

OPINION NO. 83-054

Syllabus:

A convention and visitors' bureau may expend revenue available to it from a tax levied pursuant to R.C. 5739.024(A) for the maintenance of a county-owned facility which is used only for public purposes.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983

I have before me your opinion request in which you ask:

whether a convention and visitors bureau can expend revenue available to it from a countywide hotel/motel tax enacted pursuant to [R.C. 5739.024] in the maintenance of a county-owned facility used by a variety of groups involved in the performing arts, if the facility is leased to the Chamber of Commerce.

It is my understanding that you no longer plan to lease the facility to the chamber of commerce and you have, therefore, deleted that portion of your question.

Pursuant to R.C. 5739.024(A), a board of county commissioners may levy an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests. The statute provides for the payment of costs of administering the tax and distribution of a portion of such tax to various political subdivisions within the county. "The remainder of the revenue arising from the tax shall be deposited in a separate fund and shall be spent solely to make contributions to the convention and visitors' bureau operating within the county." R.C. 5739.024(A).

You specifically ask whether such a convention and visitors' bureau may expend the funds it receives under R.C. 5739.024(A) for the maintenance of a county owned facility, used in part as a museum and in part as a theater. A similar question was addressed in 1981 Op. Att'y Gen. No. 81-093, which discussed whether a convention and visitors' bureau could use funds derived from a tax levied pursuant to R.C. 5739.024(A) to aid in the support of a local historical museum. Since the creation and operation of a convention and visitors' bureau is not governed by statute, the opinion noted a limitation upon the county's authority to contribute funds to such a bureau under R.C. 5739.024(A). Because Ohio Const. art. VIII, §6 prevents a county from furnishing money or credit for the benefit of a private enterprise, a convention and visitors' bureau must be either "a public organization created for a public purpose or . . . a private non-profit organization [which will use such funds] for a public purpose," Op. No. 81-093 at 2-357, in order to receive funds under R.C. 5739.024(A).

As concluded in Op. No. 81-093, the General Assembly has, by the enactment of R.C. 5739.024(A), determined that conventions and tourism constitute a valid public purpose. It appears reasonable that the expenditure of funds to maintain a county building used as a museum and for the performing arts would promote tourism and would, thus, be a permissible expenditure of funds which are levied and distributed to a convention and visitors' bureau pursuant to R.C. 5739.024(A). See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (charter municipality may expend public funds for construction of stadium).

Your opinion request states that the facility about which you ask is currently owned, maintained, and operated by the county commissioners. As stated above, the limitation upon the expenditure of funds distributed to a convention and visitors' bureau under R.C. 5739.024(A) is that the expenditure must constitute a public purpose. The fact that the General Assembly has expressly authorized the county to purchase, construct, equip and furnish a public auditorium or exhibition hall, R.C. 307.02, further supports the conclusion that the maintenance of such a facility constitutes a public purpose.

It is, therefore, my opinion, and you are advised, that a convention and visitors' bureau may expend revenue available to it from a tax levied pursuant to R.C. 5739.024(A) for the maintenance of a county-owned facility which is used only for public purposes.