

OPINION NO. 85-002**Syllabus:**

Interest earned on moneys of a joint-county community mental health service district and held by a county treasurer as the designated custodian of the district's funds, including interest earned on the proceeds of a tax authorized by R.C. 5705.19(A), must be credited to the general fund of the county. (1982 Op. Att'y Gen. No. 82-026 and 1982 Op. Att'y Gen. No. 82-027, approved and followed.)

To: James A. Kiger, Fayette County Prosecuting Attorney, Washington C.H., Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 13, 1985

I have before me your request for my opinion concerning the disposition of interest earned from the deposit or investment of the proceeds of a tax levied by a joint-county community mental health board pursuant to the authority conferred by R.C. 5705.19(A), when such proceeds are received and held by a county treasurer as custodian of the community mental health funds. Your specific question is:

Shall the county auditor who acts as the fiscal agent of a joint county mental health service district in receiving, holding and disbursing tax monies generated from a tax levy approved pursuant to Section 5705.19(A) of the Ohio Revised Code pay to the said joint county mental health service district the interest accumulated on said tax monies while held by him?

The provisions concerning the apportionment of interest earned on a public deposit were substantially altered specifically with respect to funds held by a county treasurer in Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). Shortly after the enactment of Am. Sub. H.B. 230, my predecessor had occasion to consider the issue of the proper disposition of interest earned on custodial funds held by a county treasurer. My predecessor concluded in 1982 Op. Att'y Gen. No. 82-026 and again in 1982 Op. Att'y Gen. No. 82-027 that interest earned on all funds included within a county treasury, including those funds which belong to another subdivision or district and are held by a county treasurer as the designated custodian of such funds, must be credited to the general fund of the county.¹ This

¹ The syllabus of Op. No. 82-026 states: "Pursuant to R.C. 135.351 interest earned on the deposit of money belonging to a county park district but included within the county treasury must be credited to the general fund of the county." Op. No. 82-027 addresses several issues involving the creation of a reserve balance account by a board of township trustees for the purpose of purchasing fire department or police department equipment. Pursuant to R.C. 5705.29(F)(1) the amount reserved by a board of township trustees is retained by the county auditor and county treasurer out of the second

conclusion was based in part upon the fact that after the effective date of Am. Sub. H.B. 230 the provisions in R.C. 135.21, which generally require that interest earned from the deposit of custodial funds be credited to the funds to which the principal sums belong, were no longer applicable to custodial funds held by a county treasurer.² See Op. No. 82-026 at 2-77. This conclusion was also based upon R.C. 135.351(A), which stated at the time of its enactment in Am. Sub. H.B. 230: "All interest earned on money included within the county treasury shall be credited to the general fund of the county." Id. See also Op. No. 82-027 at 2-82. I have reviewed my predecessor's analysis of the amendments and enactments in Am. Sub. H.B. 230 and concur that the conclusions reached in Op. No. 82-026 and Op. No. 82-027 were compelled by the changes made in Am. Sub. H.B. 230. The General Assembly, however, has spoken again on this issue and it is, therefore, necessary for me to consider whether the subsequent amendment of R.C. 135.351(A) affects the conclusion reached in these opinions.

In Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982) the General Assembly amended R.C. 135.351(A) to state: "Except as provided in section 1545.22 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." S.B. 550 also amended R.C. 1545.22 by inserting the sentence emphasized in the following quotation of that statute.

All funds under the control of a board of park commissioners shall be kept in depositories selected in the manner provided for the deposit of county funds. . . . The county treasurer of the county in which the park district is located shall be the custodian of the funds of the board and shall be an ex officio officer of the board. . . . Interest earned on all funds under the control of the board of park commissioners shall be credited to such funds. (Emphasis added.)

The General Assembly explained the purpose of this amendment in section 32 (uncodified) of Am. Sub. S.B. 550 as follows:

The purpose of the amendments to sections 135.351 and 1545.22 of the Revised Code in this act is to clarify the intentions of the General Assembly in enacting section 135.351 of the Revised Code in Amended Substitute House Bill No. 230 of the 114th General Assembly, which included the preserving to each board of park commissioners created under Chapter 1545. of the Revised Code the right to the interest earned on moneys of the district held by the county treasurer as its custodian.

Each county treasurer who has credited to the county general fund interest earned on funds of a park district is, therefore,

semiannual settlement of taxes until the date specified in the resolution creating the reserve balance account or until the reserve balance is reached. With respect to the disposition of interest earned on money in a reserve balance account prior to the date specified for the distribution of the reserved balance to the township, my predecessor concluded that such interest must be credited to the county's general fund pursuant to R.C. 135.351(A). Op. No. 82-027 at 2-81, 2-82 (syllabus 3).

² Am. Sub. H.B. 230 amended R.C. 135.21 to state in pertinent part:

All interest earned from other moneys deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment or other district of which he is acting as an ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision shall, except as provided in section 135.351 [135.35.1] of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposit or investments belong. (Emphasis added.)

obligated to transfer from the county general fund to the account of such park district an amount equal to the total of such interest credited to the county general fund.

By so amending R.C. 135.351(A) and R.C. 1545.22, the General Assembly quite clearly indicated its intent regarding the disposition of interest earned on moneys belonging to a board of park commissioners and held by a county treasurer only in a custodial capacity. See 1983 Op. Att'y Gen. No. 83-025. The significance of the amendment is, however, much broader. Where a statute contains an express exception, such exception comprises the only exclusion and no other exception is properly implied. The articulation of an exception from the operation of a statute, therefore, indicates that the statute is intended to apply in all cases not specifically excluded. Andrus v. Glover Const. Co., 446 U.S. 608, 616-167 (1980); State ex rel. Keller v. Forney, 108 Ohio St. 463, 467, 141 N.E. 16, 17 (1923); Kroff v. Amrhein, 94 Ohio St. 282, 286, 114 N.E. 267, 268 (1916). Thus, the express exclusion of interest earned on all funds under the control of a board of park commissioners from the operation of R.C. 135.351(A) constitutes a reaffirmation of the General Assembly's intent that that statute govern the disposition of interest earned on all other funds included within a county treasury, including funds which belong to another subdivision or district and are held by a county treasurer in a custodial capacity.

I turn now to your specific question which concerns the proceeds of a tax authorized by R.C. 5705.19(A) and levied by a joint-county community mental health service district. R.C. 340.01 mandates the establishment of a community mental health service district in any county or combination of counties having a population of at least fifty thousand. The statute likewise permits the Director of Mental Health to authorize the establishment of such a district in any county or combination of counties having a population of less than fifty thousand. Districts comprising more than one county are known as joint-county districts. If a joint-county district is established, the participating counties must designate the treasurer of one such county to serve "as custodian of the community mental health funds," and must designate the auditor of such county as the auditor and fiscal officer of the district. R.C. 340.10. The term "community mental health funds" is not defined for the purposes of R.C. 340.10 but it would quite logically include the proceeds of a tax authorized by R.C. 5705.19(A), since the purpose of any such levy is to provide for the current expenses of the district. Thus, it would appear that the proceeds of a tax levied by a joint-county mental health board pursuant to R.C. 5705.19(A), and held by the designated county treasurer in a custodial capacity, fall within the purview of R.C. 135.351(A) and any interest earned on such tax proceeds must be credited to the general fund of the county.

This conclusion is also supported by an analysis of R.C. 5705.10, which generally addresses the disposition of various moneys accruing to a subdivision or a taxing district or authority subject to the Uniform Tax Levy Law. Both a county and a joint-county mental health service district are subdivisions governed by R.C. 5705.10. R.C. 5705.01(A). H.B. 230 amended R.C. 5705.10 by inserting the sentence emphasized in the following quotation of its pertinent parts.

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

. . . .

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund. (Emphasis added.)

Prior to H.B. 230 the benefit of any interest earned on the deposit or investment of the proceeds of a tax levied by a joint-county mental health board pursuant to R.C. 5705.19(A) would have accrued to the district under R.C. 135.21. Accordingly, the disposition of such interest would have been governed by the first paragraph in R.C. 5705.10 as revenue derived from a general levy for current expenses authorized by a vote in excess of the ten-mill limitation. See 1982 Op. Att'y Gen. No. 82-031; 1980 Op. Att'y Gen. No. 80-003. Pursuant to R.C. 135.21 and R.C. 5705.10, the county treasurer would have had to apportion such interest to the district's general fund. Subsequent to the effective date of Am. Sub. H.B. 230, however, the benefit of any interest earned from the deposit or investment of community mental health funds accrues to the county which serves as the custodian of such funds, and not to the district, by virtue of the exclusion in R.C. 135.21 and the enactment of R.C. 135.351(A). Accordingly, the disposition of such interest is now within the purview of the amendment to R.C. 5705.10 as "revenue derived [by the county] from a source other than [the county's] general property tax, for which the law does not prescribe use for a particular purpose." Pursuant to R.C. 135.351(A) and R.C. 5705.10 such interest is to be paid into the county's general fund.

Accordingly, it is my opinion, and you are advised, that interest earned on moneys of a joint-county community mental health service district and held by a county treasurer as the designated custodian of the district's funds, including interest earned on the proceeds of a tax authorized by R.C. 5705.19(A), must be credited to the general fund of the county. (1982 Op. Att'y Gen. No. 82-026 and 1982 Op. Att'y Gen. No. 82-027, approved and followed.)