

OPINION NO. 89-026

Syllabus:

A board of township trustees is prohibited from establishing a law enforcement trust fund under R.C. 2933.43.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 15, 1989

I have before me your predecessor's request for my opinion as to whether a board of township trustees can establish a law enforcement trust fund. The information provided by your predecessor states that Erie County political entities are in the process of creating law enforcement trust funds under R.C. 2933.43 and the question has arisen whether a board of township trustees is authorized under R.C. 2933.43 to establish such trust funds.

It is well established in Ohio that township trustees have only those powers which are prescribed by statute or necessarily implied therefrom, in order to perform the duties entrusted to them. *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 456 (1875); *Hopple v. Brown Township*, 13 Ohio St. 311, 324-325 (1862). Therefore, a board of township trustees can only establish a law enforcement trust fund if granted the authority, either expressly or impliedly, by statute.

R.C. 2933.43 deals with the procedures for seizure and forfeiture of contraband by law enforcement agencies. It also delineates the authority of a law enforcement agency to use, destroy, or sell forfeited contraband. R.C. 2933.43(D), which authorizes the establishment of law enforcement trust funds under R.C. 2933.43, provides in pertinent part:

If the contraband is sold, the proceeds of the sale shall be disposed of in the following order:

(1) To the payment of the costs incurred in the forfeiture proceedings;

(2) To the payment of the balance due on any security interest preserved pursuant to division (C) of this section;

(3) To the payment of any costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;

(4) To the law enforcement trust fund of the political subdivision whose agency made the seizure. *A law enforcement trust fund shall be established by the board of county commissioners of each county and by the legislative authority of each municipal corporation for the purposes of this division.* (Emphasis added.)

The language of R.C. 2933.43(D) expressly grants to the board of county commissioners of each county and the legislative authority of each municipal corporation the power to establish a law enforcement trust fund. There is no similar express grant of power in R.C. 2933.43(D) to the board of township trustees of each township. If the General Assembly had intended to allow a board of township trustees to establish a law enforcement trust fund under R.C. 2933.43(D) to receive the proceeds from the sale of contraband, language expressing that intention could have been added. See, e.g., R.C. 2933.41 (the proceeds from property, *other than contraband* that is subject to R.C. 2933.42 and R.C. 2933.43, disposed of pursuant to this section, shall be placed in the general fund of the township whose law enforcement agency made the seizure). Since the General Assembly did not expressly provide for a board of township trustees to establish a law enforcement trust fund under R.C. 2933.43(D), such authority cannot be read into the statute.

See State ex rel. Celebrezze v. Allen Cty. Bd. of Comms., 32 Ohio St. 3d 24, 28, 512 N.E.2d 332, 335 (1987) ("we are bound to adhere strictly to the language of the statute"). Thus, the language of R.C. 2933.43(D) clearly indicates that the General Assembly intended that only the board of county commissioners of each county and the legislative authority of each municipal corporation establish a law enforcement trust fund under R.C. 2933.43.

Additionally, the canon of statutory construction *expressio unius est exclusio alterius* holds that the express mention of one class implies the exclusion of those not named. *See State ex rel. Boda v. Brown*, 157 Ohio St. 368, 372, 105 N.E.2d 643, 646 (1952) ("[i]t is generally recognized that the express mention of but one class of persons in a statute implies the exclusion of all others"); *State v. Amman*, 78 Ohio App. 10, 12-13, 68 N.E.2d 816, 818 (Hamilton County 1946) ("the express mention of a person, thing or consequence in a statute is tantamount to an express exclusion of all others"). Thus, by expressly granting to the board of county commissioners of each county and the legislative authority of each municipal corporation the power to establish a law enforcement trust fund, the General Assembly intended to exclude all others, including the board of township trustees of each township, from establishing law enforcement trust funds under R.C. 2933.43.

Therefore, it is my opinion, and you are hereby advised, that a board of township trustees is prohibited from establishing a law enforcement trust fund under R.C. 2933.43.