roads or highways and for the purpose of enforcing and paying the expenses of administering the law to provide reimbursement for hospitals on account of the expenses for the care of indigent persons injured in motor vehicle accidents." R.C. 4501.06. It is clear that these highway-related moneys in the Highway Safety Fund are derived from sources encompassed by Ohio Const. art. XII, §5a, and may not be used except for the purposes permitted by that provision.¹

Am. Sub. H.B. 348 also provides, however, that amounts equal to those appropriated to the Security and Investigations Account of the Division of State Highway Patrol from the Highway Safety Fund must be paid into the Highway Safety Fund, to the credit of the Security and Investigations Account, from moneys derived from "fines against or bonds forfeited by persons apprehended or arrested by state highway patrolmen."² Moneys paid into the state treasury from such fines or bonds are, under R.C. 5503.04, ordinarily credited to the Highway Operating Fund.³ Since such moneys are not derived from fees, excises, or license taxes relating to highways or motor vehicles, they are not subject to the restrictions of Ohio Const. art. XII, §5a. By directing that moneys derived under R.C. 5503.04 be deposited to the credit of the Security and Investigations Account, the General Assembly has provided that the security and investigative operations of the State Highway Patrol shall be funded by moneys derived from

¹ The use of the moneys referenced in R.C. 4501.06 is also restricted by the language of R.C. 4501.06, which does not include all of the highway purposes authorized by Ohio Const. art. XII, §5a.

² Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) states, in section three (uncodified):

Security and Investigations

Notwithstanding other provisions of law to the contrary, no revenue shall be deposited in the Highway Operating Fund pursuant to section 5503.04 of the Revised Code until \$718,138 in fiscal year 1986 and until \$716,710 in fiscal year 1987 [the amounts appropriated to the Security and Investigations Account of the Division of State Highway Patrol] received from fines against or bonds forfeited by persons apprehended or arrested by state highway patrolmen has been deposited in the Highway Safety Fund to the credit of appropriation item 764-617, Security and Investigations.

³ R.C. 5503.04 states, in part:

All fines collected from or moneys arising from bonds forfeited by persons apprehended or arrested by state highway patrolmen shall be paid forty-five per cent into the state treasury....The fines and moneys paid into the state treasury shall be credited to the highway operating fund, which is hereby created.

sources that are not within the restrictions of Ohio Const. art XII, §5a. This arrangement provides support for the conclusion that the General Assembly did not intend to classify the activities funded by the Security and Investigations Account of the Division of State Highway Patrol as statutory highway purposes under Ohio Const. art. XII, §5a. See also note 4 and accompanying text, infra.

Based upon the foregoing, I conclude that the purposes for which the Security and Investigations Account is used are not purposes encompassed by Ohio Const. art. XII, §5a, and that moneys derived from funds whose use is restricted by Ohio Const. art. XII, §5a may not be used to fund that account. This conclusion does not, however, provide a complete resolution of the issues here under consideration. It is also necessary to examine the question whether moneys from the Operating Expense Account may be used to fund activities that are ordinarily funded by the Security and Investigations Account of the State Highway Patrol. It is, therefore, necessary for me to determine the sources of moneys used to fund the Operating Expense Account.

As discussed above, in Am. Sub. H.B. 348 the General Assembly appropriated moneys to the Operating Expense Account of the Division of State Highway Patrol from the Highway Safety Fund. The Highway Safety Fund contains certain moneys that are available for appropriation to the Operating Expense Account and that are restricted by Ohio Const. art. XII, §5a or by provision of statute to uses other than security and investigations.⁴ See R.C. 4501.03; R.C. 4501.06; R.C. 4503.311-.312; R.C. 4505.11-.111; R.C. 4923.12.⁵ Such moneys may not be used for security and investigative functions, but are available for operating expenses of the Patrol. See generally R.C. 5503.02(A).

Provision is made in Am. Sub. H.B. 348 for any deficiency

⁴ As discussed above, certain moneys derived under R.C. 5503.04 from fines and bonds have been appropriated to the credit of the State Highway Patrol's Security and Investigations Account. A similar arrangement has been provided for the State Fair Security Account. See Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) (section three, uncodified). While such moneys may be considered part of the Highway Safety Fund, they are not available to fund the State Highway Patrol's Operating Expense Account.

⁵ The Highway Safety Fund also contains amounts recovered by the state under R.C. 3701.69. That section provides for the recovery, in certain circumstances, of prior payments made to hospitals by the Director of Health to cover expenses for the care of indigent persons injured in motor vehicle accidents. It appears that funds recovered under this provision should be limited to the uses for which the amounts initially paid were available. See R.C. 4501.06.

in the Highway Safety Fund to be met by the transfer of moneys from the Highway Operating Fund.⁶ It is, therefore, necessary to consider whether moneys that may be transferred from the Highway Operating Fund to the Highway Safety Fund are available for the Operating Expense Account of the Division of State Highway Patrol, and then whether such moneys may be used for security and investigative purposes.

The Highway Operating Fund contains both moneys that are not subject to the restrictions of Ohio Const. art. XII, §5a, see, e.g., R.C. 5503.04, and moneys that are subject to the restrictions of Ohio Const. art. XII, §5a, see, e.g., R.C. 5735.05 (motor vehicle fuel excise tax); R.C. 5735.23(B)(2)(c) and (C)(4); R.C. 5735.25; R.C. 5735.26(A); R.C. 5735.27(B); R.C. 5735.29; R.C. 5735.291.⁷ See generally R.C. 126.06; 1976 Op. Att'y Gen. No. 76-076; Op. No. 75-088. Certain of the moneys in the Highway Operating Fund are subject to specific statutory restrictions which make them unavailable for operating expenses of the State Highway Patrol.⁸

Moneys in the Highway Operating Fund that are not subject to such specific restrictions are limited by R.C. 5735.291 to

⁶ Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) states, in section three (uncodified):

Transfer of Funds

The Director of Budget and Management shall certify the amount of any estimated deficiency in the State Highway Safety Fund established in section 4501.06 of the Revised Code, to the Treasurer of State and the Auditor of State for transfer from the Highway Operating Fund established in section 5503.04 of the Revised Code.

The transfer of funds to meet the aforementioned deficiency shall be in approximate equal amounts on a monthly basis or as otherwise determined by the Director of Budget and Management pursuant to a plan submitted by the Department of Highway Safety.

⁷ Both R.C. 5503.04 and R.C. 5735.291 purport to create the Highway Operating Fund. See R.C. 5503.04 ("[t]he fines and moneys paid into the state treasury shall be credited to the highway operating fund, which is hereby created"); R.C. 5735.291 ("[t]he balance of taxes collected under section 5735.29 of the Revised Code [after certain credits, transfers, and certifications] shall be credited to the 'highway operating fund', which is hereby created in the state treasury..."). See also R.C. 5728.08 (referring to "the highway operating fund created by section 5735.291 of the Revised Code"); Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) (section 3, uncodified) (referring to "the Highway Operating Fund established in section 5503.04 of the Revised Code"). It is, however, my understanding that there is only one such fund. See generally note 9, infra.

⁸ R.C. 4561.08 provides that money accepted by the Department of Transportation under R.C. 4561.01-.16, which relate to aeronautics, shall be deposited in the State

the purposes set forth in R.C. 5735.29. R.C. 5735.291 states that "[t]he balance of taxes collected under section 5735.29 of the Revised Code," after certain credits, transfers, and certifications, "shall be credited to the 'highway operating fund', which is hereby created in the state treasury and shall be used solely for the purposes enumerated in section 5735.29 of the Revised Code." The syntax and punctuation of this language--particularly the lack of a comma after "treasury"--indicate that both "is hereby created in the state treasury" and "shall be used solely for the purposes enumerated in [R.C. 5735.29]" refer to "the 'highway operating fund'." See R.C. 1.42. Thus, the language limiting expenditures to the purposes enumerated in R.C. 5735.29 applies to the entire Highway Operating Fund, and not solely to the "balance of taxes collected under [R.C. 5735.29]," after the various credits, transfers, and certifications. This interpretation of R.C. 5735.291 is supported by the fact that the prior version of R.C. 2935.291 clearly stated that the Highway Operating Fund should be used only for the purposes listed in R.C. 5735.29. See 1977-1978 Ohio Laws, Part 1, 487, 702-03 (Am. Sub. S.B. 221, eff. Nov. 23, 1977) ("[t]he balance of taxes collected under section 5735.29 of the Revised Code [after certain credits, transfers, and certifications] shall be credited to a fund to be known as the 'highway operating fund' which shall be

Treasury to the credit of the Highway Operating Fund and "shall be expended in accordance with the terms imposed by the United States in making the grants thereof." R.C. 5735.27(B) states:

Amounts credited to the highway operating fund pursuant to divisions (B)(2)(c) and (C)(4) of section 5735.23 and division (A) of section 5735.26 of the Revised Code shall be expended in the following manner:

(1) The amount credited pursuant to divisions (B)(2)(c) and (C)(4) of section 5735.23 of the Revised Code shall be apportioned to and expended by the department of transportation for the purpose of planning, maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state required by law to be maintained by the department, and paying the costs apportioned to the state under section 4907.47 of the Revised Code [installation of protective devices at public railroad highway grade crossings];

(2) The amount credited pursuant to division (A) of section 5735.26 of the Revised Code shall be used for paying the state's share of the cost of planning, constructing, widening, maintaining, and reconstructing the state highways and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways and costs apportioned to the state under section 4907.47 of the Revised Code. The director of transportation may expend portions of such amount upon extensions of state highways within municipal corporations or upon portions of state highways within municipal corporations, as is provided by law.

used solely for the purposes enumerated in section 5735.29 of the Revised Code"). There is no indication that the amendments which brought about the current version were intended to change the permissible uses of the Highway Operating Fund. See Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985).⁹ Further, the interpretation of R.C. 5735.291 that is set forth herein comports with the general principle that all words in a statute are to be given effect. See R.C. 1.47(B); State ex rel. Bohan v. Industrial Commission, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) (stating that, instead of disregarding words as mere surplusage and meaningless, a court has a duty "to accord meaning to each word of a [legislative] enactment if it is reasonably possible to do so. It is to be presumed that each word in a statute was placed there for a purpose"). If the portion of R.C. 5735.291 that limits uses to those set forth in R.C. 5735.29 were read as applying only to taxes collected under R.C. 5735.29, it would constitute mere surplusage, since the language of R.C. 5735.29 itself limits the expenditure of taxes collected pursuant to that provision to the purposes set forth therein. See Ohio Const. art. XII, §5. See generally 1980 Op. Att'y Gen. No. 80-016. It follows that all moneys placed in the Highway Operating Fund that are not otherwise restricted are, by R.C. 5735.291, limited to use for the purposes enumerated in R.C. 5735.29.

R.C. 5735.29 states, in part:

To provide revenue for supplying the state's share of the cost of constructing, widening, maintaining, and reconstructing the state highways; to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the expense of

⁹ Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985), which added the words "is hereby created in the state treasury and" to R.C. 5735.291, was a lengthy bill that stated as its purpose: "to revise the state financial system and make an appropriation." Sub. H.B. 201 repealed a version of R.C. 131.32 that had listed various funds of the state, including, in division (B)(1): "'Highway operating fund' which shall receive all revenues, after any transfers, payments, or deductions authorized or required by law, derived from sections 5503.04, 5735.23, 5735.25, and 5735.29 of the Revised Code, grants received from the federal government solely for highway purposes, and all other revenues prescribed by law." See 1983-1984 Ohio Laws, Part II, 2924-27 (Am. Sub. H.B. 291, eff. July 1, 1983) (former version of R.C. 131.32). The evident intent of the addition of the language "is hereby created in the state treasury and" to R.C. 5735.291 was to indicate that the Highway Operating Fund is a fund within the State Treasury. See also R.C. 5503.04; note 7, supra. Similar amendments were made with respect to various other funds that had been listed in R.C. 131.32. See, e.g., R.C. 146.07 (Volunteer Fire Fighters' Dependents Fund, referenced in former R.C. 131.32(G)(8)); R.C. 154.23(F) (State Agency Facilities Improvement Fund, referenced in former R.C. 131.32(D)(6)). Sub. H.B. 201 enacted a new section 131.32, which is not analogous to the former version.

administering and enforcing the state law relative to the registration and operation of motor vehicles; to pay the expense of administering and enforcing the state law providing reimbursement to hospitals for expenses incurred for the care of indigent persons injured in motor vehicle accidents; to provide revenue for the purposes of sections 1547.71 to 1547.78 of the Revised Code [harbors and waterways]; and to supplement revenue already available for such purposes, to pay the expenses of the department of taxation incident to the administration of the motor vehicle fuel laws, to supplement revenue already available for such purposes; to pay the interest, principal, and charges on bonds and other obligations issued pursuant to Section 2g of Article VIII, Ohio Constitution and sections 5528.10 and 5528.11 of the Revised Code, and to pay the interest, principal, and charges on highway obligations issued pursuant to Section 2i of Article VIII, Ohio Constitution and sections 5528.30 and 5528.31 of the Revised Code, an excise tax is hereby imposed on all dealers in motor vehicle fuel, upon the use, distribution, or sale within the state by them of motor vehicle fuel, at the rate of two cents per gallon so used, distributed, or sold. (Emphasis added.)

See also R.C. 5511.03; R.C. 5511.05; R.C. 5525.17. The purposes set forth in R.C. 5735.29 encompass many of the functions of the State Highway Patrol. See R.C. 5503.02(A). Moneys that are transferred from the Highway Operating Fund to the Highway Safety Fund may, thus, be available for the Patrol's Operating Expense Account. The purposes set forth in R.C. 5735.29 do not, however, encompass security and investigative operations that are not highway related, such as those to which the Patrol's Security and Investigations Account is directed. It follows that moneys from the Highway Operating Fund that are transferred to the Highway Safety Fund and appropriated to the Patrol's Operating Expense Account may not be used for purposes of security and investigations.

Under the provisions discussed above, the Operating Expense Account of the State Highway Patrol, for the 1985-1987 biennium, is funded by moneys whose use is restricted by statute or constitution to purposes other than security and investigations. Such moneys in the Operating Expense Account may not be used to pay for expenses that are ordinarily covered by the Security and Investigations Account.

I am, however, aware that, in certain circumstances, the Operating Expense Account of the State Highway Patrol may receive moneys that are not restricted by Ohio Const. art. XII, §5a or provision of statute and are not directed by the General Assembly to be used for any particular purpose. Under R.C. 4507.50-.52, the Registrar of Motor Vehicles and deputy registrars are authorized to issue identification cards that are intended to establish the identity of the bearer but are not valid for the purpose of operating a motor vehicle. Fees for the issuance of such cards are paid into the State Treasury to the credit of the Identification Card Fund. R.C. 4507.50. If, however, the Registrar of Motor Vehicles determines that the amount of money in the fund is in excess of the amount required to pay the costs of administering R.C. 4507.50-.52,

"he may require the director of budget and management to transfer the excess to the state highway safety fund." R.C. 4507.50. Moneys derived from the issuance of identification cards that do not permit the bearer to operate a motor vehicle do not appear to come within Ohio Const. art. XII, §5a. The use of these moneys is not restricted by statute. Therefore, to the extent that any of these moneys are transferred to the Highway Safety Fund under R.C. 4507.50, they appear to be available for any purpose. They may, therefore, be used to fund the Operating Expense Account of the State Highway Patrol and be expended for non-highway purposes. Cf. Op. No. 76-076 (finding that, to the extent that the Highway Safety Fund and the Highway Operating Fund contain moneys that are subject to the provisions of Ohio Const. art. XII, §5a they may not be included in a total operating fund which is available for non-highway purposes); Op. No. 75-088. See generally R.C. 126.06.

I note, however, that R.C. 5503.02(E)(1) states expressly that the State Highway Patrol's duty to provide security is "[s]ubject to the availability of funds specifically appropriated by the general assembly for security detail purposes."¹⁰ By means of Am. Sub. H.B. 348, the General Assembly made specific appropriations for accounts designated "Security and Investigations" and "State Fair Security." For this reason, it appears that funds appropriated generally for operating expenses may not be used to cover expenses incurred by the Patrol in its security operations. See generally State ex rel. Meshel v. Keip, 66 Ohio St. 2d 379, 423 N.E.2d 60 (1981); State ex rel. Kauer v. Defenbacher, 153 Ohio St. 268, 91 N.E.2d 512 (1950); Long v. Board of Trustees, 24 Ohio App. 261, 157 N.E. 395 (Franklin County 1926), appeal dismissed, 116 Ohio St. 738, 158 N.E. 7 (1927). It follows that, to the extent that it can be established that certain moneys have been transferred to the Highway Safety Fund under R.C. 4507.50 and appropriated to the Operating Expense Account of the State Highway Patrol, such moneys may be used to fund investigative activities of the Patrol, but may not be used for security detail purposes. If, in the process of funding the appropriation for the Operating Expense Account, moneys transferred under R.C. 4507.50 become commingled with moneys

¹⁰ Language making the State Highway Patrol's duty to provide security subject to the availability of funds specifically appropriated by the General Assembly for that purpose was initially enacted in 1977-1978 Ohio Laws, Part I, 487, 657 (Am. Sub. S.B. 221, eff. Nov. 23, 1977). That version of R.C. 5503.02 also provided that the Governor could order the State Highway Patrol to undertake major criminal investigations involving state property interests only if the Controlling Board approved the use of funds for such investigations. Am. Sub. S.B. 221 repealed the following language that had appeared in R.C. 5503.02:

The general assembly shall appropriate annually from general revenues to the state highway safety fund created by section 4501.06 of the Revised Code, moneys to reimburse such fund for all expenses of the state highway patrol incident to the performance of duties unrelated to highway purposes as described in section 5a of Article XII, Ohio Constitution.

that may not be used for investigative activities so that the source of the moneys cannot be identified, then the use of the commingled moneys must be restricted, and none of the commingled moneys may be used for investigative activities.¹¹ See Op. No. 76-076. The determination as to whether the source of particular moneys can be identified is a question of fact that I am unable to resolve by means of this opinion.¹²

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

1. Moneys derived from sources whose use is restricted by Ohio Const. art. XII, §5a may not be used to fund security and investigative

¹¹ My predecessor considered a similar question concerning county funds in 1981 Op. Att'y Gen. No. 81-035, stating, at 2-137:

Where moneys from various sources are deposited in the general fund and thereafter become commingled, it may be difficult or impossible from a practical standpoint to insure that general levy revenues or any other similarly restricted revenues would not be included within a proposed expenditure for bridge construction, repair, etc. Any doubt with regard to the legality of a proposed expenditure would necessarily be resolved against the expenditure. The Supreme Court of Ohio, in State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916), held as follows: "The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county." Therefore, a county wishing to spend moneys in its general fund directly for the purpose of bridge construction must be able to establish that no restricted funds are being so used.

¹² I note that, in funding the Operating Expense Account, see Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) (section three, uncodified), and in providing for a transfer from the Highway Operating Fund to the Highway Safety Fund to meet a deficiency, see note 6, supra, the General Assembly did not, apart from indicating the funds from which the moneys were to be obtained, specify the nature of the moneys to be used. Am. Sub. H.B. 348 does, however, permit the Department of Highway Safety to submit a plan for the transfer of funds to meet the deficiency. See note 6, supra. Further, Am. Sub. H.B. 348 states, in section seven (uncodified): "Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each item of appropriation made in this act, and shall determine the form and manner in which such appropriation accounts shall be maintained."

activities of the State Highway Patrol that are ordinarily funded by the Security and Investigations Account.

2. If it can be established that certain moneys have been transferred to the Highway Safety Fund under R.C. 4507.50 and appropriated to the Operating Expense Account of the Division of State Highway Patrol, such moneys may be used to fund investigative activities of the Patrol, but may not be used for security detail purposes.
3. Except for those moneys referenced in paragraph two, above, moneys appropriated to the Operating Expense Account of the Division of State Highway Patrol by Am. Sub. H.B. 348, 116th Gen. A. (1985) (eff. July 1, 1985) are restricted by Ohio Const. art. XII, §5a or by provision of statute to purposes other than security and investigations and, therefore, may not be used to fund activities of the sort ordinarily funded by the Security and Investigations Account of the State Highway Patrol.