

OPINION NO. 97-036

Syllabus:

1. Except where the context of a statutory scheme indicates otherwise, a joint-county alcohol, drug addiction, and mental health service district is a political subdivision.
2. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to maintain custody of the moneys of a joint-county alcohol, drug addiction, and mental health service district or deposit

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those moneys into interest-bearing accounts that are not part of the treasury of a county that is a member of the joint-county district.

3. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to transfer the moneys of a joint-county alcohol, drug addiction, and mental health service district from the treasury of one county to the treasury of another county.
4. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to deposit the moneys of a joint-county alcohol, drug addiction, and mental health service district into the treasury of more than one county.

To: Nick A. Selvaggio, Champaign County Prosecuting Attorney, Urbana, Ohio
By: Betty D. Montgomery, Attorney General, July 3, 1997

Your predecessor requested an opinion pertaining to the custody of moneys received by a joint-county alcohol, drug addiction, and mental health service district. By way of background, your predecessor stated:

The Mental Health Drug and Alcohol Services Board of Logan and Champaign Counties is a joint county alcohol drug addiction and mental health service district established pursuant to R.C. 340.01. As the name suggests the territory of the district is Logan County and Champaign County. Pursuant to R.C. 340.10 the Treasurer of Champaign County has been designated the "custodian of community mental health funds". Pursuant to 1985 Ohio Attorney General Opinion 85-002 the interest from tax operating levies is paid to the general fund of Champaign County.¹ This has caused consternation to Logan County members of the board who propose to change the fiscal agent to the Treasurer of Logan County. This would cause consternation to the Champaign County board members. (Footnote added.)

In order to alleviate the inequity of allocating all the interest earned on the moneys of the Mental Health, Drug and Alcohol Services Board of Logan and Champaign Counties (Board) to

¹ 1985 Op. Att'y Gen. No. 85-002 concluded that "[i]nterest earned on moneys of a joint-county community mental health service district [now a joint county alcohol, drug addiction, and mental health service district] and held by a county treasurer as the designated custodian of the district's funds, including interest earned on the proceeds of a tax authorized by R.C. 5705.19(A), must be credited to the general fund of the county." *Id.* (syllabus).

the general fund of Champaign County, the Board asked your predecessor for advice on the following matters:²

1. Is a joint-county alcohol, drug addiction, and mental health service district a political subdivision?
2. If a joint-county alcohol, drug addiction, and mental health service district is a political subdivision, may the board of alcohol, drug addiction, and mental health services deposit the moneys of the joint-county district into interest-bearing accounts that do not constitute a part of the treasury of a county that participates in the joint-county district?
3. May a board of alcohol, drug addiction, and mental health services transfer the moneys of a joint-county alcohol, drug addiction, and mental health service district from the treasury of one county to the treasury of another county?
4. May a board of alcohol, drug addiction, and mental health services deposit the moneys of a joint-county alcohol, drug addiction, and mental health service district into the treasury of more than one county?

With respect to the first question, 1972 Op. Att'y Gen. No. 72-035 concluded that "[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function." *Id.* (syllabus); *accord* 1991 Op. Att'y Gen. No. 91-072 at 2-340; 1979 Op. Att'y Gen. No. 79-018 at 2-59. Subsequent opinions of the Attorneys General have further determined that the general definition of the term "political subdivision" set forth in 1972 Op. Att'y Gen. No. 72-035 is applicable unless the context in which the term is used indicates that a different definition of the term controls. *See* 1991 Op. Att'y Gen. No. 91-072 at 2-340; 1983 Op. Att'y Gen. No. 83-059 at 2-247. Accordingly, resolution of the first question turns on whether the definition of the term "political subdivision" set forth in 1972 Op. Att'y Gen. No. 72-035 encompasses a joint-county alcohol, drug addiction, and mental health service district (joint-county district).

² A county prosecuting attorney is not responsible for furnishing legal advice or representation to a joint-county alcohol, drug addiction, and mental health service district. *See* R.C. 309.09; 1975 Op. Att'y Gen. No. 75-014. Your predecessor's questions, however, reasonably relate to the obligation of a county prosecuting attorney to protect public funds deposited in the county treasury. *See* R.C. 309.12; 1975 Op. Att'y Gen. No. 75-014 at 2-55. In addition, your predecessor's request concerns the responsibilities of the county treasurer in regard to moneys deposited in the county treasury. *See* R.C. 309.09(A) (providing, in part, that the county prosecuting attorney shall be the legal adviser of "all ... county officers"); 1927 Op. Att'y Gen. No. 1125, p. 1971 (pursuant to G.C. 2917, which was the predecessor to R.C. 309.09, a county prosecuting attorney is the legal adviser for the county treasurer). For these reasons, therefore, it is appropriate to address your predecessor's questions by way of a formal opinion. *See* R.C. 109.14 (the Attorney General "shall advise the prosecuting attorneys of the several counties respecting their duties").

Pursuant to R.C. 340.01(B), any combination of counties having a population of less than fifty thousand may establish a joint-county district.³ A joint-county district is governed by a board of alcohol, drug addiction, and mental health services (ADAMH board). R.C. 340.02.

An ADAMH board is required to prepare, develop, and implement plans for the operation of community mental health services and programs and facilities for those services and programs; investigate, or request another agency to investigate, any complaint alleging abuse or neglect of any person receiving services from a community mental health agency; review, evaluate, and conduct program audits for community mental health services, facilities, and agencies seeking federal, state, or board assistance; and recruit and promote local financial support for mental health programs from private and public sources. R.C. 340.03. An ADAMH board also may enter into contracts with public and private agencies for the provision of mental health services and facilities; establish a community support system, which provides for treatment, support, and rehabilitation services and opportunities; and establish a method for evaluating referrals for involuntary commitment and affidavits filed in order to assist the probate division of the court of common pleas in determining whether there is probable cause that a respondent is subject to involuntary hospitalization and what alternative treatment is available and appropriate. *Id.*

In addition, an ADAMH board is required to serve as the planning agency for alcohol and drug addiction services for the counties in its service district; investigate, or request another agency to investigate, any complaint alleging abuse or neglect of any person receiving services from an alcohol or drug addiction program; and recruit and promote local financial support, from private and public sources, for alcohol and drug addiction programs. R.C. 340.033.

Thus, a joint-county district is a statutorily created entity that is responsible for promoting the delivery of alcohol and drug addiction services and providing a system of treatment for mentally ill persons. *See* R.C. 340.01; R.C. 340.011 R.C. 340.03; R.C. 340.033. Moreover, the geographic boundaries of a joint-county district are limited to the counties that enter into an agreement pursuant to R.C. 340.01 to create the joint-county district. The ADAMH board of a joint-county district thus may not exercise its powers throughout the entire geographical area of the state of Ohio. Accordingly, a joint-county district is a limited geographical area wherein a public agency is authorized to exercise some governmental function.

Because 1972 Op. Att'y Gen. No. 72-035 defines a political subdivision as a limited geographical area wherein a public agency is authorized to exercise some governmental function, it is our conclusion that a joint-county district is a "political subdivision" as that term is defined in 1972 Op. Att'y Gen. No. 72-035. *See generally* R.C. 5705.01(A) (a joint-county district is a "subdivision" for purposes of R.C. Chapter 5705). Therefore, except where the context of a statutory scheme indicates otherwise, a joint-county district is a political subdivision.

The second question is whether, if a joint-county district is a political subdivision, an ADAMH board may deposit the moneys of the joint-county district into interest-bearing accounts that do not constitute a part of the treasury of a county that participates in the joint-county district. An ADAMH board, as a creature of statute, has only those powers and duties that the General Assembly has either expressly or by necessary implication conferred upon it. 1997 Op. Att'y

³ The creation of a joint-county district must be approved by the directors of mental health and alcohol and drug addiction services. R.C. 340.01(B).

Gen. No. 97-008. As such, it must be determined whether the General Assembly has authorized an ADAMH board to deposit the moneys of a joint-county district into interest-bearing accounts that do not constitute a part of the treasury of a county that participates in the joint-county district.

A review of the statutes governing the operation of a joint-county district discloses that no provision of law authorizes an ADAMH board to maintain custody of the moneys of a joint-county district. Rather, our research discloses that the treasurer of a county participating in the joint-county district is to be designated in the agreement creating the joint-county district as the custodian of the community mental health funds and alcohol and drug addiction services funds. R.C. 340.03(C); R.C. 340.10; R.C. 5705.221; *see also* 1969 Op. Att'y Gen. No. 69-015 at 2-27.

As custodian of a joint-county district's moneys, a county treasurer is required to receive moneys of the joint-county district from various sources. R.C. 340.10, which sets forth the procedure for the payment of state moneys to a joint-county district, provides, in part, as follows:

State funds allocated for the support of a service district *shall be paid to the county treasurer or, in a joint-county district, to the treasurer of that county designated in the agreement as custodian of the community mental health funds* and authorized to make payments from such funds on order of the county auditor and on recommendation of the board of alcohol, drug addiction, and mental health services, or the executive director of the board when authorized by the board. (Emphasis added.)

With respect to the custody of any gift, grant, devise, or bequest of moneys to the joint-county district, R.C. 340.03(C) states:

A board of alcohol, drug addiction, and mental health services 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 may hold and apply it according to the terms of the gift, grant, or bequest. *All money received, including accrued interest, by gift, grant, or bequest shall be deposited in the treasury of the county, the treasurer of which is custodian of the alcohol, drug addiction, and mental health services funds to the credit of the board and shall be available for use by the board for purposes stated by the donor or grantor.* (Emphasis added.)

In addition, a county treasurer, as custodian of a joint-county district's moneys, is required to hold any moneys appropriated to the joint-county district by a county participating in the joint-county district or received from any general levy for current expenses authorized by vote in excess of the ten-mill limitation.⁴ Under R.C. 5705.10, all revenue derived from the general levy for

⁴ A joint-county district is a "subdivision," and an ADAMH board of a joint-county district is a "taxing authority" for purposes of R.C. Chapter 5705, which sets forth provisions concerning tax levies within the ten-mill limitation and in excess of the ten-mill limitation. R.C. 5705.01. Accordingly, an ADAMH board may determine that the amount of taxes raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the joint-county district and that it is necessary to levy a tax in excess of the ten-mill limitation for current expenses of the joint-county district. R.C. 5705.19(A).

current expenses within the ten-mill limitation and from any general levy for current expenses authorized by vote in excess of the ten-mill limitation must be paid into the general fund of the joint-county district. *See* R.C. 5705.10. As stated above, a treasurer of a county that participates in the joint-county district is to be designated in the agreement creating the joint-county district as custodian of the community mental health funds and alcohol and drug addiction services funds. Accordingly, moneys appropriated to a joint-county district from the general levy for current expenses within the ten-mill limitation by a county that participates in the joint-county district and moneys derived from any general levy for current expenses in excess of the ten-mill limitation must be deposited by the county treasurer who serves as the custodian of the joint-county district's moneys into the account that constitutes the general fund of the joint-county district. *See* R.C. 5705.10. *See generally* 1969 Op. Att'y Gen. No. 69-015.

Finally, pursuant to R.C. 5705.221, the county auditor who is the fiscal officer of a joint-county district may be required to establish within the county treasury a capital improvements account or a reserve balance account, or both. In this regard, R.C. 5705.221(C) provides:

The county auditor who is the fiscal officer of the alcohol, drug addiction, and mental health service district, upon receipt of a resolution from the board of alcohol, drug addiction, and mental health services, shall establish for the district a capital improvements account or a reserve balance account, or both, as specified in the resolution. The capital improvements account shall be a contingency fund for the necessary acquisition, replacement, renovation, or construction of facilities and movable and fixed equipment. Upon the request of the board, funds not needed to pay for current expenses may be appropriated to the capital improvements account, in amounts such that the account does not exceed twenty-five per cent of the replacement value of all capital facilities and equipment currently used by the board for programs and services. Other funds which are available for current capital expenses from federal, state, or local sources may also be appropriated to this account.

The reserve balance account shall contain those funds that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future. Upon the request of a board, such funds shall be appropriated to the reserve balance account. *Payments from the capital improvements account and the reserve balance account shall be made by the county treasurer who is the custodian of funds for the district upon warrants issued by the county auditor who is the fiscal officer of the district pursuant to orders of the board.* (Emphasis added.)

R.C. 340.10, R.C. 340.03(C), R.C. 5705.10, and R.C. 5705.221 thus demonstrate that the General Assembly intended for the moneys of a joint-county district to be placed into the custody of the treasurer of a county that participates in the joint-county district. Because a county treasurer is required, unless legislatively directed to the contrary, to deposit all moneys in his custody into the county treasury, R.C. 321.05, it follows that all moneys of a joint-county district in the custody of a county treasurer must be deposited into the county treasury to the credit of the joint-county district.

"It is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner." 1984 Op. Att'y Gen. No. 84-050 at 2-168. The General

Assembly, through the aforementioned legislation, has specified the manner in which the moneys of a joint-county district are to be held and accounted for by an ADAMH board. If the General Assembly had intended to grant an ADAMH board the authority to maintain custody of the moneys of a joint-county district, the General Assembly could have communicated that intention expressly, having done so in other instances. See R.C. 306.11 (a county transit board "shall have exclusive control over the county transit system's budgets, appropriations, collections, custody, and application of its revenues or other funds received by it"); 1992 Op. Att'y Gen. No. 92-030 at 2-114 and 2-115 ("there is no statute that requires a county prosecuting attorney or county sheriff to deposit mandatory drug fine moneys, or proceeds from the sale of contraband and forfeited moneys that constitute a law enforcement trust fund, into the county treasury. These fine moneys, proceeds, and forfeited moneys, thus, are to be held and controlled, in the first instance, by the county prosecuting attorney or county sheriff that has received such moneys or proceeds" (citations omitted)). Therefore, since the General Assembly has not authorized an ADAMH board to maintain custody of the moneys of a joint-county district, the board is not permitted to deposit the moneys of the joint-county district into interest-bearing accounts that are not part of the treasury of a county that participates in the joint-county district.

The third question asks whether an ADAMH board may transfer the moneys of a joint-county district from the treasury of one county to the treasury of another county. Pursuant to R.C. 340.03(C), R.C. 340.10, R.C. 5705.10, and R.C. 5705.221, the moneys of a joint-county district are required to be deposited into the county treasury designated in the agreement between the participating counties. No provision within the Revised Code authorizes an ADAMH board to transfer the moneys of a joint-county district from the county treasury designated in the agreement to the treasury of another county that participates in the joint-county district. Therefore, an ADAMH board may not transfer the moneys of the joint-county district from the treasury of one county to the treasury of another county.

Although an ADAMH board may not transfer the moneys of the joint-county district from the treasury of one county to the treasury of another county, the counties that enter into the agreement to create the joint-county district may amend the agreement in order to designate the treasurer of another county that participates in the joint-county district as custodian of the joint-county district's moneys. With respect to the amending of agreements between governmental entities, 1988 Op. Att'y Gen. No. 88-076 at 2-371 and 2-372 stated:

It has been established as a general rule, that the contracts of a governmental entity, "unless limited by positive provisions of statute law, are governed by the same principles as apply to contracts between individuals." *Phelps v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. 144, 148, 128 N.E. 58, 59 (1920); see *State ex rel. Cutler v. Pike County Joint Area Vocational School District*, 6 Ohio St. 3d 138, 451 N.E.2d 800 (1983); *Ferdinand v. Hamilton Local Board of Education*, 17 Ohio App. 3d 165, 171, 478 N.E.2d 835, 842 (Franklin County 1984), *motion to certify dismissed*, No. 84-1070 (Ohio Sup. Ct. Aug. 2, 1984) ("a board of education is bound by a continuing contract under ordinary contract law..."). Since no statutory provision authorizes a village to compel renegotiation of a contract in the circumstances that you have described, and since the contract in question does not provide for such renegotiation, the general rule governing changes to a contract comes into effect: "A consent to alteration of

rights under a written contract must be by agreement of the parties upon sufficient consideration." *Hinkler v. Equitable Life Assurance Society*, 61 Ohio App. 140, 143, 22 N.E.2d 451, 452 (Hamilton County 1938). Consideration for modification or abrogation of a contract may be found in mutual waivers of rights under the contract, and one party to a contract may attempt to persuade the other party that modification of the contract would be to the mutual benefit of the parties. See *Phelps v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. at 148, 128 N.E. at 59; *Murrell v. Elder-Beerman Stores Corp.*, 16 Ohio Misc. 1, 239 N.E.2d 248 (C.P. Montgomery County 1968). Absent statutory or contractual terms providing for renegotiation, however, one party to a contract has no power to require another party to renegotiate the terms of the contract. See, e.g., *Fraser v. Magic Chef-Food Giant Markets, Inc.*, 324 F.2d 853, 857 (6th Cir. 1963) ("[p]arties to a contract may amend, modify or cancel a contract in such manner as is agreeable to them"). See generally *Logan Natural Gas & Fuel Co. v. City of Chillicothe*, 65 Ohio St. 186, 62 N.E. 122 (1901).

Thus, if terms in the agreement creating the joint-county district provide for the amending of the agreement or, alternately, the counties that have entered into the agreement agree to amend it, the counties may amend the agreement in order to designate the treasurer of another county that participates in the joint-county district as custodian of the joint-county district's moneys.

The final question asks whether an ADAMH board may deposit the moneys of a joint-county district into the treasury of more than one county. As indicated above, R.C. 340.03(C), R.C. 340.10, R.C. 5705.10, and R.C. 5705.221 require the moneys of a joint-county district to be deposited into the county treasury designated in the agreement between the participating counties. Neither these statutes nor any other statute permits the moneys of a joint-county district to be deposited into the treasury of more than one county. Rather, the language of R.C. 340.03(C), R.C. 340.10, R.C. 5705.10, and R.C. 5705.221 indicates that the moneys of a joint-county district are to be deposited into a single county treasury. This is done to ensure an accurate accounting of the moneys of the joint-county district. Moreover, since the General Assembly has legislatively determined that the moneys of a joint-county district are to be deposited into a single county treasury, the counties that participate in the agreement creating the district may not provide in such agreement that the moneys of the joint-county district are to be deposited into the treasury of more than one county. See 1979 Op. Att'y Gen. No. 79-082 at 2-263. Therefore, an ADAMH board may not deposit the moneys of a joint-county district into the treasury of more than one county.

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

1. Except where the context of a statutory scheme indicates otherwise, a joint-county alcohol, drug addiction, and mental health service district is a political subdivision.
2. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to maintain custody of the moneys of a joint-county alcohol, drug addiction, and mental health service district or deposit those moneys into interest-bearing accounts that are not part of the treasury of a county that is a member of the joint-county district.

3. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to transfer the moneys of a joint-county alcohol, drug addiction, and mental health service district from the treasury of one county to the treasury of another county.

4. No provision of law grants a board of alcohol, drug addiction, and mental health services the authority to deposit the moneys of a joint-county alcohol, drug addiction, and mental health service district into the treasury of more than one county.