OPINION NO. 85-047

Syllabus:

1. Summit County may, through an amendment of its charter or through a council ordinance or resolution, impose powers and duties not provided by statute upon its county treasurer, although such a charter amendment, ordinance, or resolution may not conflict with any constitutional provision.

2. Ohio Const. art. VIII, §6 prohibits Summit County from amending its charter or from passing an ordinance or resolution in order to empower the county treasurer to establish a program whereby an individual prepays his real property taxes into an interest bearing escrow account, where the interest earned on such account is paid in part to the taxpayer and the remainder to the county.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985

I have before me your request for my opinion on the question whether the Summit County Treasurer may "set up an escrow fund program for prepayment of taxes in an interest-bearing account and rebate part of the interest earned to the taxpayer placing such funds in the account." You state in your request that:

> The Treasurer of Summit County. . .has expressed an interest in setting up an escrow fund which would permit taxpayers to pay their taxes in advance and have their money held in escrow until such time as their taxes become due. The money would then be taken out of escrow and applied to their current tax balance. In addition, the Treasurer desires to place the funds in an interest-bearing account and split the interest earned between the taxpayer and the County.

From material sent with your request, it is my understanding that the concern which has given rise to this proposal is that state law does not permit taxpayers to make, or county treasurers to accept, partial payments towards current real property taxes,[1] and that it is difficult for taxpayers to save for their semi-annual tax payments. It is felt that a program where installment payments of any amount may be accepted in advance and held in an escrow account until the current collection opens would comply with state law "since only payments for the total amount of the current taxes would be transferred from the escrow fund and applied." It is also noted that, "monies held for accounts having insufficient balances would remain in the fund until additional payments cover the amount of the current charges. Penalties and interest would accrue to these deficient accounts as they do on any unpaid account."

In analyzing your question, it is first necessary for me to discuss the nature of Summit County's authority as a charter county.

Counties in Ohio have traditionally been viewed as dependent subdivisions of the state, quasi-corporate in nature, with only those powers expressly granted by statute, or necessarily implied therefrom. See State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). However, pursuant to Ohio Const. art. X, §3, the people of any county may increase the authority of their county government by adopting a charter. Every county which adopts a charter is a body politic and corporate. R.C. 301.22. Article X, §3, provides that a county charter must "provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election." The charter must also "provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." The Summit County charter has so provided in section 1.01 of Article I. Pursuant to Ohio Const. art. X, §3, a charter "may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation. . . ." The Summit County charter, art. I, §§1.01, 1.02, has provided for the concurrent exercise (with cities within the county) of those powers vested in municipalities by the Ohio Constitution and general law. By so providing, the charter has achieved for Summit County not only the authority to prescribe its form of government and to exercise those powers and duties granted to counties, but also the authority to exercise those powers of local self-government and police and sanitary powers granted to municipalities. See Ohio Const. art. XVIII, §3. See also State ex rel. Howland v. Krause, 130 Ohio St. 455, 200 N.E. 512 (1936).

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[1] R.C. 323.15 provides in part that with certain exceptions not relevent herein, "no person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate at the times provided by [law]."

Section 4.01 of Article IV of the Summit County charter currently provides that: "The Auditor, Treasurer, Clerk of the Court of Common Pleas, Coroner, County Engineer, Prosecuting Attorney, Recorder and Sheriff of the County shall be elected and their salaries and duties shall continue to be determined in the manner provided by general law, and they shall also perform such other duties as may be provided by ordinance or resolution of the County Council." There is no statutory provision for the establishment of an escrow account as described in your request. As discussed above, however, because Summit County is a charter county which has adopted those powers vested in municipal corporations, it has the authority to impose powers and duties not provided by statute upon its officers. See State ex rel. Frankenstein v. Hillenbrand, 100 Ohio St. 339, 126 N.E. 309 (1919) (the qualifications, duties, and manner of selecting municipal officers come within a municipality's powers of local self-government). Thus, Summit County could, through a charter amendment or through a council ordinance or resolution, impose additional powers and duties upon the county treasurer, including the power to establish an escrow account into which taxpayers may prepay their taxes.

The exercise by Summit County of its municipal power may not, however, come into conflict with any constitutional provision.[2] See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); Village of Brewster v. Hill, 128 Ohio St. 343, 190 N.E. 766 (1934); State ex rel. Campbell v. Cincinnati Street Railway Co., 97 Ohio St. 283, 119 N.E. 735 (1918). One pertinent limitation on Summit County's authority to establish an escrow program may be found in Ohio Const. art. VIII, §6, which provides in part:

> No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association. . . . (Emphasis added.)

Although specifically directed towards joint stock companies, corporations, and associations, art. VIII, §6 has been interpreted as prohibiting aid to individuals as well as to the entities specified in §6. See Markley v. Village of Mineral City, 58 Ohio St. 430, 51 N.E. 28 (1898); Walker v. City of Cincinnati, 21 Ohio St. 14 (1871).

Ohio Const. art. VIII, §6 has been given an expansive interpretation. See 1978 Op. Att'y Gen. No. 78-040; 1977 Op. Att'y Gen. No. 77-047. See also State ex rel. Saxbe v. Brand, 176 Ohio St. 44, 197 N.E.2d 328 (1964).[3] The initiation and direct participation of a county in a plan, a prominent feature of which is to provide interest income to individual taxpayers clearly constitutes action which involves the county in raising money for or aiding private individuals. See State ex rel. Saxbe v. Brand; Village of Brewster v. Hill; Alter v. City of Cincinnati, 56 Ohio St. 47, 46 N.E. 69 (1897); 1976 Op. Att'y Gen. No. 76-008.

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2 Ohio Const. art. XVIII, §13 authorizes the General Assembly to pass laws "to limit the power of municipalities to levy taxes and incur debts for local purposes. . . ." Although the General Assembly may limit a municipality's power to levy taxes, it does not appear that laws could be passed pursuant to art. XVIII, §13 to limit the power of a municipality to establish a plan for the collection of taxes. See generally Dies Electric Co. v. City of Akron, 62 Ohio St. 2d 322, 405 N.E.2d 1026 (1980); State ex rel. City of Dayton v. Bish, 104 Ohio St. 206, 135 N.E. 816 (1922).

3 State ex rel. Saxbe v. Brand, 176 Ohio St. 44, 197 N.E.2d 328 (1964) dealt with §4, rather than §6 of article VIII of the Ohio Constitution, which prohibits the state from lending its aid and credit to private enterprises in language similar to that of §4. It has been concluded that cases interpreting either §4 or §6 may be used in construing the other provision. See State ex rel. Eichenberger v. Neff, 42 Ohio App. 2d 69, 330 N.E.2d 454 (Franklin County 1974); 1978 Op. Att'y Gen. No. 78-040; 1977 Op. Att'y Gen. No. 77-047.

The courts have recognized an exception to the prohibition against the state and its political subdivisions lending their aid and credit.[4] Aid and credit may be given to public organizations and private nonprofit organizations, as long as the aid is used for a public purpose. See Bazell v. City of Cincinnati; State ex rel. Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955); State ex rel. Kauer v. Defenbacher, 153 Ohio St. 268, 91 N.E.2d 512 (1950); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922); State ex rel. Taft v. Campanella, 51 Ohio App. 2d 237, 368 N.E.2d 76 (Cuyahoga County 1977), aff'd, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977). I am unaware of any judicial decision specifically addressing the question whether an individual could qualify for aid under this public purpose exception to §4 and §6. See 1979 Op. Att'y Gen. No. 79-055; 1977 Op. Att'y Gen. No. 77-049. See also Op. No. 78-040 at 2-96 ("[t]he public purpose exception depends upon the nature of the recipient or partner as well as the purpose for which the funds are spent or the venture is undertaken"). Cf. State ex rel. Ach v. Braden, 125 Ohio St. 307, 181 N.E. 138 (1932) (holding a poor relief act constitutional, declaring that it is a public purpose of the state to protect its needy citizens); State ex rel. Walton v. Edmondson, 89 Ohio St. 351, 106 N.E. 41 (1913) (relief of the poor is a proper public purpose); 1946 Op. Att'y Gen. No. 769, p. 133 (state support of children deprived of parental support is an expenditure of public funds for a public purpose). In 1973 Op. Att'y Gen. No. 73-018 and 1973 Op. Att'y Gen. No. 73-038, however, it was held that advances of travel expense money and compensation, respectively, to state employees served a public purpose, and thus were not violative of art. VIII, §4.

Even assuming that individuals may receive aid under the public purpose exception, there appears to be no public purpose served in this case. I recognize that legislative authorities have broad discretion in determining what constitutes a public purpose, and such determination will be judicially overturned only in cases where the determination is manifestly arbitrary or unreasonable. See Bazell v. City of Cincinnati; State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951); State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835 (1951); 1982 Op. Att'y Gen. No. 82-006; Op. No. 77-049. The Ohio Supreme Court, however, has held that no public purpose is served by grants to private individuals where there are no limitations placed on the use of such money. See Auditor of Lucas County v. State ex rel. Boyles, 75 Ohio St. 114, 78 N.E. 955 (1906) (public relief may be provided for the blind, but limitations must be placed on such relief to insure it is used by needy individuals for support). See also State ex rel. Dickman v. Defenbacher; 1971 Op. Att'y Gen. No. 71-044. Cf. State ex rel. Walton v. Edmondson, 89 Ohio St. at 357, 106 N.E. at 43 (the poor relief act in question was constitutional in that it adopted "[e]very safeguard. . .to secure the application of the money to the support of the individual and to prevent him from becoming a public charge. It is not an indeterminate annuity, unlimited in time or uncertain in its application"). More recently the court has recognized that the private interests of individuals may be advanced "incidentally" by an expenditure of public funds provided the "primary object" is to subserve a public purpose. State ex rel. McClure v. Hagerman, 155 Ohio St. at 324, 98 N.E.2d at 837. The requisite public purpose must have for its primary objective "the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the [state or political subdivision], the sovereign powers of which are used to promote such public purpose." Id., 155 Ohio St. at 325, 98 N.E.2d at 838. The plan in question does not meet this standard because its intent is to advance the taxing power and the plan is not required for the general good of all the inhabitants of the county. Even though the county would also benefit from the plan by receiving part of the interest earned on the escrow account and from the timely payment of taxes, the fact remains that the private interests of selected individuals would predominate in apparent violation of art. VIII, §6. See State ex rel. Ryan v. City Council of Gahanna, 9 Ohio St. 3d 126, 459 N.E.2d 208 (1984); State ex rel. Saxbe v. Brand; Village of Brewster v. Hill; Alter v. City of Cincinnati; Op. No. 78-040; Op. No. 77-049. Cf. 1981 Op. Att'y Gen. No. 81-

[4] Certain exceptions to art. VIII, §§4, 6 have also been provided in the state constitution. See, e.g., art. VI, §5; art. VIII, §13. There is no exception, however, which would apply to this situation.

092 (a school district may trade a commodity it possesses for something it needs, and such exchange does not violate art. VIII, §4); 1979 Op. Att'y Gen. No. 79-052 (art. VIII, §6 is not at issue in determining whether a board of county hospital trustees may lease office space to physicians since the physicians will be required to compensate the county for the use of the facilities); 1969 Op. Att'y Gen. No. 69-089 (a public body may pay a private entity for services actually rendered by such entity without violating art. VIII, §6). I note that the plan proposed by the Summit County Treasurer is an innovative idea, and one which is designed to assist the county's taxpayers. The evils which prompted the passage of art. VIII, §6 are certainly not apparent in this plan. See Walker v. City of Cincinnati. Nonetheless, the constitutional prohibition of art. VIII, §6 appears to apply in this instance, and I must conclude that the county treasurer may not establish an escrow account as described in your request, despite the beneficial nature of the program. See Op. No. 78-040.

In conclusion, it is my opinion, and you are advised, that:

1. Summit County may, through an amendment of its charter or through a council ordinance or resolution, impose powers and duties not provided by statute upon its county treasurer, although such a charter amendment, ordinance, or resolution may not conflict with any constitutional provision.

2. Ohio Const. art. VIII, §6 prohibits Summit County from amending its charter or from passing an ordinance or resolution in order to empower the county treasurer to establish a program whereby an individual prepays his real property taxes into an interest bearing escrow account, where the interest earned on such account is paid in part to the taxpayer and the remainder to the county.