

OPINION NO. 69-121

Syllabus:

1. Pursuant to Section 5713.081, Revised Code, inheritance tax revenues are a proper source of monies for the payment of delinquent taxes owed by the state to the county, as contemplated in Section 5713.081, Revised Code.

2. Section 5a of Article XII of the Ohio Constitution precludes monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles from being expended for the satisfaction or payment of delinquent taxes owed by the state, as contemplated in Section 5713.081, Revised Code.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: Paul W. Brown, Attorney General, September 23, 1969

I have before me your request for my opinion in which you ask the following questions:

1. Is the action of the Auditor of Lucas County in withholding a sum of \$89,105.26 on the February inheritance tax settlement due the state, in accordance with the provisions of Section 5713.081 of the Revised Code and shall the Auditor of State accept the offered settlement?

2. Since the properties involved have been taken by the state for highway purposes, is it more appropriate that the Lucas County Auditor use highway user monies to set off the delinquent taxes rather than funds due the General Fund of the State?

My opinion is that the offered settlement should be accepted.

Along with your request, you have informed me that the \$89,105.26 withheld includes no payments of delinquent special assessments. Section 5713.081, Revised Code, deals only with the remission and the collection of delinquent taxes and no authority is given to the Board of Tax Appeals or to county auditors to exempt from, remit or withhold monies for the payment of special assessment by Section 5713.081, Revised Code. See Carney v. State, 158 Ohio St. 348 (1952); State v. Carney, 166 Ohio St. 81 (1956).

Along with Section 5713.081, Revised Code, an uncodified temporary statute, Section 2 of Amended Senate Bill No. 351 (132 Ohio Laws, 2325), was passed. This temporary section was held to be unconstitutional in Park v. City of Euclid, 17 Ohio St. 2d 4 (1969). This decision has no effect upon Section 1 of Amended Senate Bill No. 351, codified as new Section 5713.081, Revised Code, as was specifically stated in the Park case, supra, at page 6.

The only part of Section 5713.081, Revised Code, that needs to be interpreted reads in pertinent part:

"* * * Such official shall deduct from each distribution made by him, the amount necessary to pay the tax delinquency from any revenues or funds to the credit of the state * * *."
(Emphasis added)

Though the above language "any revenues or funds" is broad and apparently unrestricted, the term must be construed in the light of pre-existing restrictions, both constitutional and statutory that exist on expenditures of tax revenues. Clearly there is a constitutional restriction placed on highway user tax revenues as to use. See Section 5a of Article XII of the Ohio Constitution, which reads:

"No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways."

In short, constitutional restrictions on the use of revenues and funds must have been contemplated as an implied limitation on the term "any revenues or funds." Therefore, the term "any revenues or funds" means those revenues or funds that are not limited as to purpose or use by the Ohio Constitution. As to inheritance tax settlement revenues, I can find no particular purpose or use limitation of such funds either in the Constitution or the statutes and the settlement should be accepted. However, as above noted, Section 5a of Article XII of the Ohio Constitution would preclude the proposed setoff by the application of highway user tax revenues.

Therefore, it is my opinion and you are so advised:

1. Pursuant to Section 5713.081, Revised Code, inheritance tax revenues are a proper source of monies for the payment of delinquent taxes owed by the state to the county, as contemplated in Section 5713.081, Revised Code.
2. Section 5a of Article XII of the Ohio Constitution precludes monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles from being expended for the satisfaction or payment of delinquent taxes owed by the state, as contemplated in Section 5713.081, Revised Code.