

December 16, 2020

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
Youngstown, Ohio 44503

SYLLABUS: 2020-005

The proceeds from the sale of real property that is titled in the name of a board of county commissioners, and that was purchased, maintained, renovated, repaired and improved through the years by a county board of developmental disabilities' levy funds, may be placed by the board of county commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites.



DAVE YOST

OHIO ATTORNEY GENERAL

Opinions Section
Office (614) 752-6417
Fax (614) 466-0013

30 East Broad Street, 26th Floor
Columbus, Ohio 43215
www.ohioattorneygeneral.gov

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OPINION NO. 2020-005

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
Administration Building, 6th Floor
21 West Boardman Street
Youngstown, Ohio 44503

Dear Prosecutor Gains:

You requested an opinion from my office regarding the proper disposition of proceeds obtained from an anticipated sale of county property. I have reworded your question as follows:

May the proceeds from the sale of real property that:

- (1) is titled in the name of a board of county commissioners, and
- (2) was purchased, maintained, renovated, repaired and improved through the years by a county board of developmental disabilities' levy funds

be placed by the board of county commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites?

I

You state that, in 1976, the Mahoning County Board of County Commissioners (“Commissioners”) acquired the real property at issue. The Commissioners planned to build on that property a facility for providing services to individuals with developmental disabilities. The Commissioners paid for the property and the construction with funds from Mahoning County Board of Developmental Disabilities (“Board”). No funding for the property came from the county’s general fund.

The property was originally, and continues to be, titled in the name of the Commissioners. Although R.C. 307.10(B) allows a county to transfer real property in fee simple to county boards of developmental disabilities, the Commissioners never transferred the property.

From 1979 (when construction ended) through 2018, the property was used to offer programming and workshops to individuals with developmental disabilities. The programming and workshops, as well as the maintenance of the property, were paid for with Board levy proceeds or money received by the Board from state and federal funds. The Board ceased using the property for programming in 2018, but continues to maintain the property with Board funds.

The county anticipates that it may sell the property, and you ask for an opinion on how any proceeds from the sale of the property should be distributed.

II

A

Before deciding how to distribute the proceeds of any sale, it is important to know who owns the property: the Commissioners, or the Board? I conclude that it belongs to the Commissioners, for two reasons. *First,*

the Commissioners do, and always have, held title to the property. While the Commissioners *could have* transferred the property, including to a county board of developmental disability, they needed to do so by executing a deed or another proper instrument. R.C. 307.10(B). The Commissioners never did that, and have thus retained title to the property. See 2011 Op. Att’y. Gen. 2011-042, at 2-343 (“[O]ne of the common, everyday meanings of the term ‘title’ is ‘the union of all elements... constituting the legal right to control and dispose of property.’” (citing *Black’s Law Dictionary*, 7th Ed. 1999)).

Second, this conclusion accords with the general presumption that county property is held by the board of county commissioners. See *State ex rel. Bd of County Comm’rs v. Allen*, 86 Ohio St. 244, 251, 99 N.E. 312 (1912) (title to all county property is vested in the county’s board of commissioners); *Carder v. Board of Comm’rs*, 16 Ohio St. 353, 369 (1865); 2008 Op. Att’y. Gen. No. 2008-023, at 2-248; 2006 Op. Att’y. Gen. No. 2006-001, at 2-4 (“regardless of which county office or entity customarily uses or occupies particular county property, ownership of county property is vested in the county’s board of commissioners.”).

To be sure, property may properly be held by a county agency, rather than the county itself, if the agency has statutory authority to independently purchase and hold real property. 2011 Op. Att’y. Gen. No. 2011-042, at 2-343. For example, county alcohol, drug addiction, and mental health services boards (“ADAMH boards”) have statutory authority to independently purchase and hold real property, R.C. 340.031(B), and my predecessor found that the sale of property acquired through this statute is not governed by the requirements of R.C. 307.09. 2011 Op. Att’y. Gen. No. 2011-042, at 2-343. Here, however, no statutory authority gave the Board power to acquire the property here at issue. In contrast to ADAMH boards, county boards of developmental disabilities do not have general statutory authority to independently acquire

real property, and can do so only with the approval of the board of county commissioners. 1982 Op. Att’y. Gen. No. 1982-18, at syllabus. Two laws give them authority to hold property in specific situations. R.C. 5126.051(A), passed in 1991, gives boards of developmental disabilities authority to independently acquire real property for the limited purposes of using the property for residential services and supported living. R.C. 5126.051(A); H.B. 298, 119th Gen. A. (1991), at 4396. And county boards of developmental disabilities have authority to acquire real property by gift, grant, devise, or bequest. R.C. 5126.05(F). But neither of these authorizations applies here. The first is irrelevant because the property at issue was acquired before R.C. 5126.051(A)’s passage in 1991, and because the property here was not used for providing residential services and supported living. The second is irrelevant because the property was purchased, not taken as a gift, grant, devise, or bequest.

Because the Commissioners have always held title to the property here at issue, and because the general presumption is that county commissioners hold title to county property, the property here at issue, under the facts presented in your letter, is county property in the Commissioners’ possession.

B

Now that I have determined the property in question is county property in the hands of the Commissioners, the question becomes how to distribute the proceeds from any sale. More precisely, you ask if the proceeds may be placed by the board of county commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites. I conclude that the answer is “yes.” Your letter points to three statutes that potentially govern the distribution of proceeds: R.C. 5705.10(C), R.C. 5705.10(F), R.C. 307.09(C). But the first statute does not apply here.

One could make a case that either of the second two statutes ought to govern, but there is no need to resolve that dispute to answer your question: under either statute, the distribution you inquire about is permitted.

As an initial matter, the distribution is *not* governed by R.C. 5705.10(C). That statute states, in applicable part: “All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.” R.C. 5705.10(C). On its face, this statute applies to revenue derived from a levy—not to revenue derived from the sale of property (like the property at issue here) that was acquired with proceeds from a levy. To be sure, several other statutes govern how money in special funds may be used, and how money may be transferred into and out of the fund. *See, e.g.*, R.C. 5705.14 through 5705.16; *Fisher v. Amberly Village*, 2015-Ohio-2384, 37 N.E.3d 731, ¶¶37–39 (1st Dist.). But none alters the language of R.C. 5705.10(C), and none discusses the sale of permanent improvements. Therefore, I conclude that the R.C. 5705.10(C) is not applicable to the distribution of proceeds of the proposed sale discussed in your request.

That leaves two more statutes: R.C. 5705.10(F) and R.C. 307.09(C). R.C. 5705.10(F) states, in applicable part:

Except as provided in section (G) and (H) of this section, if a permanent improvement of the subdivision is sold, the amount received from the sale shall be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements.... [P]roceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired

or is maintained, or if there is no such fund, into the general fund.

That applies to the facts here. R.C. 5705.10(F) governs how proceeds obtained from the sale of a permanent improvement by a subdivision are to be distributed. The definition of subdivision includes counties. R.C. 5705.01(A). “Permanent improvement” is defined as “any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein[.]” R.C. 5705.01(E). Real property with an estimated life of at least five years, as the building discussed in your letter almost certainly has, constitutes a permanent improvement. *See* 1956 Op. Att’y. Gen. No. 1956-7477, at 885-887 (farm building is a permanent improvement); 1930 Op. Atty. Gen. No. 1930-2704, at 1838 (county hospital building is a permanent improvement).

R.C. 307.09(C) states, in applicable part:

In case of the sale of such real property... all or such part of the proceeds thereof as the board designates may be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor, or for the payment of principal of or interest on bonds of the county issued for any county building.

R.C. 307.09(C) governs the distribution of proceeds from the sale of real property belonging to a county. The proceeds from the sale of such property “*may* be placed by the board in a separate fund to be used only for construction, equipment, furnishing maintenance, or repair of county buildings and the acquisition of therefor, or for the payment of principal of or interest on bonds of the county issued for any county building.” (emphasis added.) R.C. 307.09(C) is quite similar to

R.C. 5705.10(F), but the property subject to each statute is slightly different. R.C. 307.09(C) applies only to property held by a county, while R.C. 5705.10(F) applies to all defined political subdivisions. In addition, R.C. 307.09(C) applies to real property, while R.C. 5705.10(F) applies to permanent improvements. The property addressed in your letter meets the requirements of both statutes, as it is held by both a county and a political subdivision, and it is both real property and a permanent improvement.

In a different case, it would be necessary to determine whether these statutes conflict, and which governs if they do. But there is no need to conduct that inquiry here. It suffices to say that *one of* these statutes controls, and both permit the allocation of proceeds you propose. R.C. 307.09(C) allows for the Commissioners to distribute the funds to, “a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor, or for the payment of principal of or interest on bonds of the county issued for any county building.” R.C. 5705.10(F) allows for the Commissioners to distribute the funds to, “a special fund for the construction or acquisition of permanent improvements.” Thus, both statutes allow the proceeds to be deposited in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings (which are “permanent improvements”) and the acquisition of sites on which to construct such buildings.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

The proceeds from the sale of real property that is titled in the name of a board of county commissioners, and that was purchased, maintained, renovated, repaired and improved through the years

by a county board of developmental disabilities' levy funds, may be placed by the board of county commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive style with a large, looping "D" and "Y".

DAVE YOST
Ohio Attorney General