OPINION NO. 2011-009

Syllabus:

2011-009

1. Absent formal action consistent with statute to change a township's boundaries, a township may, pursuant to R.C. 5705.19, levy and collect property taxes on all property within the entire territory of the township, including territory previously annexed to a municipal corporation pursuant to R.C. 709.023.

2. A subdivision may not maintain a cause of action for unjust enrichment against another subdivision if the basis of the claim is that the latter subdivision erroneously or improperly levied and collected a tax on property located within the territory of the former subdivision. However, a subdivision may maintain a cause of action for unjust enrichment against another subdivision if a tax was levied by or for the benefit of the former subdivision, but a portion of the tax proceeds were erroneously or improperly distributed to the latter subdivision. (1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, overruled in part.)

To: Brent W. Yager, Marion County Prosecuting Attorney, Marion, Ohio
By: Michael DeWine, Ohio Attorney General, April 4, 2011

I am in receipt of your request for an opinion on the following questions:

1. When township territory has been annexed to a municipal corporation pursuant to an expedited type-2 annexation under R.C. 709.023, and there is no annexation agreement or cooperative economic agreement, does the township collect 100% of its voted (outside) millage for general and special purposes within such annexed, dual-jurisdiction territory?

2. If so, is the municipal corporation required to reimburse the township with legal interest any township voted (outside) millage erroneously paid to the municipal corporation?

A township is a subdivision for taxation purposes, and the board of township trustees is the taxing authority of the township. R.C. 5705.01(A), (C). Voted (outside) millage refers to taxes levied in excess of the ten-mill limitation in Section 2, Article XII, of the Ohio Constitution and R.C. 5705.02. *See* Ohio Const. art. XII, § 2 (''[n]o property . . . shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation''); R.C. 5705.02 (''[t]he aggregate amount of taxes that may be levied on any taxable property in any subdivision

. . . shall not in any one year exceed ten mills on each dollar of tax valuation . . . except for taxes specifically authorized to be levied in excess thereof''). Pursuant to R.C. 5705.04, the taxes levied by a subdivision are divided into one of five categories. The types of levies referenced in your opinion request fall into the category of ''[o]ther special or general levies authorized by law or by vote of the people in excess of the ten-mill limitation.'' R.C. 5705.04(E).

R.C. 5705.19 authorizes the taxing authority of a subdivision to levy taxes in excess of the ten-mill limitation, providing, in part, as follows:

> The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes[.]

R.C. 5705.19(A) authorizes general levies ''[f]or current expenses of the subdivision.'' *See also* R.C. 5705.05 (the ''purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made''). R.C. 5705.19 further authorizes a number of special levies, including, for example, for parks and recreational purposes, R.C. 5705.19(H), fire protection services, R.C. 5705.19(I), and police protection services, R.C. 5705.19(J). *See also* 2010 Op. Att'y Gen. No. 2010-028, slip op. at 5 (while the term ''special levy'' is not defined by statute, it has been interpreted to mean ''a levy for a specific purpose, as opposed to a general levy for current expenses'' (quoting 1992 Op. Att'y Gen. No. 92-058, at 2-239 n.1)).

Your first question relates to a township's levy of property taxes in accordance with R.C. 5705.19 if certain township territory has been previously annexed to a municipal corporation pursuant to R.C. 709.023. We recently addressed the same issue in 2011 Op. Att'y Gen. No. 2011-002, and we rely on the reasoning and analysis contained therein in answering your question.

The general rule is that, ''absent formal action pursuant to either R.C. 503.07 or R.C. 503.09, township territory that has been annexed to a municipal corporation 'becomes part of the municipal corporation and also remains part of the township,' and 'persons residing in the annexed township territory are residents of both the municipal corporation and the township.''' 2011 Op. Att'y Gen. No. 2011-002, slip op. at 3 (quoting 2005 Op. Att'y Gen. No. 2005-024, at 2-244). Further, ''[w]hen a township includes both territory that is incorporated into a city or village and territory that is unincorporated, the township is authorized to levy taxes on all of that territory, including the territory that is incorporated.'' 2003 Op. Att'y Gen. No. 2003-023, at 2-178; *see also* 2011 Op. Att'y Gen. No. 2011-002, slip op. at 4; 2005 Op. Att'y Gen. No. 2005-024, at 2-244.

An annexation pursuant to R.C. 709.023 is commonly referred to as an

expedited type-2 annexation. *See State ex rel. Butler Twp. Bd. of Trs. v. Montgomery County Bd. of County Comm'rs*, 112 Ohio St. 3d 262, 2006-Ohio-6411, 858 N.E.2d 1193, at ¶5. Nothing in R.C. 709.023 alters the general rule that territory annexed to a municipal corporation remains subject to taxation by the township. In fact, R.C. 709.023(H) reaffirms that general rule and places additional restrictions on extricating annexed territory from the taxing authority of a township:

> Notwithstanding anything to the contrary in [R.C. 503.07], unless otherwise provided in an annexation agreement entered into pursuant to [R.C. 709.192] or in a cooperative economic development agreement entered into pursuant to [R.C. 701.07], territory annexed into a municipal corporation pursuant to this section *shall not* at any time *be excluded from the township under [R.C. 503.07] and, thus, remains subject to the township's real property taxes*. (Emphasis added.)

See also State ex rel. Butler Twp. Bd. of Trs., 112 Ohio St. 3d 262, at ¶7 (''when property is annexed to a municipality under R.C. 709.023, the residents of the territory become residents of both the township and the municipality, subject to the taxes of both, and potentially able to receive services from either''); *Sugarcreek Twp. v. City of Centerville*, 184 Ohio App. 3d 480, 2009-Ohio-4794, 921 N.E.2d 655, at ¶135-40 (Greene County) (consistent with prior law, territory annexed pursuant to R.C. 709.023 remains subject to taxation by both the township and the municipal corporation).

The opinion request asks us to assume that there have been no formal efforts, consistent with statute, to change the township's boundaries and that the previously annexed territory remains part of the township. In such a situation, a township may, pursuant to R.C. 5705.19, levy and collect property taxes on all property within the entire territory of the township, including territory previously annexed to a municipal corporation pursuant to R.C. 709.023.

Your second question asks, if the answer to the first question is in the affirmative, whether a municipal corporation is required to reimburse a township with interest if township voted (outside) millage is erroneously paid to the municipal corporation. It is beyond the scope of the opinion process to resolve ''questions of fact regarding the lawfulness of actions taken in the past or the rights or liabilities of particular individuals or governmental entities.'' 2005 Op. Att'y Gen. No. 2005-043, at 2-472; *see also* 2005 Op. Att'y Gen. No. 2005-002, at 2-12 (''[w]e are not able, by means of this opinion, to make findings of fact or to determine the rights of particular parties''). We are able, however, to discuss general principles of law applicable to your question. 2005 Op. Att'y Gen. No. 2005-043, at 2-472.[1]

In 2005 Op. Att'y Gen. No. 2005-043, the Attorney General addressed a

[1] Regardless of whether a municipal corporation is *required* to reimburse a township in this instance, municipal corporations possess broad home rule powers. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-011, at 2-39 (the ''authority granted to municipalities under Ohio Const. art. XVIII §§ 3 and 7 is far greater than that granted to . . . counties and townships''; the ''authority of the governing body of a municipal

question similar to the one you have raised. That opinion involved a situation in which township territory was annexed to a municipal corporation and, following annexation, the township boundaries were not conformed to those of the municipal corporation, but inside millage was mistakenly calculated and levied as if the boundaries had been conformed. Analyzing the validity of this treatment on prior abstracts, and the resulting effect on reduction factors and tax rates, the Attorney General set forth a number of general principles:

> There is a presumption of validity of action taken by a public official in the course of the performance of the official's duties.
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> In general, action taken by public officials is presumed to have legal effect, even though some errors may occur.
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> The fact that official actions may have legal effect even though they are not flawless is evidenced by the fact that various statutory provisions authorize the correction of errors made in the taxation process.
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> Actions taken by public officials may be changed only as permitted by law.

Id. at 2-472 to 2-474 (citations omitted). Accordingly, the Attorney General concluded that "the actions of public officials taken to calculate and levy the taxes are presumed to be valid and of legal effect, and may be modified or corrected only in accordance with provisions of statute or through proper administrative or judicial procedures." *Id.* (syllabus, paragraph 5).

We have exhaustively reviewed the statutory procedures for the levying of real property taxes. As to future tax years, it is well established that a "county auditor's duty to prepare a proper abstract and a proper tax list and duplicate applies anew each year, and errors in previous years do not eliminate the duty to comply with current statutory requirements." 2005 Op. Att'y Gen. No. 2005-043, at 2-457 (citing R.C. 319.28; R.C. 5715.16; R.C. 5715.23). R.C. 319.35 and R.C. 5713.19 also require a county auditor, moving forward, to correct clerical errors in tax lists and duplicates. *See* 1960 Op. Att'y Gen. No. 1876, p. 718, at 720 ("where the county auditor by a clerical error describes certain land in the tax duplicate as being in one school district when in fact it is located in another, then under the provisions of [R.C. 319.35 and R.C. 5713.19], he has a duty to correct such error when he discovers it, notwithstanding that considerable time may have elapsed from the time the error was committed until it was discovered"). However, there does not appear to be any statutory mechanism for correcting an error involving a tax levy that has already been assessed by the county auditor, collected by the county treasurer, and

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corporation . . . is not limited to those powers expressly provided by statute"). As we are unaware of any conflicting constitutional or statutory provision, a municipal corporation may voluntarily elect to reimburse a township with interest if the municipal corporation erroneously received tax proceeds levied by and for the benefit of the township under R.C. 5705.19. *See id.*; *see also* 2005 Op. Att'y Gen. No. 2005-005, at 2-47.

improperly or erroneously distributed to a subdivision. *See* 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, at 1730 ("I do not find any express authority for a county auditor when making settlements with the county treasurer and when determining the proper amount of tax revenues with which the several taxing districts in the county are to be credited, to correct errors in previous apportionments of real estate taxes").

This leaves resort to the judicial process. The ability of one political subdivision to recover through litigation tax proceeds paid to another subdivision has been the subject of several Ohio Supreme Court decisions and a prior Attorney General opinion. *See N. Olmsted City School Dist. Bd. of Educ. v. Cleveland Mun. School Dist. Bd. of Educ.*, 108 Ohio St. 3d 479, 2006-Ohio-1504, 844 N.E.2d 832; *Village of Indian Hill v. Atkins*, 153 Ohio St. 562, 93 N.E.2d 22 (1950); *Lyme Twp. Bd. of Educ. v. Lyme Twp. Special School Dist. No. 1 Bd. of Educ.*, 44 Ohio St. 278, 7 N.E. 12 (1886); 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728. As the present opinion ultimately is concerned with the current state of Ohio law, we begin with the most recent pronouncements by the Ohio Supreme Court.

In *N. Olmsted City School Dist. Bd. of Educ.*, Circuit City Stores, Inc. filed several intercounty personal property tax returns erroneously indicating that a Circuit City store actually located in the North Olmsted taxing district was located in the Cleveland taxing district. As a result of these errors, Circuit City for several years paid personal property taxes at the rate levied by Cleveland, not North Olmsted (which were different rates), and the county auditor allocated the personal property tax proceeds from the store to the Cleveland School District. The issue before the Ohio Supreme Court was the North Olmsted School District's ability to recover from the Cleveland School District, under an unjust enrichment theory, the amount that Circuit City would have paid under the North Olmsted School District's levy if Circuit City had reported the correct location of its store.

The Ohio Supreme Court began its analysis of the issue by reviewing its two prior decisions in *Lyme Twp. Bd. of Educ.* and *Village of Indian Hill*.

> This court first encountered a similar situation many years ago. In *Lyme Twp. Bd. of Edn. v. Lyme Twp. Special School Dist. No. 1 Bd. of Edn.* (1886), 44 Ohio St. 278, 7 N.E. 12, a special school district in Lyme Township in Huron County sought to recover taxes collected against property located within that special district after the county auditor had mistakenly recorded the property as being within the township's regular school district, so that the regular school district received the taxes pursuant to its own levy. In a very short opinion, this court held that the special district could not maintain an action to recover the tax money because the taxes received by the other district "were not produced by any levy made by the board of the special district" and because there was no privity between the two boards. *Id.* at 13, 7 N.E. 12.
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> This court decided another case with some similarities to the instant case in 1950. The parties dispute the impact of that decision on this appeal. In that case, *Indian Hill v. Atkins* (1950), 153 Ohio St. 562,

> 42 O.O. 35, 93 N.E.2d 22, a taxpayer who lived in the village of Indian Hill filed tax returns for intangible personal property indicating that his place of residence was Cincinnati. The Hamilton County Auditor accepted the taxpayer's assertion that Cincinnati was the proper taxing district. Consequently, Cincinnati received taxes paid by that taxpayer that Indian Hill should have received. When Indian Hill sought restitution from Cincinnati, the trial court sustained Cincinnati's demurrer and dismissed the cause, and the court of appeals affirmed.
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> This court reversed the judgment of the court of appeals, holding at paragraph three of the syllabus: "Where the proceeds of [intangible] personal property taxes collected from a taxpayer who resided in and was domiciled in one municipality are distributed to another municipality because of a mistaken belief that such taxpayer was a resident of the latter municipality, a cause of action *may exist* in favor of the first municipality against the second municipality for recovery of the proceeds so distributed."

N. Olmsted City School Dist. Bd. of Educ., 108 Ohio St. 3d 479, at ¶12-14 (emphasis in original).

Relying extensively on an earlier court of appeals decision, *Zupancic v. Carter Lumber Co.*, Franklin No. 01AP-1248, 2002-Ohio-3246, 2002 Ohio App. LEXIS 3294 (June 25, 2002), the Ohio Supreme Court concluded *Lyme Twp. Bd. of Educ.* was the controlling precedent:

> . . . [W]e agree with the conclusion reached by the *Zupancic* court that *Lyme Twp.*, rather than *Indian Hill*, is the proper precedent to apply to this situation. After extensively reviewing those two decisions, the *Zupancic* court focused specifically on the portions of the *Indian Hill* opinion in which this court discussed *Lyme Twp.*
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> After recounting the facts of *Lyme Twp.*, this court in *Indian Hill* observed that "the taxes received by the second board 'were not produced by any levy made by the' first board." *Indian Hill*, 153 Ohio St. at 567, 42 O.O. 35, 93 N.E.2d 22, quoting *Lyme Twp.*, 44 Ohio St. at 278, 7 N.E. 12. For our purposes, the pivotal statement made by this court in *Indian Hill* was that "[i]f the taxes involved in the *Lyme Township* case were not produced by any levy made by the board seeking recovery on account thereof, it is difficult to see what right that board would have to the proceeds of such taxes." *Indian Hill*, 153 Ohio St. at 567-568, 42 O.O. 35, 93 N.E.2d 22.
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> The *Zupancic* court's conclusion on the effect of this and other statements in *Indian Hill* was that "it is clear that *Indian Hill* did not limit the holding in *Lyme*. Indeed, the taxes at issue in *Indian Hill* were completely different from the taxes involved in *Lyme*. The taxes in *Indian Hill* were intangible personal property taxes that had been levied by the General Assembly based on a standard tax rate. They were not taxes

> levied locally by an individual school district with individual tax rates, such as in *Lyme*. . . . Thus, the facts in *Indian Hill* are clearly distinguishable from the facts in Lyme and, accordingly, *Lyme* remains good law." *Zupancic*, 2002-Ohio-3246, 2002 WL 1377932, at ¶ 23.

N. Olmsted City School Dist. Bd. of Educ., 108 Ohio St. 3d 479, at ¶22-24. The court further concluded that *Lyme Twp. Bd. of Educ.* was soundly reasoned and should not be overruled. *Id.* at ¶30-42. As such, the court held that the North Olmsted School District did not have a viable unjust enrichment claim against the Cleveland School District for tax proceeds erroneously assessed on behalf of and paid to the Cleveland School District. *Id.* at ¶43-44.

The preceding discussion indicates that, in determining whether a subdivision can assert a cause of action against another subdivision, the salient distinction is between an error in the assessment and levying of a tax and an error in the distribution of tax proceeds. The central tenet of *Lyme Twp. Bd. of Educ.*, reaffirmed by subsequent case law, is that "a taxing authority cannot claim taxes when such taxes were not produced by a levy of such authority." *Zupancic*, 2002-Ohio-3246, at ¶13; *see also N. Olmsted City School Dist. Bd. of Educ.*, 108 Ohio St. 3d 479, at ¶23 ("[i]f the taxes involved in the *Lyme Township* case were not produced by any levy made by the board seeking recovery on account thereof, it is difficult to see what right that board would have to the proceeds of such taxes" (quoting *Village of Indian Hill*, 153 Ohio St. at 567-68)). In *Lyme Twp. Bd. of Educ., N. Olmsted City School Dist. Bd. of Educ.*, and *Zupancic*, the tax proceeds in question were all derived from levies that, through a mistake of fact, were assessed on behalf of the wrong subdivision. Unjust enrichment was not available in any of these cases.[2] By contrast, the issue in *Village of Indian Hill* was the recovery of tax proceeds

[2] Similar to *Lyme Twp. Bd. of Educ. v. Lyme Twp. Special School Dist. No. 1 Bd. of Educ.*, 44 Ohio St. 278, 7 N.E. 12 (1886), *N. Olmsted City School Dist. Bd. of Educ. v. Cleveland Mun. School Dist. Bd. of Educ.*, 108 Ohio St. 3d 479, 2006-Ohio-1504, 844 N.E.2d 832, and *Zupancic v. Carter Lumber Co.*, Franklin No. 01AP-1248, 2002-Ohio-3246, 2002 Ohio App. LEXIS 3294 (June 25, 2002), 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728 involved one school district seeking to recover from a second school district after certain property located in the first school district was erroneously assessed as if it were located in the second school district. Relying largely on authority from other states, the Attorney General concluded the first school district had a viable cause of action against the second school district for money had and received. *See* 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728 (syllabus, paragraph 1). The Attorney General also noted that the question before him had "never come before the courts of Ohio." *Id.* at 1730. As *Lyme Twp. Bd. of Educ.* was decided several decades prior to 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, this statement is inaccurate. Further, the conclusion in paragraph one of the syllabus runs contrary to the holdings in both *Lyme Twp. Bd. of Educ.* and *N. Olmsted City School Dist. Bd. of Educ.* It is unclear whether the Attorney General was aware of *Lyme Twp. Bd. of Educ.* In any event, while the reasoning in 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728 may be persuasive in its own right, the Ohio

otherwise properly assessed, but erroneously distributed. *See Village of Indian Hill*, 153 Ohio St. at 571 (''we believe it is accurate to state that the matter involved in this case does not involve the assessment of property for taxation or the levy or collection of taxes. Instead, it involves the distribution in accordance with the direction of the General Assembly . . . of the collected proceeds of taxes levied by the General Assembly''); *Zupancic*, 2002-Ohio-3246, at ¶13 (''the intangible taxes in *Indian Hill*, for all intents and purposes, had been levied by Indian Hill (by way of the General Assembly) and not Cincinnati whereas in *Lyme*, the complaining party had not levied the subject taxes''). Thus, Indian Hill had a viable cause of action. *Village of Indian Hill*, 153 Ohio St. at 574 (although the unjust enrichment claim would be subject to ''equitable and other defenses . . . , the petition does state a cause of action'').

Based on the preceding authority, therefore, a subdivision may not maintain a cause of action for unjust enrichment against another subdivision if the basis of the claim is that the latter subdivision erroneously or improperly levied and collected a tax on property located within the territory of the former subdivision. However, a subdivision may maintain a cause of action for unjust enrichment against another subdivision if a tax was levied by or for the benefit of the former subdivision, but a portion of the tax proceeds were erroneously or improperly distributed to the latter subdivision. Your opinion request describes a situation in which township voted (outside) millage was erroneously paid to a municipal corporation. While additional facts are needed, this appears to fall into the latter category—*i.e.*, tax proceeds erroneously distributed. As noted above, though, it is beyond the scope of the opinion process to make findings of fact or to determine the rights of particular parties. Ultimately, either the parties involved or the judiciary will need to make this determination.

Finally, we briefly address the specific issue, raised in your second question, of a municipal corporation's obligation to reimburse a township with interest. A number of Ohio courts have ''determined that a claim of unjust enrichment does not support an award of prejudgment interest under R.C. 1343.03(A).'' *Cantwell Mach. Co. v. Chicago Mach. Co.*, 184 Ohio App. 3d 287, 2009-Ohio-4548, 920 N.E.2d 994, at ¶31 (Franklin County) (citations omitted); *see also Dixon v. Smith*, 119 Ohio App. 3d 308, 321, 695 N.E.2d 284 (Logan County 1993) (affirming trial court's denial of prejudgment interest on unjust enrichment claim because ''the amount of recovery in an unjust enrichment claim is by its very nature uncertain until the court determines the amount to which the defendant has benefited''); *Donovan v. Omega World Travel, Inc.*, No. 68251, 1995 Ohio App. LEXIS 4448, at *12 (Cuyahoga County Oct. 5, 1995) (''[t]he trial court did not err in denying prejudgment interest to plaintiff pursuant to R.C. 1343.03(A) as prejudgment interest cannot be awarded on an unjust enrichment claim''). Recently, however, several courts have reached the opposite conclusion. *Desai v. Franklin*, 177 Ohio App. 3d 679, 696, 2008-Ohio-3957, 895 N.E.2d 875, at ¶32 (Summit County) (affirming trial court's award of

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Supreme Court has spoken on the issue. Thus, 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728 is overruled to the extent it conflicts with the advice offered here.

prejudgment interest on unjust enrichment claim because such a claim is "a quasi-contractual claim and falls under the purview of R.C. 1343.03(A)"); *Zeck v. Sokol*, Medina No. 07CA0030-M, 2008-Ohio-727, 2008 Ohio App. LEXIS 626, at ¶43 (Feb. 25, 2008) ("[t]hat the amount [of damages] is unliquidated and/or not capable of ascertainment prior to judgment, as in the case of a claim for unjust enrichment, does not defeat a claim for prejudgment interest").

We agree with the *Desai* court that an unjust enrichment claim, particularly one by a subdivision against another to recover erroneously distributed tax proceeds, is quasi-contractual in nature. *See Village of Indian Hill*, 153 Ohio St. at 569-70 (discussing the quasi-contractual nature of Indian Hill's claim); 1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, at 1733 ("an action by one political subdivision against another, for moneys rightfully belonging to the one but wrongfully paid to the other, [is] in the nature of an action *ex contractu*"); *see also generally Hummel v. Hummel*, 133 Ohio St. 520, 525-29, 14 N.E.2d 923 (1938) (discussing the doctrine of liability on quasi contract and its relationship to unjust enrichment). Further, while the typical unjust enrichment claim may be unliquidated, a claim to recover tax proceeds erroneously distributed to the wrong subdivision should reasonably be capable of ascertainment by mere computation. *See, e.g., Ford v. Tandy Transp., Inc.*, 86 Ohio App. 3d 364, 385, 620 N.E.2d 996 (Lawrence County 1993) ("prejudgment interest will not be denied, although the sum due is unliquidated, where the amount is capable of ascertainment by mere computation, or is subject to reasonably certain calculations"); *Finn v. Krumroy Constr. Co.*, 68 Ohio App. 3d 480, 490, 589 N.E.2d 58 (Summit County 1990) ("prejudgment interest is warranted when the amount is capable of ascertainment by mere computation"). Accordingly, it appears the better view is that prejudgment interest may be recovered in a successful unjust enrichment cause of action by a subdivision for erroneously distributed tax proceeds. Ultimately, however, a trial court is required to follow the precedent established in its appellate district, and determining whether prejudgment interest is warranted under the facts of a particular case is a judicial function. As such, we refrain from opining on the matter formally.

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

1. Absent formal action consistent with statute to change a township's boundaries, a township may, pursuant to R.C. 5709.19, levy and collect property taxes on all property within the entire territory of the township, including territory previously annexed to a municipal corporation pursuant to R.C. 709.023.

2. A subdivision may not maintain a cause of action for unjust enrichment against another subdivision if the basis of the claim is that the latter subdivision erroneously or improperly levied and collected a tax on property located within the territory of the former subdivision. However, a subdivision may maintain a cause of action for unjust enrichment against another subdivision if a tax was levied by or for the benefit of the former subdivision, but a portion of the tax proceeds were erroneously or improperly distributed to the latter

subdivision. (1933 Op. Att'y Gen. No. 1856, vol. III, p. 1728, overruled in part.)