

April 16, 2019

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS:

2019-013

1. A board of county commissioners may give revenue generated from a tax levied in accordance with R.C. 5705.19(Y) to the county's transit board for use by the county transit board in procuring transportation services for the county's senior citizens.
2. The county transit board may credit the tax revenue to a fund that contains other county transit system revenues, so long as the county transit board adopts accounting procedures that enable the board to identify and track the expenditure of the tax revenue.
3. The county transit board may use the tax revenue as "matching funds" in applying for federal funds under a federal grant program, so long as the county transit board uses the pledged tax revenue to pay only those costs that are attributable to purposes consistent with R.C. 5705.19(Y).
4. Federal moneys awarded to a county transit board pursuant to a federal grant application to the Federal Transit Administration in which the county transit board pledges the tax revenue as "matching funds," may be used in any manner set forth in the federal statutes establishing the grant assistance program, by the rules and regulations promulgated by the Federal Transit Administration in administering the program, and in any manner further specified by the Federal Transit Administration in awarding the federal grant moneys to the board.
5. The county transit board may use the tax revenue to pay a third party private vendor to provide transportation services to the county, so long as the tax revenue is used to pay for that portion of the vendor's fee that is being charged for the provision of transportation services to the county's senior citizens.



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OPINION NO. 2019-013

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W.
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

We have received your request for an opinion regarding the use of revenue derived from a tax levied by a board of county commissioners for the support of the county's senior citizens. Pursuant to R.C. 5705.19(Y), the Trumbull County Board of Commissioners has levied a tax in excess of the ten-mill limitation "[f]or providing or maintaining senior citizens services or facilities." The Trumbull County Board of Commissioners proposes an arrangement whereby all or some portion of the funds generated by the levy will be given to the Trumbull County Transit Board, and the transit board will use the revenue from that tax to procure transportation services for the county's senior citizens. The Trumbull County Transit Board is a county transit board whose members are appointed by the Trumbull County Board of Commissioners pursuant to R.C. 306.01(A) to operate the county's transit system.

You ask several questions about this proposed arrangement. After several discussions with your office, we have rephrased and renumbered your questions as follows:

1. May a board of county commissioners give to a county transit board within the same county, revenue derived from a tax levied by the board of county commissioners pursuant to R.C. 5705.19(Y) to procure transportation services for the county's senior citizens?
2. If so, upon receipt of the tax revenue, may the county transit board commingle the tax revenue with other county transit board revenues?
3. If the county transit board uses the tax revenue as "matching funds" in an application for a federal grant, is the county transit board restricted in using the matching funds only for the purposes set forth in R.C. 5705.19(Y)?

4. If the county transit board uses the tax revenue as matching funds in an application for a federal grant, is the use of any awarded federal grant moneys restricted by R.C. 5705.19(Y)?¹
5. May the county transit board use revenue derived from a tax levied pursuant to R.C. 5705.19(Y) to pay a private vendor for the provision of transportation services if the vendor uses the revenue to provide transportation services to persons in the county who are not senior citizens?

I. Whether a Board of County Commissioners May Transfer Special Tax Revenue to a County Transit Board

Your first question asks whether a board of county commissioners that has levied a tax pursuant to R.C. 5705.19(Y) may give to a county transit board within the same county the revenue derived from that tax to procure transportation services for the county's senior citizens.

A tax levied pursuant to R.C. 5705.19(Y) is a special tax levy. *See* 2014 Op. Att'y Gen. No. 2014-024, at 2-219; *see also* R.C. 5705.04; R.C. 5705.10(C). Therefore, the revenue derived from this tax (hereinafter, "senior levy revenue") is to be credited to a special fund and used only for the purposes for which the levy was made. *See* Ohio Const. art XII, § 5; R.C. 5705.04; R.C. 5705.09(D); R.C. 5705.10(C). A special levy's purpose may be limited by the authorizing statute and further limited by the language of the resolution authorizing the levy or by the ballot presented to electors. *See* 2013 Op. Att'y Gen. No. 2013-005, at 2-051. You have given us no indication that in this instance, the special levy's purpose is further limited by the levy resolution or ballot. Therefore, for the purpose of this opinion, we will consider the language of R.C. 5705.19(Y) to determine whether a board of county commissioners may use senior levy revenue in the way you propose.

R.C. 5705.19(Y) authorizes a board of county commissioners, as the taxing authority for a county, to levy a tax in excess of the ten-mill limitation to "provid[e] or maintain[] senior citizens services or facilities as authorized by ... [R.C. 307.85]," among other statutes.² R.C.

¹ This question, while not posed in your letter, was raised during a conversation we had with your office.

² R.C. 5705.19(Y) also authorizes a board of county commissioners to levy a tax in excess of the ten-mill limitation to "provid[e] or maintain[] senior citizens services or facilities as authorized by [R.C. 307.694]." R.C. 307.694 authorizes a board of county commissioners to "spend moneys for the support of senior citizens services or facilities." Pursuant to R.C. 307.694, a board of county commissioners may spend moneys for the support of senior citizens services by appropriating senior levy revenue to pay expenses incurred by a county transit board in procuring senior citizens services. However, in this instance, it is our understanding that the Trumbull County Board of Commissioners plans to give senior levy revenue to the Trumbull County Transit Board under the circumstances set forth in R.C. 307.85(A) or (B). Therefore, our

307.85(A) and (B) confer broad authority upon a board of county commissioners to cooperate with, and give financial assistance to, other public and private agencies and organizations, in the course of establishing, operating, or otherwise supporting certain types of programs.

R.C. 307.85(A) authorizes a board of county commissioners to give financial assistance to other governmental or private agencies in the course of supporting or implementing any federal program. R.C. 307.85(A) provides:

The board of county commissioners of any county may participate in, *give financial assistance to*, and cooperate with *other agencies or organizations, either private or governmental*, in establishing and operating any federal program enacted by the congress of the United States, *or with any such agency or organization that is receiving federal funds pursuant to a federal program*, and for such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state. (Emphasis added.)

Our opinions have interpreted R.C. 307.85(A) as authorizing a board of county commissioners to take any action, within constitutional and statutory limitations, that is reasonably related to the establishment or operation of a federal program. *See, e.g.*, 2004 Op. Att’y Gen. No. 2004-016, at 2-134 to 2-135; 1978 Op. Att’y Gen. No. 78-060, at 2-149; 1971 Op. Att’y Gen. No. 71-092 (syllabus, paragraph 2).

Alternatively, R.C. 307.85(B) authorizes a board of county commissioners to cooperate with, and give financial assistance to, other public or nonprofit private agencies “in establishing and operating programs to provide necessary social services to meet the needs of older persons.” R.C. 307.85(B) provides:

The board [of county commissioners] may participate in, *give financial assistance to*, and cooperate with *public and nonprofit private agencies and organizations* in establishing and operating programs to provide necessary social services to meet the needs of older persons or to provide emergency food to needy persons, *in addition to those agencies and organizations receiving federal funds for this purpose*. ... If the board finds that any agency or organization receiving funds pursuant to this division uses them for any purpose not clearly a public purpose authorized by this division and by the board or fails to comply with accounting and reporting requirements under [R.C. Chapter 117], the board shall withhold future payments of such funds to such agency or organization. (Emphasis added.)

opinion focuses on the authority conferred upon a board of county commissioners in R.C. 307.85.

Black's Law Dictionary 63 (7th ed. 1999) defines "government" or "public agency" to mean "[a] governmental body with the authority to implement and administer particular legislation." *See also* R.C. 102.01(C)(1) (defining "public agency" for purposes of R.C. Chapter 102 to include "any ... board, ... or other instrumentality of ... a county"). A county transit board is a creature of statute, the members of which are appointed by the board of county commissioners to operate the county's transit system in accordance with the provisions in R.C. Chapter 306. *See* R.C. 306.01. A county transit board is undoubtedly a "governmental" or "public" agency within the meaning of R.C. 307.85(A) or (B).

It is our understanding that the Trumbull County Transit Board receives federal funds pursuant to a variety of transit assistance programs administered by the Federal Transit Administration. *See, e.g.*, 49 U.S.C. § 5307; 49 U.S.C. § 5309; 49 U.S.C. § 5310. If the procurement of transportation services to the county's senior citizens is reasonably related to one of the transit assistance programs for which the Trumbull County Transit Board receives federal moneys, R.C. 307.85(A) authorizes the Trumbull County Board of Commissioners to give senior levy revenue to the Trumbull County Transit Board for this purpose. Alternatively, pursuant to R.C. 307.85(B), the Trumbull County Board of Commissioners may give senior levy revenue to the Trumbull County Transit Board to procure transportation services for the county's senior citizens, if the service procured by the county transit board is reasonably related to the establishment or operation of a program designed to provide necessary social services to meet the needs of older persons. If the Trumbull County Board of Commissioners gives senior levy revenue to the county transit board under R.C. 307.85(B) and finds that the county transit board uses the revenue for purposes other than those authorized by R.C. 307.85(B) and by the board of county commissioners, or fails to comply with accounting and reporting requirements under R.C. Chapter 117, the board of county commissioners is required to withhold future payments of such revenue to the county transit board.

A board of county commissioners that gives senior levy revenue to a county transit board under R.C. 307.85(A) or (B) is responsible for taking measures to ensure that the county transit board uses senior levy revenue to provide or maintain senior citizens services or facilities in the circumstances set forth in those divisions. It is our understanding that the Trumbull County Board of Commissioners plans to enter into an agreement with the Trumbull County Transit Board pursuant to which the Board of County Commissioners will allocate senior levy revenue to the transit board and which will specify the purposes for which the senior levy revenue may be used. In such an instance, the county transit board may use senior levy revenue only as specified in the grant agreement with the board of county commissioners and within the limitations imposed under R.C. 5705.19(Y) and the terms of the levy enactment.

II. Whether a County Transit Board May Commingle Senior Levy Revenue with Other Transit Board Revenue

Your second question asks whether a county transit board that receives senior levy revenue from the board of county commissioners may commingle the revenue with other county transit system revenues. *Black's Law Dictionary* 264 (7th ed. 1999) defines "commingle" to

mean “[t]o put together in one mass, as when one mixes separate funds or properties into a common fund.” Therefore, we interpret your question as asking whether a county transit board may credit senior levy revenue to a fund to which other county transit system revenues are credited, as opposed to establishing a special fund to which only senior levy revenue may be credited.

The provisions in R.C. Chapter 5705 require “subdivisions” to establish special funds into which revenue derived from special tax levies shall be paid. R.C. 5705.09; R.C. 5705.10. The term “subdivision” is defined in R.C. 5705.01(A) to include the county and other delineated political subdivisions, as well as certain special districts that possess the authority to levy taxes within their boundaries. A county transit board is not a “subdivision” within the meaning of R.C. 5705.01(A) and is therefore not required by the provisions in R.C. Chapter 5705 to establish special funds to which special tax levies of the county must be credited. Instead, R.C. 306.11 gives a county transit board “exclusive control over the county transit system’s budgets, appropriations, collections, custody, and application of its revenues *or other funds received by it.*” (Emphasis added.) Accordingly, if a county transit board receives senior levy revenue as authorized by R.C. 307.85, the county transit board may credit the senior levy revenue to any county transit system fund or account it desires, notwithstanding whether the fund contains other county transit system revenues.

Significantly, however, a county transit board must account for the senior levy revenue, even after crediting the revenue to a fund to which other county transit system revenues are credited. This means that a county transit board must establish adequate accounting measures in the county transit board’s bookkeeping that ensures senior levy revenue may be identified separately from other county transit system revenues in the same fund (e.g., a line item under a fund in a ledger), and to ensure that expenditures of senior levy revenue are for lawful purposes. Therefore, while a county transit board may credit senior levy revenue to a fund containing other county transit system revenues, a county transit board must account for the senior levy revenue to ensure it is used for the purpose for which it was levied. We note further that the transit board’s separate accounting of senior levy revenue is unlikely to prove unduly burdensome.

III. The Use of Senior Levy Revenue as “Matching Funds” in an Application for a Federal Grant

Your third and fourth questions arise from the county transit board’s use of senior levy revenue as “matching funds” in an application for a federal grant. Typically, federal grant programs require a state or local entity submitting a grant application to pledge a portion of local moneys to the project for which it is requesting federal moneys. *See, e.g.,* FTA Cir. 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions*, p. III-16 (July 7, 2014), available at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/C9070_1G_FINAL_circular_4-20-15%281%29.pdf (last visited, Mar. 19, 2019). The moneys pledged by the applicant to cover its portion of the project’s costs are referred to as “matching funds.”

You have explained that the county transit board plans to pledge senior levy revenue as “matching funds” in a grant application to the FTA. You ask whether the county transit board may use senior levy revenue pledged as matching funds for purposes other than those set forth in R.C. 5705.19(Y), and also whether federal grant moneys awarded to the county transit board upon approval of the board’s application are restricted to being used only for the purposes specified in R.C. 5705.19(Y).

Article XII, § 5 of the Ohio Constitution states unequivocally that “every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” *See also* R.C. 5705.04(E); R.C. 5705.09(D); R.C. 5705.10(C). As we explained in the course of answering your first question, R.C. 5705.19(Y) limits the use of senior levy revenue to “providing or maintaining senior citizens services or facilities as authorized by” R.C. 307.85, among other statutes. Senior levy revenue may not be used for any other purpose. Therefore, if the county transit board uses senior levy revenue as “matching funds” in a grant application to the FTA, the county transit board must ensure that it pledges to pay only that percentage of the project’s costs attributable to the provision or maintenance of senior citizens services or facilities.³ *See* Ohio Const. art. XII, § 5; R.C. 5705.19(Y).

For example, a county transit board may apply to the FTA for an urbanized area formula grant under 49 U.S.C. § 5307(a)(1)(A) for the purpose of funding, among other things, the rehabilitation of a bus. *See* 49 U.S.C. § 5302(3)(B). Pursuant to federal law, federal moneys awarded for such a project may not be used to pay more than 80% of the project’s net cost. 49 U.S.C. § 5307(d)(1). Thus, if the county transit board were to apply for an urbanized area formula grant to fund such a project, the board would have to pledge matching funds to cover the remaining 20% of the project’s net cost. The county transit board would be able to use senior levy revenue only as matching funds in this instance if the board were confident that 20% of the net cost of rehabilitating the bus would be attributable to the provision or maintenance of senior citizens services or facilities. In other words, the county transit board would be able to use senior levy revenue to satisfy 20% of the net cost of rehabilitating the bus if the county transit board were able to confidently estimate that the bus would be used to transport the county’s senior citizens at least 20% of the time.

In contrast, federal moneys that are awarded to the county transit board are not restricted in use as are senior levy revenues. R.C. 5705.19(Y) governs the use of revenue derived from a tax levied by a board of county commissioners pursuant to that statute. Federal grant moneys are not derived from a tax levied pursuant to R.C. 5705.19(Y) and therefore, the use of such moneys is not restricted by that statute. Rather, the purposes for which federal grant moneys may be

³ The General Assembly codified this principle in Am. Sub. H.B. 62, 133rd Gen. A. (2019), through the enactment of R.C. 306.051. Pursuant to that statute, effective July 3, 2019, revenue derived from a county tax levy may be used as matching funds in an application for a federal grant, “only to the extent that such use of the funds is consistent with the purpose for which the tax was levied.”

used are controlled by the federal statutes governing the transit assistance program, the rules and regulations promulgated by the FTA, and any further restrictions specifically set forth by the FTA in awarding the grant. *See, e.g.*, 49 U.S.C. § 5310; FTA Cir. 9070.1G.

IV. Whether the County Transit Board May Use the Tax Revenue to Pay a Private Entity Providing Transportation Services to the County, Including a Transportation Service for Senior Citizens

Your fifth question asks whether a county transit board may use senior levy revenue to pay a private vendor for the provision of transportation services if the vendor uses the revenue to provide transportation services to persons in the county who are not senior citizens, in addition to transportation services that serve senior citizens.

R.C. 5705.19(Y) limits the use of senior levy revenue to “providing or maintaining senior citizens services or facilities as authorized by [R.C. 307.694 or R.C. 307.85].” *See also* Ohio Const. Art. XII, § 5. The provision of transportation services to persons other than the county’s senior citizens is not a “senior citizens service[]” within the meaning of R.C. 5705.19(Y). Therefore, senior levy revenue may not be used to pay a private vendor to provide transportation services to persons other than the county’s senior citizens. Senior levy revenue may be used only to pay the private vendor for that portion of the private vendor’s fee that is being charged for the provision of transportation services to the county’s senior citizens.

A private vendor sets the price for providing transportation services to the county’s senior citizens. In setting a price for such services, a private vendor may consider, in good faith, a multitude of factors, including the anticipated cost to the vendor in providing the service and whether the vendor’s bid for the contract will be competitive. *See* R.C. 307.86. Once moneys are given to the vendor as payment for the provision of such services, the moneys become part of the vendor’s private business revenues. So long as a county transit board uses senior levy revenue (in good faith and pursuant to proper competitive bidding procedures), to pay the price set by the vendor for the provision of transportation services to the county’s senior citizens, and does not use the revenue to provide transportation services to non-senior citizens of the county, the private vendor is not restricted by R.C. 5705.19(Y) in the use of the senior levy revenue which the vendor receives.

V. Conclusions

In sum, it is our opinion, and you are hereby advised that:

1. A board of county commissioners may give revenue generated from a tax levied in accordance with R.C. 5705.19(Y) to the county’s transit board for use by the county transit board in procuring transportation services for the county’s senior citizens.
2. The county transit board may credit the tax revenue to a fund that contains other county transit system revenues, so long as the county transit board

adopts accounting procedures that enable the board to identify and track the expenditure of the tax revenue.

3. The county transit board may use the tax revenue as “matching funds” in applying for federal funds under a federal grant program, so long as the county transit board uses the pledged tax revenue to pay only those costs that are attributable to purposes consistent with R.C. 5705.19(Y).
4. Federal moneys awarded to a county transit board pursuant to a federal grant application to the Federal Transit Administration in which the county transit board pledges the tax revenue as “matching funds,” may be used in any manner set forth in the federal statutes establishing the grant assistance program, by the rules and regulations promulgated by the Federal Transit Administration in administering the program, and in any manner further specified by the Federal Transit Administration in awarding the federal grant moneys to the board.
5. The county transit board may use the tax revenue to pay a third party private vendor to provide transportation services to the county, so long as the tax revenue is used to pay for that portion of the vendor’s fee that is being charged for the provision of transportation services to the county’s senior citizens.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST
Ohio Attorney General