

OPINION NO. 73-122**Syllabus:**

The express terms of R.C. 5575.10 prohibit the transfer from the township road maintenance and repair fund of moneys produced by tax levy under the authority of that Section.

To: Napoleon A. Bell, Chairman, Board of Tax Appeals, Columbus, Ohio
By: William J. Brown, Attorney General, December 5, 1973

I have before me your request for my opinion, which reads as follows:

We are respectfully requesting an opinion of Senate Bill 391, Section 5575.10 R.C., passed by the 109th General Assembly, which became effective August 31, 1972.

The language we need to have clarified is
* * * "The fund produced by such levies for
maintenance and repair purposes shall not be
subject to transfer, by order of Court or
otherwise."

Would the above quoted language of Section
5575.10 R.C., prohibit the Board of Tax Appeals
from giving consent to the filing of resolutions
and petitions in the Courts of Common Pleas,
for the transfer of road and bridge funds to the
general fund of the Township?

Your question involves the apparent conflict between the
cited phrase of R.C. 5575.10, and R.C. 5705.15 and 5705.16 con-
cerning the transfer of political subdivision maintenance and
repair funds.

In general, provision for transfer of public funds is
contained in R.C. 5705.15 and 5705.16. The method authorized is
by petition addressed to the common pleas court of the county in
which the funds are held. A duplicate copy of the petition is to
be forwarded to the board of tax appeals for its examination and
approval or disapproval. R.C. 5705.15 lists general exceptions
of funds capable of being transferred. Those excepted are
" * * * proceeds or balances of loans, bond issues, special
levies for the payment of loans or bond issues, the proceeds or
balances of funds derived from any excise tax levied by law
for a specified purpose, and the proceeds or balances of any
license fees imposed by law for a specified purpose." As
indicated, R.C. 5705.15, 5705.16 are general authority for
the transfer of public funds, listing general exceptions.

However, R.C. 5575.10 deals with township road maintenance
and repair funds specialy. That Section permits up to a three-
mill levy on taxable property outside of any municipal corporation
or part thereof to create a fund for the purpose of dragging,
maintaining, and repairing roads, and further states:

* * * The fund produced by such levies
for maintenance and repair purposes shall not
be subject to transfer, by order of court or
otherwise, and shall be used solely for the
maintenance and repair of township roads within
the township. This section does not prevent
the board [of township trustees] from using
any other available road funds for the maintenance
and repair of township roads.

Thus, these two portions of the Code are irreconcilable on
one point. R.C. 5575.10 expressly prohibits transfer of funds
raised from levies of tax authorized therein while R.C. 5705.15
and 5705.16 would allow it since those funds are not among
those generally excepted from transfer in R.C. 5575.15.

However, these two portions of the Code are reconcilable
concerning transfer of funds not raised by the specific levying
authority of R.C. 5575.10. The prohibition of transfer contained
in R.C. 5575.10 would not apply, because it speaks only to
funds produced by the levy for maintenance and repair purposes
pursuant to that Section. Provided that transfer is not prohibited
by the exceptions of R.C. 5705.15, either, funds are transferable

pursuant to the general authority of R.C. 5705.15. For a discussion of an analogous situation, permitting transfer to the county general fund of moneys which had been transferred to the county road and bridge fund, see Opinion No. 193, Opinions of the Attorney General for 1939.

As to the transferability of funds derived from road and maintenance levies, it is necessary to apply the appropriate rule of statutory construction. Specifically, R.C. 1.51 provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the sections is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

Clearly, as discussed earlier, R.C. 5575.10 is a special provision, while R.C. 5705.15, 5705.16 are general. It is necessary therefore to go to the history of both portions of the code to see which was the later adoption, and whether there is any manifest intent on the part of the legislature that R.C. 5705.15 and 5705.16 prevail.

R.C. 5575.10 [G.C. 3298-18] was originally enacted in 1915, 106 Ohio Laws 647, and amended inconsequentially for purposes here in 1917, 107 Ohio Laws 83. In 1919, the Section was amended to add the restriction on transfer found in R.C. 5575.10 today. R.C. 5705.15 and 5705.16 were originally enacted as G.C. 5625-13 (a)-(g) in 1933, 115 Ohio Laws 251, and were amended in 1935 to add the exceptions to transfer listed in R.C. 5705.15 today, 116 Ohio Laws 46. Since the general Section was the latest adopted, if the manifest intent of the legislature was such, the provisions of that Section should control.

In searching for some clue as to legislative intent, the effect of the recent amendment of R.C. 5575.10 must be considered. Although the amendment ended up merely raising the permissible millage levy from two to three mills, at least when the amendment was being considered in the House of Representatives as H.B. 484 in the 107th General Assembly an amendment permitting transfer of the funds in accordance with R.C. 5705.15 and 5705.16 was considered. It obviously was rejected. The statute passed by the Senate (S.B. 391), effective August 31, 1972, contains the same prohibition on transfer originally passed in 1919. At the very least, the rejection of the amendment permitting transfer of funds indicates lack of manifest legislative intent for the general provisions of R.C. 5705.15 and 5705.16 to control. Otherwise, I can see no manifestation of legislative intent that the general authority of R.C. 5705.15 negate the specific exemption contained in R.C. 5575.10. Consequently, the latter should be read as an exception to the former, in accordance with R.C. 1.51.

In specific answer to your question, it is my opinion and you are so advised that the express terms of R.C. 5575.10 prohibit the transfer from the township road maintenance and repair fund of moneys produced by tax levy under the authority of that Section.