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FUNDS FROM COUNTY GENERAL FUND—MAY NOT BE TRANSFERRED TO COUNTY MAINTENANCE FUND—MONEY FOR SUCH MAINTENANCE FUND DERIVED SOLELY FROM ASSESSMENTS PROVIDED IN—§§6137.02, 6137.03, R.C.

SYLLABUS:

The word “establish” as used in Section 6137.02, Revised Code, does not authorize the transfer of funds from the county general fund to the maintenance fund created by Section 6137.02, Revised Code, the money for such maintenance fund being derived solely from the assessments provided in Section 6137.03, Revised Code.

Columbus, Ohio, February 9, 1960

Hon. James S. Patrick, Prosecuting Attorney  
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

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

“I have been requested by the County Commissioners of Tuscarawas County to request your opinion in the following matter:

“Section 6137.02 provides that the Board of County Commissioners of each county shall establish and maintain a fund within each county for the repair, upkeep and permanent maintenance of each improvement constructed under provisions of Chapter 6131 of the Revised Code.

“Section 6137.03 states the manner in which the above mentioned fund shall be maintained.

“However, the question which we are seeking an opinion is this:

“Does the word “establish”, as set out in Section 6137.02, allow the County Commissioner to transfer funds from the general fund into this maintenance fund, or should the wording ‘establish and maintain a fund’ be construed that said fund shall be derived only from the assessments, as provided for in Section 6137.03 of the Revised Code?”

Section 6137.02, Revised Code, reads in part:

“The board of county commissioners of each county shall establish and maintain a fund within each county for the repair, upkeep, and permanent maintenance of each improvement constructed under the provisions of Chapter 6131., of the Revised Code. \* \* \*”

Section 6137.03, Revised Code, reads in part:

“The maintenance fund shall be maintained by an annual assessment upon the benefited owners, as defined in section 6131.01 of the Revised Code, apportioned on the basis of the appraisal of benefits for construction of the improvement. Such assessment shall represent a sum equal to one per cent of said appraisal or such percentage as is estimated by the engineer and found adequate by the board or joint board to effect the purpose of section 6137.02 of the Revised Code; except that in any year when a maintenance fund has an unencumbered balance equal to twenty per cent of said appraisal of benefits, the annual maintenance assessment shall be omitted.

“\* \* \*”

The word “establish” is defined by Webster’s New International Dictionary as follows:

“To originate and secure the permanent existence; to found; to institute; to create and regulate;”

The following definition of the word “fund” is found in 17-A, Words and Phrases, 545:

“A ‘fund’ is merely a name for a collection of an appropriation of money. It may be nothing but a designation of one branch of the accounts of the state, or of a certain amount of money, when collected to be applied to a particular purpose. It may have no property and represent no investments, and what are called its revenues may include all moneys appropriated or directed to be paid to it or for its benefit, or that of the objects it represents.”

A consideration of the above cited definitions and the language contained in Sections 6137.02 and 6137.03, Revised Code, indicates that the legislature clearly intended that the county commissioners should create an account which might be used for the purpose indicated. There is nothing in the statute to indicate that the legislature intended that the county commissioners should create a sum of money for such fund or furnish revenue by transferring money from another fund.

Section 6131.03, Revised Code, provides the source of the revenue to be appropriated to this particular account. The intent of the legislature, therefore, appears to be plain; that is, the money for the fund shall be acquired in the manner provided in Section 6131.03, Revised Code.

A consideration of the various sections of the code dealing with the establishment of funds by the county commissioners indicates that the word “fund” means an account under which the revenues of the county may be properly placed and appropriated to the designated purpose. The creation or “establishment” of such funds amounts to nothing more than creating the appropriate bookkeeping system.

A consideration of Section 5705.09, Revised Code, indicates that each subdivision shall “establish” certain enumerated funds, and Section 5705.10, Revised Code, indicates the source of revenue for the various funds specified in Section 5705.09, Revised Code.

Sections 5705.12 and 5705.13, Revised Code, provide that special funds may be created under certain circumstances, and further indicates—either directly or indirectly—the source of revenue for these funds.

The above cited sections of the Revised Code indicate that, when the legislature uses the phrase “establish \* \* \* a fund”, they mean the county commissioners shall establish an account since the statutes clearly designate the source of revenue for the various funds which the county commissioners are authorized to establish.

Section 5705.14, Revised Code, prohibits the transfer of money from one fund to another except in certain specified cases. The language in this section clearly indicates that a fund is an account. The transfer of money from the general fund to the fund created by Section 6137.02, Revised Code, does not fall within the exceptions set forth in Section 5705.14, Revised Code.

Section 5705.15, Revised Code, does, however, authorize the transfer from one fund to another in the manner prescribed in Section 5705.16, Revised Code.

There appears to be nothing in the Revised Code which would prohibit the transfer of funds under the procedure set forth in the above cited section, but the complex and cumbersome nature of this proceeding would certainly make its use undesirable.

A consideration of the above cited sections dealing with transfer from one fund to another further indicates that the legislature did not intend that the county commissioners should "establish a fund" in the sense that they should supply a ready amount of cash for the maintenance of the various improvements mentioned in Section 6131.02, Revised Code.

It is equally obvious that the legislature did not intend that the county commissioners should utilize Sections 5705.15 and 5705.16, Revised Code, to provide means to supply money for the newly created maintenance fund.

Accordingly, it is my opinion and you are advised that the word "establish", as used in Section 6137.02, Revised Code, does not authorize the transfer of funds from the county general fund to the maintenance fund created by Section 6137.02, Revised Code, the money for such maintenance fund being derived solely from the assessments provided in Section 6137.03, Revised Code.

Respectfully,

MARK McELROY

Attorney General