

2-415

2013 Opinions

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OPINION NO. 2013-044

Syllabus:

2013-044

Revenue derived from a public recycling drop-off program that is funded with disposal fees received by a joint solid waste management district under R.C. 3734.57(B) and (E) is not required to be deposited into the special fund established under R.C. 3734.57(G) and used only for the purposes enumerated therein.

To: Ryan Styer, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio

By: Michael DeWine, Ohio Attorney General, December 20, 2013

You have requested an opinion about the expenditure of moneys by the board of directors of a joint solid waste management district (JSWMD). According to your letter, Tuscarawas County participates in a JSWMD that operates a public recycling drop-off program.¹ The program is funded with disposal fees received by the JSWMD under R.C. 3734.57(B) and (E).²

Under the program, the JSWMD collects at various locations recyclable materials, e.g., aluminum cans, plastic containers, steel cans, cardboard, and newspapers. The JSWMD then sells the recyclable materials to generate additional revenue for the JSWMD. Because the program is funded with disposal fees received by the JSWMD under R.C. 3734.57(B) and (E), you wish to know whether the district's board of directors may use the revenue derived from the program for purposes not enumerated in R.C. 3734.57(G).

As a creature of statute, the board of directors of a JSWMD "has only those powers expressly provided by statute or as may exist by necessary implication."

¹ The board of county commissioners of each county is required to either establish and maintain a county solid waste management district or participate in establishing and maintaining a joint solid waste management district (JSWMD). R.C. 343.01; R.C. 3734.52.

² R.C. 3734.57(G)(2) provides that disposal fees received by a JSWMD under R.C. 3734.57(B) and (E) may be used by the district's board of directors to develop and implement solid waste recycling or reduction programs. *See generally* R.C. 3734.57(B) (for the purposes specified in R.C. 3734.57(G), the solid waste management policy committee of a JSWMD may levy fees upon the disposal of solid wastes at a solid waste disposal facility located within the district); R.C. 3734.57(E) (disposal fees levied by a JWSMD under R.C. 3734.57(B) "shall be collected by the owner or operator of the solid waste disposal facility where the wastes are disposed of as a trustee for the . . . joint district . . . Moneys from the fees levied [by a JWSMD] under [R.C. 3734.57(B)] shall be forwarded to the . . . board of directors of the district in accordance with rules adopted under [R.C. 3734.57(H)]"). *See generally also* R.C. 343.022(A) (the board of directors of a JWSMD "may enter into a contract or agreement with the owner or operator of a solid waste facility, or with persons collecting or transporting solid wastes, to establish and collect on behalf of the district . . . disposal fees to be used by the district for the purposes set forth in [R.C. 3734.57(G)(1)-(10)]").

2003 Op. Att’y Gen. No. 2003-012 at 2-94. Also, when a statute limits the purposes for which particular moneys of a JSWMD may be used, the JSWMD’s board of directors is prohibited from using the moneys for a purpose not listed in the statute. *See* 2002 Op. Att’y Gen. No. 2002-031 at 2-206 (“[p]ublic money may be expended only by clear authority of law and in compliance with applicable statutory provisions”); 2000 Op. Att’y Gen. No. 2000-039 at 2-240 (“[i]t is a long-established principle that where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions”). *See generally State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (all “public moneys . . . constitute a public trust fund Said trust fund can be disbursed only by clear authority of law”). Accordingly, if R.C. 3734.57(G) governs the use of revenue derived from a public recycling drop-off program that is funded with disposal fees received by a JSWMD under R.C. 3734.57(B) and (E), the district’s board of directors must use the revenue for only the purposes enumerated in R.C. 3734.57(G).³

R.C. 3734.57(G) states, in pertinent part:

Moneys received by the . . . board of directors under [R.C. 3734.57(E)]⁴ or [R.C. 3734.571, R.C. 3734.572, R.C. 3734.573, or R.C. 3734.574] shall be paid to . . . the county treasurer or other official designated by the board of directors in a joint district and kept in a separate and distinct fund to the credit of the district Moneys in the special fund of the . . . joint district arising from the fees levied under [R.C. 3734.57(B)] and the fee levied under [R.C. 3734.573(A)] shall be expended by the . . . directors of the district in accordance with the district’s solid waste management plan or amended plan approved under [R.C. 3734.521, R.C. 3734.55, or R.C. 3734.56] exclusively for the . . . purposes [listed in this division]. (Footnote added.)

Pursuant to R.C. 3734.57(G), disposal fees received by a JSWMD under R.C. 3734.57(B) and (E), and other fees received by a JSWMD under R.C. 3734.571-.574, are required to be deposited into a special fund and used for various purposes. As explained in 1997 Op. Att’y Gen. No. 97-043 at 2-260 and 2-261:

Moneys paid to a joint district pursuant to R.C. 3734.57(G) come

³ The purposes enumerated in R.C. 3734.57(G) for which disposal fees received by a JSWMD under R.C. 3734.57(B) and (E) may be used include, but are not limited to, (1) preparing the district’s solid waste management plan; (2) implementing the plan or an amended plan; (3) providing financial assistance to boards of health for various services; (4) providing financial assistance to counties, municipal corporations, and townships for road maintenance; (5) providing financial assistance to local law enforcement agencies having jurisdiction within the district for enforcing anti-littering laws and ordinances; and (6) paying any expenses that are agreed to, awarded, or ordered to be paid under R.C. 3734.35.

⁴ R.C. 3734.57(E) requires the disposal fees levied by a JSWMD under R.C. 3734.57(B) to be paid to the district.

from various sources and may be used for various purposes. Two of the major sources are the tiered disposal fee, authorized by R.C. 3734.57(B), and the generation fee, authorized by R.C. 3734.573(A). R.C. 3734.57(G) requires that moneys in the special fund arising from the tiered disposal fee and the generation fee be expended in accordance with the district's solid waste management plan exclusively for the purposes listed in R.C. 3734.57(G)(1)-(10).

Moneys from certain other sources are also expressly required to be paid to the joint district pursuant to R.C. 3734.57(G). These moneys include joint use agreement fees under R.C. 3734.571, which may be used for the purposes specified in R.C. 3734.57(G)(1) and (2); export fees under R.C. 3734.572, which may be used for plan preparation, plan implementation, and inspection of in-district transfer facilities by a board of health; and continuation or other fees under R.C. 3734.574, which may be used for the purposes specified in R.C. 3734.57(G)(1)-(10) and the purposes specified in R.C. 3734.551. (Footnotes omitted.)

The moneys deposited into the special fund established under the first sentence of R.C. 3734.57(G) thus are the disposal, generation, and other types of fees a JSWMD receives under R.C. 3734.57-.574. In other words, the first sentence of R.C. 3734.57(G) applies only to the specific fees described therein, rather than other types of moneys collected by the district.⁵ The first sentence of R.C. 3734.57(G) therefore does not require revenue derived from a JSWMD's public recycling drop-off program to be deposited into the special fund established for the disposal, generation, and other types of fees the district receives under R.C. 3734.57-.574.

Moreover, the language of R.C. 3734.57(G) stating that moneys in a special fund of a JSWMD "arising from" the fees levied under R.C. 3734.57(B) and R.C. 3734.573(A) must be used for only the purposes listed in R.C. 3734.57(G)(1)-(10) does not require revenue derived from a recycling program that is funded with moneys from the special fund to be used in the same manner as the moneys in the special fund. In a similar situation involving interest earned on fees received by a JSWMD under R.C. 3734.57(B), 1997 Op. Att'y Gen. No. 97-043 determined that the term "arising from," as used in R.C. 3734.57(G), does not require the interest to be deposited into the special fund established under R.C. 3734.57(G) and used for the purposes listed in R.C. 3734.57(G)(1)-(10).

To reach this conclusion, the opinion reasoned as follows:

It may be argued that the words "arising from" include both fees collected [under R.C. 3734.57(B) and R.C. 3734.573(A)] and inter-

⁵ A JSWMD may derive revenue from sources other than the disposal, generation, and other types of fees a JSWMD receives under R.C. 3734.57-.574. See R.C. 343.07-.08; R.C. 343.99; 1997 Op. Att'y Gen. No. 97-043 at 2-260 n.7; 1997 Op. Att'y Gen. No. 97-043 at 2-264 n.14.

est earned on those fees. Under this argument, interest earned on the tiered disposal fee and the generation fee should be paid into the special fund created to hold those fees, to be expended for the purposes for which those fees may be expended

* * *

While the argument that “arising from” includes interest is similar to the exception for interest earned on motor vehicle fuel tax proceeds, the language is different. Ohio Const. art. XII, § 5a speaks of “moneys derived from fees, excises, or license taxes,” thereby encompassing both the fees, excises, and taxes and their earnings. In contrast, R.C. 3734.57(G) refers to “[m]oneys in the special fund of the . . . joint district arising from” the specified fees. The moneys that are in the special fund are those that are placed there in accordance with the relevant statutes. No statute provides for placing interest income into the special fund. Rather, the term “arising from” seems to be used to distinguish among the various moneys included under R.C. 3734.57(G) and to prescribe certain uses (those listed in R.C. 3734.57(G)(1)-(10)) only for proceeds of the tiered disposal fee and the generation fee. Therefore, we reject the argument that the words “arising from” require that interest earned on the tiered disposal fee and the generation fee must be credited to the joint district’s special fund. (Citations omitted.)

1997 Op. Att’y Gen. No. 97-043 at 2-264 and 2-265; see *Stark-Tuscarawas-Wayne Joint Solid Waste Mgmt. Dist. v. Republic Servs. of Ohio II, LLC*, Case No. 2004-CA-00099, 2004 WL 2406553 (Stark County Oct. 25, 2004).

We agree with the reasoning espoused in 1997 Op. Att’y Gen. No. 97-043 to support the conclusion that the term “arising from,” as used in R.C. 3734.57(G), is not intended to encompass future revenue generated by fees deposited into the special fund established under R.C. 3734.57(G). Instead, R.C. 3734.57(G) governs only the use of disposal, generation, and other types of fees deposited into the special fund.

Furthermore, like the situation addressed in 1997 Op. Att’y Gen. No. 97-043, neither R.C. 3734.57(G) nor any other provision of law requires revenue derived from a recycling program that is funded with disposal fees received by a JSWMD under R.C. 3734.57(B) and (E) to be deposited into the special fund established under R.C. 3734.57(G). As this revenue is not in that special fund, R.C. 3734.57(G) does not prescribe or limit how the revenue may be used. Accordingly, revenue derived from a public recycling drop-off program that is funded with disposal fees received by a JSWMD under R.C. 3734.57(B) and (E) is not required to be deposited into the special fund established under R.C. 3734.57(G) and used only for the purposes enumerated therein.

In conclusion, it is my opinion, and you are hereby advised that revenue derived from a public recycling drop-off program that is funded with disposal fees received by a joint solid waste management district under R.C. 3734.57(B) and (E)

is not required to be deposited into the special fund established under R.C. 3734.57(G) and used only for the purposes enumerated therein.