

**OPINION NO. 2013-006****Syllabus:**

2013-006

1. The term “special taxing district,” as used in R.C. 149.412, means a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose.
2. A county veterans service commission and a county board of developmental disabilities are subject to the jurisdiction of a county records commission under R.C. 149.38.
3. The entities subject to the jurisdiction of a special taxing district records commission under R.C. 149.412 include, but are not limited to: (1) a county soil and water conservation district; (2) a single county alcohol, drug addiction, and mental health service district; (3) a general health district; and (4) a combined general health district.

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**To: D. Andrew Wilson, Clark County Prosecuting Attorney, Springfield, Ohio**  
**By: Michael DeWine, Ohio Attorney General, February 27, 2013**

You have requested an opinion regarding the meaning of the term “special taxing district” as used in R.C. 149.412, which creates a special taxing district records commission in each “special taxing district.” Specifically, you ask:

1. For purposes of R.C. 149.412, what is a “special taxing district”?
2. Are any of the following entities a special taxing district that is subject to the jurisdiction of a special taxing district records commission under R.C. 149.412: (1) a county veterans service commission; (2) a county board of developmental disabilities; (3) a county soil and water conservation district; (4) a single county alcohol,

drug addiction, and mental health service district; (5) a general health district; or (6) a combined general health district?<sup>1</sup>

### **Ohio's Public Records Law and Public Records Commissions**

Resolution of your questions first requires us to examine Ohio's public records law. Ohio law generally requires every public office, upon request, to promptly prepare public records and make them available for inspection at all reasonable times during normal business hours.<sup>2</sup> R.C. 149.43(B)(1). Upon request and within a reasonable period of time, a public office or person responsible for public records is also required to make copies of public records available at cost. *Id.* As used in R.C. Chapter 149, and except as otherwise provided, "[p]ublic office" is defined to include "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of [the state of Ohio] for the exercise of any function of government."<sup>3</sup> R.C. 149.011(A). To facilitate broad access to public records, all public offices and persons responsible for public records are required to "organize and maintain public records in a manner that they can be made available for inspection or copying." R.C. 149.43(B)(2).

To coordinate the retention of public records and the disposal of obsolete public records, the General Assembly has created "records commissions" for certain governmental entities. *See* R.C. 149.38 (county records commission); R.C. 149.39 (municipal records commission); R.C. 149.41 (school district and educational service center records commissions); R.C. 149.411 (library records commission); R.C. 149.412 (special taxing district records commission); R.C. 149.42 (township records commission). Through enactment of R.C. 149.38-42, the General Assembly has established a comprehensive statutory plan for the supervision of records retention and disposition by local governmental entities. Records commissions are responsible for reviewing and approving records retention schedules and

<sup>1</sup> We have rephrased your second question for ease of discussion. In your opinion request, you ask whether a combined general health district formed under R.C. 3709.07 is a special taxing district for purposes of R.C. 149.412. The analysis in this opinion is equally applicable to a combined general health district formed under R.C. 3709.10. Therefore, we use the term "combined general health district" to refer to both a combined general health district formed under R.C. 3709.07 and a combined general health district formed under R.C. 3709.10.

<sup>2</sup> R.C. 149.011(G) defines "[r]ecords," as used in R.C. Chapter 149, except as otherwise provided, to include "any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office."

<sup>3</sup> Pursuant to R.C. 149.011(A), "[p]ublic office" does not include the nonprofit corporation formed under R.C. 187.01.

applications for one-time disposal of obsolete records submitted by public offices within the records commissions' jurisdiction. *See, e.g.*, R.C. 149.38(B); R.C. 149.39; R.C. 149.41. For example, a county records commission is responsible for reviewing and approving records retention schedules and disposal applications submitted by county offices, while a township records commission has a similar obligation with respect to township offices. R.C. 149.38(B); R.C. 149.42.

### **R.C. 149.412 and Special Taxing District Records Commissions**

The records commission with which you are concerned, a special taxing district records commission, is established by R.C. 149.412. R.C. 149.412 states, in part:

There is hereby created in each special taxing district that is a public office as defined in section 149.011 of the Revised Code and that is not specifically designated in section 149.38 [county records commission], 149.39 [municipal records commission], 149.41 [school district and educational service center records commissions], 149.411 [library records commission], or 149.42 [township records commission] of the Revised Code a special taxing district records commission composed of, at a minimum, the chairperson, a fiscal representative, and a legal representative of the governing board of the special taxing district. . . .

The functions of the commission shall be to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district.

R.C. 149.412, by its terms, excludes counties, municipalities, school districts, educational service centers, public libraries, and townships from the jurisdiction of a special taxing district records commission. *See* R.C. 149.412 (“[t]here is hereby created in each special taxing district . . . that is not specifically designated in section 149.38, 149.39, 149.41, 149.411, or 149.42 of the Revised Code a special taxing district records commission”). These entities are excluded from the jurisdiction of a special taxing district records commission because, pursuant to the statutory plan set forth in R.C. Chapter 149, each of these entities has a specific records commission designated to oversee the retention and disposition of the entity's records. *See, e.g.*, R.C. 149.38 (a county records commission is responsible for overseeing the retention and disposition of county records); R.C. 149.39 (a municipal records commission is responsible for overseeing the retention and disposition of records of the municipal corporation). Therefore, under the statutory plan set forth in R.C. Chapter 149, a “special taxing district” is subject to the jurisdiction of a special taxing district records commission if it is not subject to the jurisdiction of a county, municipal, school district, educational service center, library, or township records commission.<sup>4</sup> R.C. 149.412; *see also State ex rel. Myers v. Indus. Comm'n*, 105 Ohio St. 103, 136 N.E. 896 (1922) (syllabus, paragraph 1) (“[t]he different sec-

<sup>4</sup> The language of R.C. 149.412 suggests that it was enacted by the General Assembly as a “catch-all” for local governmental entities that are not encompassed

tions and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all”).

Thus, to determine whether an entity is subject to the jurisdiction of a special taxing district records commission under R.C. 149.412, it must first be determined whether the entity is subject to another records commission under R.C. Chapter 149. An entity is subject to the jurisdiction of another records commission under R.C. Chapter 149 if it is a county, municipal, or township office, or an office of a school district, educational service center, or public library. *See* R.C. 149.38; R.C. 149.39; R.C. 149.41; R.C. 149.411; R.C. 149.42. If the entity in question is not subject to the jurisdiction of another records commission under R.C. Chapter 149, it must then be determined whether the entity qualifies as a “special taxing district” for purposes of R.C. 149.412. We begin by considering the meaning of the term “special taxing district” for purposes of R.C. 149.412.

#### **Meaning of the Term “Special Taxing District” for Purposes of R.C. 149.412**

The General Assembly has not defined the term “special taxing district” for purposes of R.C. 149.412. The term also has not been defined elsewhere in the Revised Code. It has, however, acquired a particular meaning from the courts. The courts have described a “special taxing district” as a separate and distinct territorial division of government throughout which a tax may be levied to promote or

by one of the other records commissions established in R.C. Chapter 149. *See* R.C. 149.412 (“[t]here is hereby created in each special taxing district . . . that is not specifically designated in section 149.38, 149.39, 149.41, 149.411, or 149.42 of the Revised Code a special taxing district records commission”). When R.C. 149.412 was enacted in 2007, each county, municipal corporation, township, city school district, exempted village school district, and educational service center was subject to the jurisdiction of a records commission. *See* 2005-2006 Ohio Laws, Part IV, 8219, 8223-29 (Sub. H.B. 9, eff. Sept. 29, 2007). However, in the several decades preceding the enactment of R.C. 149.412, many local governmental entities did not have an established records commission to oversee the retention and disposition of their public records. *See, e.g.*, 1988 Op. Att’y Gen. No. 88-083 (syllabus) (“[u]nder R.C. 149.38, a county records commission is not responsible for providing rules for the retention and disposal of records of a regional transit authority established pursuant to R.C. 306.32”); 1960 Op. Att’y Gen. No. 1552, p. 520 (syllabus, paragraph 1) (“[n]either the township records commission created by [R.C. 149.42], nor the county records commission created by [R.C. 149.38], has authority to order the destruction of records of a library organized under [R.C. 3375.10]” (since the issuance of 1960 Op. Att’y Gen. No. 1552, p. 520, the General Assembly has enacted R.C. 149.411, which establishes a library records commission to oversee the retention and disposition of records of a township free public library organized under R.C. 3375.10)). In establishing special taxing district records commissions under R.C. 149.412, the General Assembly, therefore, intended to encompass local governmental entities that were not already subject to the jurisdiction of a records commission under R.C. Chapter 149.

achieve a public purpose. *See, e.g., Webster v. Fargo*, 181 U.S. 394 (1901) (syllabus) (“[i]t is within the power of the legislature of a State to create special taxing districts, and to charge the cost of local improvement, in whole or in part, upon the property in said districts, either according to valuation, or superficial area, or frontage”); *State ex rel. Wuebker v. Bockrath*, 152 Ohio St. 77, 95, 87 N.E.2d 462 (1949) (“[t]he creation of special taxing districts for a public purpose is a legislative practice followed and approved in this state”); *Root v. Bd. of Educ.*, 52 Ohio St. 589, 41 N.E. 135 (1895) (syllabus, paragraph 1) (“[i]t is competent to the legislature to provide for the creation of a special taxing district; but, in such case, the tax must be levied by a uniform rule on all property in the district”); *Bowles v. State*, 37 Ohio St. 35 (1881) (syllabus, paragraph 1) (“[t]he legislature, in the exercise of the general power of taxation, as distinguished from the power of local assessment, may create a special taxing district without regard to municipal or political subdivisions of the state, and may levy a tax on all property within such district, by a uniform rule, according to its true value in money, for the purpose of defraying the expenses of constructing and maintaining public roads therein”); *see also* 1989 Op. Att’y Gen. No. 89-080, at 2-374 to 2-375 (concluding that a regional transit authority is a “special taxing district” for purposes of R.C. 135.01(L), the provision of the Uniform Depository Act that defines “subdivision” to include “any special taxing or assessment district,” because, with voter approval, a regional transit authority may levy a tax upon property within its territorial boundaries); 1954 Op. Att’y Gen. No. 3574, p. 70 (syllabus, paragraph 1) (stating that a special tax levy for the support of a municipal university “may be submitted to a vote of the electors of the special taxing district” created under the provisions of R.C. 3349.25); 1922 Op. Att’y Gen. No. 2929, vol. I, p. 192 (syllabus, paragraph 1) (discussing park districts created under G.C. 2976, now R.C. Chapter 1545, and stating, “[t]he constitution does not prevent the delegation of the tax levying power to appointive officers of a special taxing district other than a county or township created by the general assembly”).<sup>5</sup> In the absence of a legislative definition, the term “special taxing district” should be read in accordance with the particular meaning the courts have given it. *See* R.C. 1.42 (“[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly”). Therefore, for purposes of R.C. 149.412, the term “special taxing district” means a separate and distinct territorial division of government throughout

<sup>5</sup> More recently, the Ohio Supreme Court has indicated that the term “special taxing district” is not limited to districts that have authority to levy a property tax throughout the district. In *Desenco, Inc. v. City of Akron*, 84 Ohio St. 3d 535, 706 N.E.2d 323 (1999), the court referred to a joint economic development district, which has authority to levy an income tax throughout the district, as a special taxing district. The court stated, “the General Assembly has plenary power to legislate and that includes the power to create a special district with the power to levy a tax, regardless of the type of tax.” *Desenco, Inc. v. City of Akron* at 540. Therefore, as used by the Ohio Supreme Court, the term “special taxing district” includes a district that has authority to levy taxes, regardless of the types of taxes, throughout the territory of the district.

which a tax may be levied to promote or achieve a public purpose.<sup>6</sup> See 2005 Op. Att’y Gen. No. 2005-043, at 2-455 (“[a]lthough not defined by statute, the term ‘taxing district’ is commonly used to refer to a subdivision or other unit of government that is authorized to levy taxes on territory within its boundaries”).

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<sup>6</sup> We recognize that this definition is broad enough to include counties, municipalities, and townships. The language of R.C. 149.412 supports the conclusion that the General Assembly intended to include counties, municipalities, and townships within the meaning of the term “special taxing district.” See R.C. 149.412 (“[t]here is hereby created in each special taxing district . . . that is not specifically designated in section 149.38 [county records commission], 149.39 [municipal records commission], 149.41 [school district and educational service center records commissions], 149.411 [library records commission], or 149.42 [township records commission] of the Revised Code a special taxing district records commission”).

We are also aware that a question may arise as to whether a district that lacks authority to levy taxes but has authority to levy special assessments upon property within its territorial boundaries is a special taxing district for purposes of R.C. 149.412. See generally *State v. Carney*, 166 Ohio St. 81, 83, 139 N.E.2d 339 (1956) (a special assessment is “an assessment against real property based on the proposition that, due to a public improvement of some nature, such real property has received a benefit[;]” a real property tax, on the other hand, has “no relation to benefit but [is] levied at a uniform rate on all the real property in a tax district for the purpose of raising revenue for governmental operation”); *Reeves v. Treasurer of Wood Cnty.*, 8 Ohio St. 333, 339 (1858) (“[t]axes are impositions for purposes of general revenue; assessments are ‘special and local impositions upon property in the immediate vicinity’ of an improvement for the public welfare, ‘which are necessary to pay for the improvement, and laid with reference to the special benefit which such property derives from the expenditure’”). We are of the opinion that the term “special taxing district,” as it is used in R.C. 149.412, does not include such a district. Had the General Assembly intended to subject such districts to the jurisdiction of a special taxing district records commission, it could have included the term “assessment district” within the provisions of R.C. 149.412, as it has in other provisions of the Revised Code. See, e.g., R.C. 135.01(L) (the term “[s]ubdivision,” for purposes of R.C. Chapter 135, except as otherwise provided, includes “special taxing or assessment district[s]”); R.C. 6103.05(E) (referring to the “assessment district” created to fund county water supply improvements); R.C. 6117.06(E) (referring to the “assessment district” created to fund county sanitary or drainage improvements); see *Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the General Assembly intended a particular result, “it would not have been difficult to find language which would express that purpose,” having used language elsewhere that plainly and clearly compelled that result). Thus, we do not believe that the General Assembly intended a district that lacks the power to levy taxes but has authority to levy special assessments to be subject to the oversight of a special taxing district records commission.

You have suggested that an entity must have authority to impose taxes “by its own power” to constitute a special taxing district. By this, we believe you mean that an entity’s governing board must be a “[t]axing authority,” see R.C. 5705.01(C), that may levy and collect taxes in its own right, rather than through a board of county commissioners or other taxing authority enumerated in R.C. 5705.01(C). See R.C. 5705.01(C) (defining “taxing authority” for purposes of R.C. Chapter 5705, the tax levy law, to include, *inter alia*, “in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation”). We do not believe that an entity’s governing board must have authority to levy a tax in order for the entity to constitute a special taxing district for purposes of R.C. 149.412. Rather, an entity is a special taxing district for purposes of R.C. 149.412 if it is a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose, regardless of whether the tax is levied by the entity’s governing board or another taxing authority on behalf of the entity. This interpretation of the term “special taxing district” is consistent with how Ohio courts have used the term over the years. See, e.g., *Carlisle v. Hetherington*, 47 Ohio St. 235, 24 N.E. 488 (1890) (referring to the territory surrounding a free turnpike road created under Title 7, Chapter 7 of the Revised Statutes of Ohio as a special taxing district, despite the fact that the county commissioners, and not the free turnpike road commissioners, were responsible for levying taxes on behalf of the district); *Bowles v. State*, 37 Ohio St. 35 (same as previous parenthetical). Additionally, this interpretation is consistent with the fact that, in some instances, certain taxing authorities have been authorized to act as a taxing authority on behalf of other taxing districts. See R.C. 3709.29 (a board of county commissioners may act as a special taxing authority of a general health district in certain circumstances); R.C. 5705.01(C) (a board of township trustees is the taxing authority of a township police district, a township fire district, a township road district, and a township waste disposal district). Thus, we do not believe a district is precluded from being a special taxing district for purposes of R.C. 149.412 because taxes levied for the district are imposed by another taxing authority on behalf of the district rather than by the district’s governing board. Rather, as stated above, a special taxing district is a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose. The essential inquiry in determining whether an entity is a special taxing district for purposes of R.C. 149.412 is whether taxes are levied throughout the territorial boundaries of the district for the benefit of the district.

#### **Test for Determining Whether the Entities in Question are Subject to the Jurisdiction of a Special Taxing District Records Commission**

You wish to know whether the following entities are subject to the jurisdiction of a special taxing district records commission: (1) a county veterans service commission; (2) a county board of developmental disabilities; (3) a county soil and water conservation district; (4) a single county alcohol, drug addiction, and mental health service district; (5) a general health district; and (6) a combined general health district. As explained above, we must first determine whether each of these

entities is subject to the jurisdiction of another records commission established in R.C. Chapter 149. Of the records commissions established in R.C. Chapter 149, only a county records commission, R.C. 149.38, or a special taxing district records commission, R.C. 149.412, could have jurisdiction over the entities that you have asked about.<sup>7</sup> You state that these entities presently submit their records retention forms to the county records commission.

As explained above, a county records commission exercises its authority over the retention and disposition of records “of the county.” R.C. 149.38; 1960 Op. Att’y Gen. No. 1552, p. 520, at 522; *see also* 1988 Op. Att’y Gen. No. 88-083, at 2-403. A county records commission is responsible for “provid[ing] rules for retention and disposal of records of the county” and “review[ing] applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by county offices.” R.C. 149.38(B). A county records commission does not oversee records retention and disposition of entities that are not county offices. Thus, to determine whether the entities in question should report to a county records commission or a special taxing district records commission, we must determine whether any of the entities is a “county office” for purposes of R.C. 149.38. If the entity is a county office, it is subject to the jurisdiction of a county records commission. *See* R.C. 149.38. If the entity is not a county office, we must then determine whether the entity is a special taxing district for purposes of R.C. 149.412.

#### **Test for Determining Whether an Entity is a County Office for Purposes of R.C. 149.38**

The term “county office” is not defined for purposes of R.C. Chapter 149. Prior Attorney General opinions have advised that an entity is a county office if it is “essentially a subdivision of the county or a subordinate department of the county.” 1993 Op. Att’y Gen. No. 93-065, at 2-308 (quoting 1961 Op. Att’y Gen. No. 2383, p. 366, at 369). In determining whether an entity is a subdivision or subordinate department of the county, Attorney General opinions have examined the following factors: (1) whether the territory that comprises the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county. 1996 Op. Att’y Gen. No. 96-052, at 2-202; 1993 Op. Att’y Gen. No. 93-065, at 2-308. We adopt this test for determining whether an entity is a “county office” subject to the jurisdiction of a county records commission under R.C. 149.38.

#### **A Veterans Service Commission is a County Office Subject to the Jurisdiction of a County Records Commission**

In 1993 Op. Att’y Gen. No. 93-065, the Attorney General applied this test

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<sup>7</sup> The entities in question are not subject to the jurisdiction of a municipal, school district, educational service center, library, or township records commission because they are not offices of a municipal corporation, school district, educational service center, public library, or township. *See* R.C. 149.39; R.C. 149.41; R.C. 149.411; R.C. 149.42.



to a veterans service commission established pursuant to R.C. Chapter 5901 and determined that a veterans service commission is essentially a subordinate department of the county. First, the territory over which a veterans service commission exercises its authority is coextensive with the geographic boundaries of the county. 1993 Op. Att’y Gen. No. 93-065, at 2-309; *see also* R.C. 5901.02. That an entity’s territorial boundaries are coextensive with the boundaries of a county is not, in and of itself, determinative. 1993 Op. Att’y Gen. No. 93-065, at 2-309. However, it weighs in favor of an entity being a county office because entities exercising authority over an area exceeding the territorial limits of a county have been determined not to be a subdivision or subordinate department of the county on that basis. *Id.* With respect to the second factor, a veterans service commission is organized and supervised by the executive and judicial branches of county government. *Id.* Members of a veterans service commission are appointed by a judge of the court of common pleas and may be removed by a common pleas court judge for cause. R.C. 5901.02. In certain circumstances, additional memberships on a veterans service commission may be created by the board of county commissioners. R.C. 5901.021. When this occurs, the board of county commissioners is responsible for filling those memberships and prescribing their terms. *Id.* The board of county commissioners also fixes the compensation of the members of a veterans service commission. R.C. 5901.04. Finally, a veterans service commission is primarily funded by the county. *See* R.C. 5901.11; 2001 Op. Att’y Gen. No. 2001-033, at 2-197.

Consequently, a veterans service commission is a county office for purposes of R.C. 149.38. *See* 2004 Op. Att’y Gen. No. 2004-032, at 2-291 n.6 (“[v]eterans service commissions and their predecessors, soldiers’ relief commissions, have been identified as county bodies for a variety of purposes”). Because a veterans service commission is a county office for purposes of R.C. 149.38, it is subject to the jurisdiction of a county records commission. *See* R.C. 149.38.

#### **A County Board of Developmental Disabilities is a County Office Subject to the Jurisdiction of a County Records Commission**

A county board of developmental disabilities, *see* R.C. Chapter 5126, also is a county office for purposes of R.C. 149.38. *See* 2009 Op. Att’y Gen. No. 2009-050, at 2-375 (“[a] single-county board of developmental disabilities, such as the board in Clark County, is a county entity that is entitled to the services of the county prosecutor”); 2007 Op. Att’y Gen. No. 2007-041, at 2-414 (“a single-county MR/DD board<sup>8</sup> has always been considered part of county government” (footnote added)); 1985 Op. Att’y Gen. No. 85-067, at 2-266 n.6 (“[a] county board of mental

<sup>8</sup> County boards of developmental disabilities were previously designated “county board[s] of mental retardation and developmental disabilities” (county MR/DD boards). *See* 2005-2006 Ohio Laws, Part I, 249, 255-56 (Am. Sub. S.B. 10, eff. Sept. 5, 2005). Under prior law, counties were permitted to establish multicounty boards of mental retardation and developmental disabilities. *Id.* In 2009, the General Assembly changed the name of “county board[s] of mental retardation and developmental disabilities” to “county board[s] of developmental disabilities” and repealed the provisions of law authorizing such boards to be created on a

retardation and developmental disabilities is, however, a body of the county, rather than a separate political subdivision, taxing district, or special district”). First, the area in which a county board of developmental disabilities operates is coextensive with the territorial limits of the county. *See* R.C. 5126.02(A); 2007 Op. Att’y Gen. No. 2007-041, at 2-411 to 2-412. Second, the executive and judicial branches of county government are responsible for the organization and general oversight of a county board of developmental disabilities. *See* R.C. 5126.021 (board members appointed by the board of county commissioners and senior probate judge of the county); R.C. 5126.0216 (hearing before board of county commissioners or senior probate judge on proposed removal of board member); R.C. 5126.051(A) (board of county commissioners may grant a county board of developmental disabilities authority to incur debt on behalf of the county); 2007 Op. Att’y Gen. No. 2007-041, at 2-412 to 2-414. Finally, the board of county commissioners has a mandatory duty to provide funds sufficient for a county board of developmental disabilities to carry out its functions and duties. *See* R.C. 5126.05(G); R.C. 5705.222; 2007 Op. Att’y Gen. No. 2007-041, at 2-414. The language of R.C. 5126.02(A)(2) further indicates that the legislature intended a county board of developmental disabilities to be a county entity. R.C. 5126.02(A)(2) states that “[t]he functions of a county board [of developmental disabilities] shall not be combined with the functions of *any other entity of county government.*” (Emphasis added.) Thus, it follows that a county board of developmental disabilities is a county office for purposes of R.C. 149.38. A county board of developmental disabilities is, therefore, subject to the jurisdiction of a county records commission. *See* R.C. 149.38.

**A Soil and Water Conservation District is not a County Office and is Subject to the Jurisdiction of a Special Taxing District Records Commission**

Using the three-part test set forth above, the Attorney General has determined that, for various purposes, a soil and water conservation district, *see* R.C. Chapter 1515, is an entity separate from the county. 1996 Op. Att’y Gen. No. 96-052, at 2-202 (a soil and water conservation district is an entity separate from the county and is not subject to the jurisdiction of a county automatic data processing board pursuant to R.C. 307.84); *see also* 2001 Op. Att’y Gen. No. 2001-031, at 2-185 n.1 (“[a] soil and water conservation district established pursuant to R.C. 1515.03 is a political subdivision apart from the county in which it is located, and does not, therefore, constitute an entity of county government for purposes of R.C. 301.27 [authorizing counties to use credit cards for the categories of purchases enumerated therein]”). While the territory of a soil and water conservation district is coextensive with the geographic area of a county, R.C. 1515.03, this fact, standing alone, does not compel the conclusion that a soil and water conservation district is a county office. *See* 1989 Op. Att’y Gen. No. 89-001, at 2-7. Pursuant to R.C.

multicounty basis. *See* Sub. S.B. 79, 128th Gen. A. (2009) (eff. Oct. 6, 2009); Ohio Legislative Serv. Comm’n, Final Analysis, Sub. S.B. 79, 128th Gen. A., at 2-3 (as passed by the General Assembly). Today, each county is required to have a board of developmental disabilities. R.C. 5126.02(A).

1515.03, each soil and water conservation district is a separate political subdivision of the state. Soil and water conservation districts are not organized or supervised by a county. Each district is governed by a five-member board of supervisors, elected by the Ohio Soil and Water Conservation Commission. R.C. 1515.05; R.C. 1515.07. The Commission may remove members of the district's board of supervisors for cause. R.C. 1515.07. The Commission, rather than the county, monitors the progress and operations of a soil and water conservation district annually. *Id.*; *see also* R.C. 1515.02(B). Finally, funding for soil and water conservation districts comes from a variety of sources, including the federal government, R.C. 1515.02(A), the county, R.C. 1515.10, and the state, R.C. 1515.14. Thus, in our opinion, a soil and water conservation district is not a county office for purposes of R.C. 149.38. A soil and water conservation district, therefore, is not subject to the jurisdiction of a county records commission.

A soil and water conservation district is, however, subject to the jurisdiction of a special taxing district records commission under R.C. 149.412. As defined above, a special taxing district is a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose. Soil and water conservation districts are created to promote the conservation of natural resources within a defined geographic area. *See* R.C. 1515.08; 1979 Op. Att'y Gen. No. 79-053, at 2-167 (“[a] soil and water conservation district is a political subdivision . . . which exercises limited powers of local self-government within a limited geographical area”). Taxes may be levied throughout the district to support the district's primary objective of natural resources conservation.<sup>9</sup> *See* R.C. 1515.10; R.C. 5705.19(VV); *see also* R.C. 307.15(A)(1) (referring to “soil and water conservation district[s], water conservancy district[s], or other taxing district[s]”). Therefore, a soil and water conservation district is a special taxing district for purposes of R.C. 149.412. Because a soil and water conservation district

<sup>9</sup> That taxes levied under R.C. 1515.10 and R.C. 5705.19(VV) are imposed on territory that is coextensive with that of a county by a board of county commissioners does not prevent a soil and water conservation district from being a special taxing district for purposes of R.C. 149.412. Taxes levied under R.C. 1515.10 and R.C. 5705.19(VV) are imposed upon property within the territorial boundaries of a soil and water conservation district, which happen to coincide with the territorial boundaries of a county, for the benefit of the soil and water conservation district. Revenues from taxes levied under R.C. 1515.10 and R.C. 5705.19(VV) must be placed in a special fund for the benefit of the soil and water conservation district. *See* R.C. 1515.10 (money appropriated from the proceeds of a special levy under R.C. 1515.10 or from the general fund of a county “shall be held in a special fund for the credit of the district”); R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made”); 2006 Op. Att'y Gen. No. 2006-28, at 2-253 n.7 (“[t]ax revenues that are restricted to a particular use must be placed in a fund or account that restricts their expenditure to the authorized purpose”). Thus, taxes levied under R.C. 1515.10 and R.C. 5705.19(VV) are levied throughout the territory of a soil and water conservation district for the benefit of the district, rather than the county.

is not subject to the jurisdiction of a county, municipal, school district, educational service center, library, or township records commission, it is subject to the jurisdiction of a special taxing district records commission under R.C. 149.412.

**A Single County Alcohol, Drug Addiction, and Mental Health Service District is not a County Office and is Subject to the Jurisdiction of a Special Taxing District Records Commission**

Now we turn to whether a single county alcohol, drug addiction, and mental health service district (“a single county ADAMH district”) is a county office for purposes of R.C. 149.38. To make this determination, we must examine the statutory plan governing ADAMH districts. R.C. 340.01(B) provides for the establishment of ADAMH districts on either a single county or joint county basis. ADAMH districts are established to provide alcohol, drug addiction, and mental health services within the district. R.C. 340.01(B). Each district is governed by either an alcohol, drug addiction, and mental health services board (“ADAMH board”) or by both (1) a community mental health board established under former R.C. 340.02 and (2) an alcohol and drug addiction services board established under R.C. 340.021. *See* R.C. 340.02; R.C. 340.021. When an ADAMH district is governed by the two boards, the community mental health board is responsible for providing mental health services within the district and the alcohol and drug addiction services board is responsible for providing alcohol and drug addiction services within the district. *See* R.C. 340.021(A).

Application of the factors used for determining whether an entity is a county office leads us to the conclusion that a single county ADAMH district is not a county office for purposes of R.C. 149.38. The geographic boundaries of a single county ADAMH district are coextensive with the territorial limits of the county, but again this fact is not determinative. *See* 1994 Op. Att’y Gen. No. 94-095, at 2-472 (“the General Assembly expressly provided for the establishment of alcohol, drug addiction, and mental health service districts that may or may not coincide with the geographical boundaries of the counties in which they are located and that have powers and duties separate and apart from those exercised by the counties”); 1978 Op. Att’y Gen. No. 78-029, at 2-69 (“[w]hile under the terms of R.C. 340.01, the boundaries of a single county mental health and retardation district<sup>10</sup> are contiguous with those of the county it serves, the district is an entity separate and distinct from

<sup>10</sup> Under prior law, R.C. Chapter 340 provided for the establishment of “community mental health and retardation service district[s]” that were governed by “mental health and retardation board[s].” *See* 1974 Ohio Laws, Part II, 664, 664-65 (Am. H.B. 421, eff. May 7, 1974). In 1980, the General Assembly divested these boards of their responsibilities regarding the mentally disabled and changed the name of the districts established by R.C. Chapter 340 to “community mental health service district[s].” *See* 1979-1980 Ohio Laws, Part I, 499, 511 (Am. Sub. S.B. 160, eff. Oct. 31, 1980); Ohio Legislative Service Comm’n, *Summary of Enactments August 1979 - December 1980*, 309, 309-10 (Am. Sub. S.B. 160). In 1989, the General Assembly again changed the name of these districts to “alcohol, drug addiction, and mental health service district[s]” and added to their responsibilities

the county” (footnote added)). The other factors used in determining whether an entity is a county office support the conclusion that a single county ADAMH district is not a county office for purposes of R.C. 149.38. First, a single county ADAMH district is not organized or administered solely by a county. While a board of county commissioners appoints persons to serve as members of the governing board or boards of a single county ADAMH district, other governmental entities also participate in appointing the members of the district’s governing board or boards. *See* R.C. 340.02-.021. If the district is governed by an ADAMH board, eight of the district’s eighteen board members are appointed by state officials, rather than by a board of county commissioners. R.C. 340.02. If the district is instead governed by a community mental health board and an alcohol and drug addiction services board, state officials are responsible for appointing one-third of the district’s board members. *See* R.C. 340.021(A). Thus, a county is not the only entity responsible for the organization of a single county ADAMH district.

Further, a county is not responsible for supervising a single county ADAMH district. 1975 Op. Att’y Gen. No. 75-084, at 2-333 (“neither a single nor a joint county community mental health and retardation board is a ‘county board’ or a ‘county commission’ subject to direct supervisory control of the board or boards of county commissioners”). The district’s annual community mental health plan must be submitted to the Department of Mental Health for review and approval. R.C. 340.03(A)(1)(c). Likewise, the district must submit a plan for alcohol and drug addiction services to the Department of Alcohol and Drug Addiction Services at intervals specified by the Department. R.C. 340.033(A)(3); R.C. 3793.05. The Directors of Mental Health and Alcohol and Drug Addiction Services are authorized to adopt rules governing the activities of ADAMH districts. *See* R.C. 340.03; R.C. 340.033(A); R.C. 340.04(B); R.C. 5119.61(A). Thus, the state has a greater supervisory role over ADAMH districts than a county. Finally, funding for an ADAMH district is provided by a variety of sources. *See, e.g.*, R.C. 340.03(A)(7) (private and public sources); R.C. 340.03(C) (gifts, grants, bequests, and devises); R.C. 340.07 (county funds); R.C. 340.09, -.10 (state assistance).

Accordingly, consideration of all the factors used in determining whether an entity is a county office leads to the conclusion that a single county ADAMH district is not a county office for purposes of R.C. 149.38. Therefore, a single county ADAMH district is not subject to the jurisdiction of a county records commission.

However, a single county ADAMH district is subject to the jurisdiction of a special taxing district records commission under R.C. 149.412. A single county ADAMH district is a special taxing district because the district constitutes a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose. *See* R.C. 340.01(B); R.C. 340.011; R.C. 5705.221; *Greene Cnty. Guidance Ctr., Inc. v. Greene-Clinton Cmty. Mental*

providing alcohol and drug addiction services. *See* 1989-1990 Ohio Laws, Part III, 4170, 4188-89 (Am. Sub. H.B. 317, eff. Oct. 10, 1989); Ohio Legislative Service Comm’n, *Summary of Enactments September 1989 - June 1990*, 238, 240 (Am. Sub. H.B. 317).

*Health Bd.*, 19 Ohio App. 3d 1, 4, 482 N.E.2d 982 (Greene County 1984) (a community mental health board established under R.C. Chapter 340 “is a public authority created by law to carry out a public purpose in a limited area of sovereign responsibility for a public purpose with public funds”). ADAMH districts are created to “[e]stablish a unified system of treatment for mentally ill persons” and “[p]romote the delivery of high quality and cost-effective alcohol and drug addiction services.” R.C. 340.011(A)(1), (7). A tax may be levied throughout the territory of a single county ADAMH district to promote these public purposes.<sup>11</sup> R.C. 5705.221.

It follows that a single county ADAMH district is a special taxing district for purposes of R.C. 149.412. Because a single county ADAMH district is not subject to the jurisdiction of any other records commission created by R.C. Chapter 149, it is subject to the jurisdiction of a special taxing district records commission. *See* R.C. 149.412.

**A General Health District and a Combined General Health District are not County Offices and are Subject to the Jurisdiction of a Special Taxing District Records Commission**

Finally, we consider whether general health districts and combined general health districts are county offices for purposes of R.C. 149.38. The state of Ohio is, pursuant to statute, divided into health districts. R.C. 3709.01. Each city constitutes a health district known as a “city health district.” *Id.* The townships and villages in each county are combined into a health district known as a “general health district.” *Id.* City health districts and general health districts are authorized to unite with one another in various combinations. *See id.*; R.C. 3709.051 (union of two or more contiguous city health districts into a single city health district); R.C. 3709.07 (union of a general health district and one or more city health districts into a combined district); R.C. 3709.10 (union of two or more contiguous general health districts, not to exceed five, into a combined district). The term “combined general health district” refers to a district formed when one or more city health districts unite with

<sup>11</sup> That taxes levied under R.C. 5705.221 for a single county ADAMH district are imposed on territory that is coextensive with that of a county by a board of county commissioners does not preclude such a district from constituting a special taxing district for purposes of R.C. 149.412. Taxes levied under R.C. 5705.221 for a single county ADAMH district are imposed upon property within the territorial boundaries of the district, which happen to coincide with the geographic area of a county, for the benefit of the district. Revenues from taxes levied under R.C. 5705.221 must be placed in a special fund for the benefit of an ADAMH district. *See* R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made”); 1969 Op. Att’y Gen. No. 69-015, at 2-27 (funds from special levies for the support of a community mental health and retardation district, now an ADAMH district, must be put in a separate fund as provided by R.C. 5705.10). Thus, taxes levied under R.C. 5705.221 for a single county ADAMH district are levied throughout the territory of the district for the benefit of the district, rather than the county.

a general health district pursuant to R.C. 3709.07 and also to a district formed when two or more contiguous general health districts, not to exceed five, unite pursuant to R.C. 3709.10. Unless otherwise provided, statutory provisions applicable to general health districts are also applicable to combined general health districts. 2011 Op. Att’y Gen. No. 2011-029, at 2-236 n.1. Therefore, for purposes of this opinion, we will analyze general health districts and combined general health districts together.

Neither a general health district nor a combined general health district is a county office for purposes of R.C. 149.38. First, the territorial boundaries of a general health district and a combined general health district are not necessarily coextensive with the territorial limits of a county. *See* R.C. 3709.01; R.C. 3709.07; R.C. 3709.10. Additionally, a county is not responsible for governing a general health district or a combined general health district and is only one of several political subdivisions that may participate in selecting the district’s governing board. 1997 Op. Att’y Gen. No. 97-029, at 2-174; *see also* R.C. 3709.02-.04; R.C. 3709.07-.071; R.C. 3709.10. Finally, health districts receive funding from a variety of sources, including the state of Ohio, grants, bequests, and devises. *See* R.C. 3709.32; R.C. 3709.36; *see also* R.C. 3709.28(B). Local funding of each health district is provided by taxes levied within the ten-mill limitation by the townships and municipal corporations that form the district. R.C. 3709.28; 1997 Op. Att’y Gen. No. 97-029, at 2-174. If additional funds are needed, the board of county commissioners of the county in which the district is located is authorized to act as a special taxing authority for the purpose of submitting the question of a special tax levy to the voters of the district. R.C. 3709.29. If the special levy is approved by the voters, the tax burden falls only upon property within the territory of the district; it does not constitute a countywide tax. 1997 Op. Att’y Gen. No. 97-029, at 2-174; *see also* R.C. 3709.29. Thus, a general health district and a combined general health district are not county offices for purposes of R.C. 149.38. *See* 1997 Op. Att’y Gen. No. 97-029, at 2-174 (“[a] general health district is not an office of the county because it is an entity separate and distinct from the county”); 1991 Op. Att’y Gen. No. 91-016, at 2-80 (“[t]he health districts are political subdivisions of the state, governed by state law, and are separate from any city, county, township or other local government”); 1965 Op. Att’y Gen. No. 65-121 (syllabus, paragraph 1) (“[a] general health district as provided for in [R.C. Chapter 3709] is not a part of municipal or county government”). Therefore, they are not subject to the jurisdiction of a county records commission. *See* R.C. 149.38.

Conversely, a general health district and a combined general health district are special taxing districts that are subject to the jurisdiction of a special taxing district records commission under R.C. 149.412. These districts are special taxing districts because they constitute separate and distinct territorial divisions of government throughout which a tax may be levied to promote or achieve a public purpose. General health districts and combined general health districts are created to promote public health within a defined geographic area. *See* R.C. 3709.01; R.C. 3709.07; R.C. 3709.10. Taxes may be levied throughout these districts in order to advance this public purpose. R.C. 3709.29; 1997 Op. Att’y Gen. No. 97-029, at 2-174 (a tax levied under R.C. 3709.29 is levied on property within the territory of a general

health district); 1986 Op. Att’y Gen. No. 86-022, at 2-116 (“[a] special levy under R.C. 3709.29 is, thus, a levy outside the ten-mill limitation imposed upon the territory within a general health district”). Therefore, general health districts and combined general health districts are special taxing districts for purposes of R.C. 149.412. Because these districts are not subject to the jurisdiction of any other records commission created by R.C. Chapter 149, they are subject to the jurisdiction of a special taxing district records commission under R.C. 149.412.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. The term “special taxing district,” as used in R.C. 149.412, means a separate and distinct territorial division of government throughout which a tax may be levied to promote or achieve a public purpose.
2. A county veterans service commission and a county board of developmental disabilities are subject to the jurisdiction of a county records commission under R.C. 149.38.
3. The entities subject to the jurisdiction of a special taxing district records commission under R.C. 149.412 include, but are not limited to: (1) a county soil and water conservation district; (2) a single county alcohol, drug addiction, and mental health service district; (3) a general health district; and (4) a combined general health district.