

Note from the Attorney General's Office:

1982 Op. Att'y Gen. No. 82-035 was overruled by
1985 Op. Att'y Gen. No. 85-055.

OPINION NO. 82-035**Syllabus:**

Pursuant to R.C. 135.351, interest earned on funds received as a gift by a county board of mental retardation and developmental disabilities and paid into the county treasury pursuant to R.C. 5126.05 must be credited to the general fund of the county treasury.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: William J. Brown, Attorney General, May 28, 1982

I have before me your request for my opinion in response to a question which I have, with your consent, rephrased as follows:

Is a county entitled under R.C. 135.351 to credit to the county treasury the interest earned on money generated from a gift to the county board of mental retardation and developmental disabilities?

It is my understanding, based on information furnished by your office, that the gifts in question consisted of cash and that such gifts were not restricted in purpose by the donors. It is also my understanding that the terms of the gifts made no mention of interest. I shall limit my analysis of this issue accordingly.

The acceptance of gifts by a county board of mental retardation and developmental disabilities is governed by R.C. 5126.05, which reads, in pertinent part, as follows:

Any county board of mental retardation and developmental disabilities may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the same according to the terms of the gift, grant, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. Any interest or earnings accruing from such gift, grant, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, or bequest.

Thus, pursuant to R.C. 5126.05, any money received by gift must be placed in the county treasury. R.C. 5126.05 also specifies that any interest earned on such money shall be placed in the county treasury to the credit of the county board of mental retardation and developmental disabilities.

R.C. 135.351(A), however, provides that "[a]ll interest earned on money included within the county treasury shall be credited to the general fund of the county." As I stated in 1982 Op. Att'y Gen. No. 82-026:

The only exception to the interest provision in R.C. 135.351(A) is in [R.C. 135.351] subsection (C) with regard to interest earned on moneys which are collected by a county on behalf of another political subdivision, taxing district, or special district and which are required under [R.C. 135.351] subsection (B) to be distributed to such subdivision or district rather than deposited or invested by the county.

As was previously discussed, money which is given by way of gift to a county board of mental retardation and developmental disabilities must be deposited in the county treasury and need not be distributed to the county board. Thus, R.C. 135.351(B) and (C) are inapplicable to the type of funds in question. Pursuant to R.C. 135.351(A), therefore, the interest earned on such funds will be credited to the general fund of the county. This allocation of interest is, however, in direct conflict with R.C. 5126.05, which requires that interest accruing from gifts to the board be credited to the board.

In 1982 Op. Att'y Gen. No. 82-027, I dealt with a similar conflict between R.C. 135.351 and R.C. 5705.29(F)(1). R.C. 5705.29(F)(1) states that the depository interest earned on money included within a township's reserve balance account shall be returned to the township with the principal of the account. As I stated in Op. No. 82-027, "it would appear that R.C. 135.351(A) was intended to encompass the interest on all funds included within the county treasury including custodial funds." Thus, I was constrained to conclude that "it was the manifest intent of the General Assembly that R.C. 135.351 prevail over R.C. 5705.29(F)(1) with regard to the allocation of interest earned on a reserve balance account."

The analysis contained in Op. No. 82-027 necessitates a similar conclusion with regard to the conflict between R.C. 135.351 and R.C. 5126.05. R.C. 135.351 was enacted subsequent to R.C. 5126.05. Moreover, R.C. 135.351 is part of a special system which alters the rule generally applicable to the state and its political subdivisions "that interest earned on money belonging to another subdivision is to be credited to the fund to which the principal belongs."¹ Op. No. 82-027. See Op. No. 82-026. As a result, I must conclude that R.C. 135.351 prevails over R.C. 5126.05 with regard to the allocation of interest earned on a gift to a county board of mental retardation and developmental disabilities. See R.C. 1.51.

Therefore, it is my opinion, and you are advised, that pursuant to R.C. 135.351, interest earned on funds received as a gift by a county board of mental retardation and developmental disabilities and paid into the county treasury pursuant to R.C. 5126.05 must be credited to the general fund of the county treasury.

¹R.C. 135.351 was recently enacted as part of Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). H.B. 230 also amended R.C. 135.01(L) and R.C. 135.21 to exclude counties from the general requirement that interest earned on funds belonging to another political subdivision shall be credited to the fund to which the principal belongs.