

OPINION NO. 78-003**Syllabus:**

A county may budget funds for its Community Mental Health and Retardation Board, which are raised pursuant to an approved levy under R.C. 5705.22, in the ensuing fiscal year even though a portion of those funds will be accumulated in the ensuing fiscal year and spent subsequently, provided that such funds are accumulated for specific programs involving matching funds for that board.

To: Edward J. Sustersic, Belmont County Pros. Atty., St. Clairsville, Ohio
By: William J. Brown, Attorney General, January 9, 1978

I have before me your request for my opinion regarding the Community Mental Health and Retardation Board in Belmont County. From information which you have supplied, it is my understanding that the Board would like to apply for "Operations Grants" from the National Institute of Mental Health. These grants would be in the form of matching funds over an eight-year period. Under the grant program, the exact breakdown of federal and local contributions is as follows:

<u>Year</u>	<u>Federal</u>	<u>Local</u>
1	80%	20%
2	65%	35%
3	50%	50%
4	35%	65%
5	30%	70%
6	20%	80%
7	20%	80%
8	20%	80%

While current levies for the boards in each of the counties making up your joint county district would easily cover the local share for the first three years of the program, in order to cover the local share during the remaining years an accumulation of levy monies in those first three years is required.

Therefore, you have asked whether it would be permissible for the Community Mental Health and Retardation Board (hereinafter "648" Board) to accumulate excess monies over the first three years of the grant in order to provide needed funds for the balance of the grant.

As you indicate, a similar question was addressed by one of my predecessors in 1966 Op. Att'y Gen. No. 66-144. That opinion reached the following conclusion:

A board of township trustees may not accumulate the proceeds of a voted levy for fire protection . . . during the life of the levy, for expenditure at a later date.

Support for that conclusion was taken from numerous sections of R.C. Chapter 5705., the tax levy laws. However, the gist of those sections relied upon is that the county budget commission is not authorized to approve any budget which includes an appropriation which is unnecessary in the ensuing fiscal year. A succinct statement of the levy law on this subject is found in the following excerpt from 1947 Op. Att'y Gen. No. 1915, p. 261, concerning R.C. 5705.34:

The budget law contemplates that the taxing authorities of the respective subdivisions shall not levy taxes for unnecessary purposes, and this policy is particularly disclosed in [R.C. 5705.34] which provides that when the budget commission has completed its work it shall certify its action to the taxing authority of each subdivision and taxing unit, together with the county auditor's estimate of the rate of tax 'necessary to be levied,' and that each taxing authority by ordinance or resolution shall authorize the 'necessary' tax levies, and certify them to the county auditor.

...

It, of course, is the intent of the budget law that no more and no less taxes be levied than necessary for the financial needs of the county and its subdivisions.

Applying this test to the situation under consideration in the 1966 opinion, that is the proposal of the township to accumulate funds in the ensuing fiscal year in order to purchase fire equipment in a subsequent year, my predecessor concluded that expenditure was speculative and unnecessary for the ensuing year. He thus concluded that the expenditure was unauthorized.

In order to determine whether the accumulation of levy funds proposed by your request for the 648 Board is "necessary," examination must be made of that Board's powers and duties. R.C. 340.03 provides, in pertinent part, as follows:

Subject to rules and regulations of the director of mental health and mental retardation, the community mental health and retardation board, with respect to its area of jurisdiction . . . shall:

(A) Review and evaluate community mental health and retardation services and facilities and submit to the director of mental health and mental retardation, the board or boards of county commissioners, and the executive director of the program, recommendations for reimbursement from state funds as authorized by section 5119.62 of the Revised Code and for the provision of needed additional services and facilities with special reference to the state comprehensive mental health plan;

(B) Coordinate the planning for community mental health and retardation facilities, services, and programs seeking state reimbursement;

(C) Receive, compile and transmit to the department of mental health and mental retardation applications for state reimbursement;

(D) Promote, arrange, and implement working agreements with social agencies, both public and private, and with educational and judicial agencies;

...

(Emphasis added.)

From the foregoing it appears that one of the primary functions of the 648 Board is to arrange funding, both public and private. Therefore, expenses made to secure those funds are "necessary expenses" given the powers and duties of the 648 Board.

Where, as here, a county agency is empowered, in fact required, to seek out additional government funding for the conduct of its operations, then a budget which includes accumulation of monies in a current fiscal year in order to have sufficient monies for matching funds in subsequent fiscal years is a necessary expense in that current year. Unlike the situation described in 1966 Op. Att'y Gen. No. 66-144, the monies will be accumulated for a specific expense at a later date, with the ultimate sum needed readily discernible. Moreover, the net effect is to increase the funds available to the 648 Board without the necessity of an increase in county taxes. Finally, in a situation where matching funds are involved, the appropriation for an accumulation in the current fiscal year is in fact necessary to receive the federal funds in that year under the program. Therefore, the accumulation is, in a practical sense, a necessary expense in that year.

Accordingly, it is my opinion, and you are so advised that:

A county may budget funds for its Community Mental Health and Retardation Board, which are raised pursuant to an approved levy under R.C. 5705.22, in the ensuing fiscal year even though a portion of those funds will be accumulated in the ensuing fiscal year and spent subsequently, provided that such funds are accumulated for specific program involving matching funds for that board.