

**OPINION NO. 83-084****Syllabus:**

Moneys held in the treasury of a political subdivision, to the credit of a trust fund, which are not claimed by the lawful owner within five years, revert to the general fund of such political subdivision in accordance with R.C. 117.10.

**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 2, 1983**

I have before me your request for an opinion in response to the following question:

Should unclaimed monies held in a political subdivision's unclaimed special trust fund for a period of five years pursuant to Section 117.10, Revised Code be allocated in [their] entirety to that subdivision's general fund, in accordance with Section 117.10, Revised Code, or allocated to the unclaimed trust fund of the state, in accordance with Section 169.05, Revised Code?

R.C. Chapter 169 provides generally for the reporting and disposition of unclaimed funds. The statutory language with which you have indicated concern is set forth under R.C. 169.05(A), and provides, in pertinent part:

Every holder required to file a report under section 169.03 of the Revised Code, shall at the time of filing pay to the director of commerce ten per cent of the aggregate amount of unclaimed funds

as shown on such report. Such funds shall be deposited by the director in the state treasury to be credited to a special account in the state special revenue fund to be known as the unclaimed funds special account. (Emphasis added.)

R.C. 169.03 requires, *inter alia*, that every holder of unclaimed funds file with the Director of Commerce a report which details certain information concerning such funds and the owners. The term "unclaimed funds," as used in R.C. Chapter 169, is extensively defined under R.C. 169.02. Except for funds described under R.C. 169.02(H),<sup>1</sup> (O),<sup>2</sup> and (Q),<sup>3</sup> funds must be held by an owner or holder, unclaimed for a period of at least five years, in order to fall within the scope of R.C. Chapter 169. The term "holder," as used in R.C. Chapter 169, is defined under R.C. 169.01(D), in pertinent part, as follows:

"Holder" means any person who has possession, custody, or control of moneys, rights to moneys, or other intangible property, or who is indebted to another if:

. . .

(2) Such person is formed under the laws of this state;

. . .or

(4) The records of such person indicate that the last known address of the owner of such moneys, rights to moneys, or other intangible property is in this state.

For purposes of R.C. Chapter 169, "person" includes a "public authority. . .or any state or political subdivision thereof, including any officer, agency, board, bureau, commission, division, department, authority, court, or instrumentality," as well as various other public and private entities and natural persons. R.C. 169.01(E). Clearly, political subdivisions of the state are formed under the laws of the state. See, e.g., R.C. Titles 3 (counties), 5 (townships), 7 (municipalities). See also Ohio Const. art. XVIII (municipal corporations). Thus, political subdivisions may qualify as holders for purposes of R.C. Chapter 169.

You have noted that R.C. 117.10 also provides for the disposition of unclaimed funds, in pertinent part, as follows:

"Public money" as used in this section and division (D) of section 117.091 of the Revised Code includes all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order, or otherwise, and all public officials are liable therefor. All money received under color of office and not otherwise paid out according to law is due to the public office with which the officer is connected and shall be paid into the treasury thereof to the credit of a trust fund, and there retained until claimed by the lawful owner. If not claimed within a period of five years, such money shall revert to the general fund of the public office where collected. (Emphasis added.)

<sup>1</sup> R.C. 169.02(H) provides that "[a]ll moneys, rights to moneys, and other intangible property distributable in the course of dissolution or liquidation of a holder that are unclaimed for one year after the date set by the holder for distribution" constitute unclaimed funds.

<sup>2</sup> R.C. 169.02(O) refers to funds represented by unredeemed lay-aways and gift certificates, unclaimed for three years after the sale thereof.

<sup>3</sup> R.C. 169.02(Q) refers to funds derived from sales of property on which the owner of a self-service storage facility has a lien pursuant to R.C. Chapter 5322, and which are unclaimed for two years after the date of the sale.

Thus, R.C. 117.10 refers specifically to unclaimed funds which are held by a "public office." For purposes of R.C. Chapter 117, this term is defined under R.C. 117.01(A), as follows:

"Public office" means any state agency, county, municipal corporation, township, police district, township fire district, joint fire district, joint ambulance district, joint recreation district, township waste disposal district, township road district, community college district, technical college district, detention home district, a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.61 of the Revised Code, a joint-county mental health district, school district, public institution, or political subdivision, and the offices thereof. "Public office" also includes any taxing authority, taxing unit, or district authority as defined in section 5705.01 of the Revised Code.

It thus appears that political subdivisions which are public offices within the scope of R.C. 117.10 could also qualify as "holders," within the meaning ascribed to that term under R.C. 169.01, of funds described under R.C. 169.02.

You have observed in your letter that the emphasized provisions of R.C. 117.10 and R.C. 169.05, quoted above, seem to conflict. As an example, if the treasury of a political subdivision which is subject to the provisions of R.C. 117.10 were to pay to the Director of Commerce ten percent of the aggregate amount of unclaimed funds held in trust by such public office, the language of R.C. 117.10, which requires that those funds be retained in the treasury of the public office to which the funds are due, would apparently be ignored. In contrast, if unclaimed funds held in a trust fund in the treasury of a political subdivision which is subject to R.C. 117.10 were to revert, in their entirety, to the general fund of such treasury the language of R.C. 169.05 would appear to be ignored. However, longstanding rules of statutory construction proscribe disregard of statutory language. Carter v. City of Youngstown, 146 Ohio St. 203, 207, 65 N.E.2d 63, 65 (1946).

The legislature has codified a rule of construction for the resolution of statutory conflicts under R.C. 1.51, which 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 provisions is irreconcilable, the special or local provisions 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.

As stated above, R.C. 117.10 provides specifically for the disposition of unclaimed funds held in the treasury of a "public office," as that term is defined under R.C. 117.01(A). In contrast, R.C. 169.05 provides for the disposition of unclaimed funds reported by holders in accordance with R.C. 169.03. The meaning of the term "holder," as set forth under R.C. 169.01 and used in R.C. 169.05, is quite broad, and may encompass those entities described under R.C. 117.10. However, the procedures for the disposition of funds held by public officers pursuant to R.C. 117.10 and R.C. 169.05 are irreconcilable. Effect cannot be given to either statute unless the other is ignored. Pursuant to R.C. 1.51, the special provisions of R.C. 117.10 with respect to public offices must be construed as an exception to the general provisions for the disposition of unclaimed funds set forth under R.C. 169.05, unless the general statute was more recently adopted, and manifests a legislative intent that it should prevail.

The requirement in R.C. 117.10 that unclaimed funds revert to the general fund if not claimed within a period of five years was enacted in 1920. 1919 Ohio Laws, Part II 115 (H.B. 188, eff. Jan. 29, 1920). R.C. Chapter 169 was originally enacted in 1967 (1967-1968 Ohio Laws, Part I 214 (Am. Sub. S.B. 911, eff. Dec. 1, 1967)), and the definition of "person" as used therein was expanded to include political subdivisions of the state in 1972 (1971-1972 Ohio Laws, Part I 413 (Am. Sub. S.B. 215, eff. Oct. 16, 1972)). Subsequently, however, the General Assembly

again addressed the pertinent provisions of R.C. 117.10, and thereby reaffirmed its application to unclaimed funds held by a public office including a political subdivision. See Am. Sub. H.B. 440, 113th Gen. A. (1980) (eff. March 13, 1981) (The amendment substituted the term "public office" for the term "political subdivision or taxing district" in R.C. 117.10). Subsequent amendments to R.C. 169.05 are not pertinent to the issue under consideration herein. See Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 11, 1981) (payment of operating expenses incurred by department of commerce) and Am. Sub. S.B. 227, 115th Gen. A. (1983) (eff. July 14, 1983) (abolishment of Ohio Development Financing Commission). Accordingly, the most recent expression of the legislative intent supports the continued application of R.C. 117.10 to unclaimed funds held by a political subdivision.

It is, therefore, my opinion, and you are advised that, moneys held in the treasury of a political subdivision, to the credit of a trust fund, which are not claimed by the lawful owner within five years, revert to the general fund of such political subdivision in accordance with R.C. 117.10.