

OPINION NO. 86-092**Syllabus:**

Pursuant to R.C. 4501.03, the Bureau of Motor Vehicles may not make final adjustments with respect to overpayments of motor vehicle tax revenues to various taxing districts for the period 1979 to 1983 by withholding from those districts a certain percentage of the motor vehicle tax revenues they will otherwise be entitled to receive in 1986 and in registration years subsequent thereto.

To: William M. Denihan, Director, Department of Highway Safety, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your predecessor's request for my opinion regarding a proposal by the Bureau of Motor Vehicles (BMV) to recover overpayments of motor vehicle tax revenues¹ from certain recipient taxing districts. According to documentation accompanying the opinion request, certain counties and municipal corporations have received, in varying amounts, overpayments of such revenues at different times during the period 1979 to 1983. In order to recover such overpayments, BMV has proposed to withhold, commencing in 1986, approximately twenty per cent of future monthly distributions from the counties and municipal corporations in question for such period

¹ It is my understanding that the tax revenues in question are those that are received by the Registrar of Motor Vehicles pursuant to R.C. 4503.02, R.C. 4503.12, and R.C. 4504.09. See R.C. 4501.03. R.C. 4503.02 levies an annual license tax upon the operation of motor vehicles on the public roads and highways; R.C. 4503.12 levies a fee upon the transfer of ownership of a motor vehicle; and R.C. 4504.09 provides for the payment of any county motor vehicle license tax or municipal motor vehicle license tax that may be levied by such political subdivision pursuant to R.C. 4504.02 and R.C. 4504.06 respectively. Further,

of time until the total amount of prior overpayments has been recouped. The Department of Highway Safety wishes to know whether BMV may implement this particular proposal as a means of recovering the prior overpayments.

I note initially that both the Department of Highway Safety and BMV are creatures of statute, see R.C. 121.02(K)(creating the Department of Highway Safety, to be administered by the Director of Highway Safety); R.C. 4501.02 (creating in the Department of Highway Safety a Bureau of Motor Vehicles, to be administered by a Registrar of Motor Vehicles); R.C. 5502.01 (duties of the Department of Highway Safety), and thus, like other state agencies and departments, may exercise only those powers and responsibilities conferred upon them by statute, or that are necessarily implied therefrom. State ex rel. Alden E. Stilson & Associates, Ltd. v. Ferguson, 154 Ohio St. 139, 93 N.E.2d 688 (1950); State ex rel. Copeland v. State Medical Board, 107 Ohio St. 20, 140 N.E. 660 (1923); 1977 Op. Att'y Gen. No. 77-090; 1973 Op. Att'y Gen. No. 73-088. Accordingly, the powers and responsibilities of BMV and the Registrar of Motor Vehicles with respect to the distribution of motor vehicle tax revenues to the appropriate taxing districts and the implementation of adjustments thereto must also be drawn from statute. See 1980 Op. Att'y Gen. No. 80-065; 1977 Op. Att'y Gen. No. 77-070.

The distribution of motor vehicle tax revenues and associated moneys received by the Registrar of Motor Vehicles is provided for in R.C. 4501.03, which states, in part, that all such moneys shall be distributed to the counties and districts of registration in the manner provided for in R.C. 4501.04 (distribution of moneys received under R.C. 4503.02 and R.C. 4503.12), R.C. 4501.041 (distribution to counties of moneys received under R.C. 4504.09 with respect to county motor vehicle taxes levied pursuant to R.C. 4504.02), and R.C. 4501.042 (distribution to counties of moneys received under R.C. 4504.09 with respect to municipal corporation motor vehicle taxes levied pursuant to R.C. 4504.06). In this regard, R.C. 4501.04-.042 set forth precise formulae according to which all such motor vehicle tax revenues are to be distributed to the various counties and municipal corporations. See, e.g., R.C. 4501.04(A)("thirty-four per cent of all such moneys are for the use of the municipal corporation or county which constitutes the district of registration"); R.C. 4501.04(B)("five percent of all such moneys...shall constitute a fund for the use of the several counties for the highway, road, and other purposes specified in [R.C. 4501.04(C)]"); R.C. 4501.04(C)("forty-seven per cent of all such moneys shall be for the use of the county in which the [motor vehicle] owner resides or in which the place is located at which the established business or branch business in connection with which the motor vehicle registered is used").

R.C. 4501.03 and R.C. 4501.04 govern the distribution to, and use of, all such tax revenues by the various taxing districts. See generally State ex rel. Stubbs v. Wallace, 140 Ohio St. 166, 42 N.E.2d 893 (1942)(it is the duty of the Registrar of Motor Vehicles to enforce and administer the laws of the state relative to the registration of motor vehicles and certificates of title pertaining thereto, including the collection of the state motor vehicle license tax); 1977 Op. Att'y Gen. No. 77-070.

R.C. 4501.03 further specifies when the distributions of such motor vehicle tax revenues are to be made, and also describes the manner in which final adjustments in the amounts so distributed shall be accomplished. In this regard, R.C. 4501.03 states, in part, as follows:

All moneys received by the registrar under sections 4503.02, 4503.12, and 4504.09 of the Revised Code shall be distributed to counties, municipal corporations, and townships within thirty days of the expiration of the registration year, except that a sum equal to five per cent of the total amount received under sections 4503.02 and 4503.12 of the Revised Code may be reserved to make final adjustments in accordance with the formula for distribution set forth in section 4501.04 of the Revised Code. If amounts set aside to make such adjustments are inadequate, necessary adjustments shall be made immediately out of funds available for distribution for the following registration year. (Emphasis added.)

Webster's New World Dictionary 17 (2d college ed. 1978) defines the term, "adjust," in part, as "to change so as to fit, conform, make suitable, etc; to make accurate by regulating; to settle or arrange rightly; to resolve or bring into accord." Thus, R.C. 4501.03 empowers the Registrar of Motor Vehicles to make final corrections with respect to the amounts of motor vehicle tax revenues actually distributed to the various recipient taxing districts so that such amounts reflect an accurate and proper application of the distribution formulae set forth in R.C. 4501.04. Further, R.C. 4501.03 empowers the Registrar of Motor Vehicles to make such final adjustments by reserving a sum equal to five per cent of the total amount of such tax revenues received under R.C. 4503.02 and R.C. 4503.12, or to make such adjustments immediately out of funds available for distribution in the following registration year if the amounts otherwise reserved therefor are inadequate.

I note, however, that R.C. 4501.03 does not describe the precise manner by which such final adjustments are to be accomplished, notwithstanding its identification of the particular funds that shall be utilized in making those adjustments. Thus, it has been stated that where statutory authority to perform an act is granted, and there is no provision governing the manner in which that authority shall be exercised, the act may be performed in any reasonable manner. Jewett v. Valley Railway Co., 34 Ohio St. 601 (1878); 1984 Op. Att'y Gen. No. 84-080; 1984 Op. Att'y Gen. No. 84-047; 1984 Op. Att'y Gen. No. 84-036. See also State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), aff'd, 241 U.S. 565 (1916)(where no direction has been given, an officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing his duties); 1986 Op. Att'y Gen. No. 86-064; 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-075.

It seems clear that the final adjustments envisioned by R.C. 4501.03 encompass underpayments of motor vehicle tax revenues to the various taxing districts. In the case of an underpayment to a particular taxing district, for example, R.C. 4501.03 contemplates that the amount of the deficiency shall be paid out of either the funds reserved thereunder or those funds that become available for distribution in the following

registration year. Thus, a deficiency that occurs in registration year 1986 may be satisfied either out of the funds reserved under R.C. 4501.03 for that year, or those funds that become available for distribution in registration year 1987, if the funds otherwise held in reserve are inadequate for such purpose.

Your immediate concern, however, is with overpayments that have occurred in prior registration years, and it is much less clear whether R.C. 4501.03 authorizes final adjustments with respect thereto. An argument may be made that the language of R.C. 4501.03 permits the Registrar of Motor Vehicles to make an adjustment with respect to an overpayment to a taxing district in a given year by withholding from the subsequent year's distribution a sum equal to the amount of the preceding year's overpayment. I find it unnecessary, however, for purposes of this opinion, to make a conclusive determination whether such is, in fact, the case. Instead, I believe it sufficient to confine my analysis to the particular proposal described in the Department's opinion request. In this regard, BMV wishes to recover from certain taxing districts overpayments of motor vehicle tax revenues that occurred at varying times during the period 1979 to 1983. In order to recover those overpayments, BMV proposes to withhold approximately twenty per cent of future monthly distributions from the taxing districts in question for such period of time as the total amount of prior overpayments has been recouped.

I conclude that such proposal is not authorized by the language of R.C. 4501.03 as a method by which BMV may recover prior overpayments in making final adjustments in the amounts of motor vehicle tax revenues distributed to recipient taxing districts. The plain language of R.C. 4501.03 states that all final adjustments in the amounts distributed in a given year shall be made only out of the funds reserved thereunder for that year, or immediately out of funds available for distribution in the following registration year. R.C. 4501.03 does not state that such final adjustments may be made out of funds available for distribution in a subsequent year other than the year immediately following the registration year to which the adjustments pertain. Certainly, had the General Assembly meant to permit the implementation of final adjustments in such fashion, it could have included language to that effect in R.C. 4501.03. See 1934 Op. Att'y Gen. No. 3055, vol. II, p. 1227 (concluding that the Registrar of Motor Vehicles, in making distributions of motor vehicle tax revenues to various subdivisions pursuant to G.C. 6309 and G.C. 6309-2 (the statutory predecessors to R.C. 4501.03 and R.C. 4501.04), is not authorized to use the current year's collection to correct errors of previous years, since those sections do not expressly provide therefor). The absence of any such language in R.C. 4501.03 persuades me that it is the intent of the General Assembly that final adjustments in the amounts of motor vehicle tax revenues distributed to recipient taxing districts in a given year may not be made out of those funds available for distribution in a subsequent year other than the year immediately following the registration year to which the adjustments pertain. Thus, BMV may not make final adjustments with respect to overpayments of motor vehicle tax revenues to various taxing districts for the period 1979 to 1983 by withholding from those districts a certain percentage of the motor vehicle tax revenues they will otherwise be entitled to receive in 1986 and in registration years subsequent thereto.

Accordingly, it is my opinion, and you are advised that pursuant to R.C. 4501.03, the Bureau of Motor Vehicles may not make final adjustments with respect to overpayments of motor vehicle tax revenues to various taxing districts for the period 1979 to 1983 by withholding from those districts a certain percentage of the motor vehicle tax revenues they will otherwise be entitled to receive in 1986 and in registration years subsequent thereto.