

OPINION NO. 81-093**Syllabus:**

Revenue derived from the tax levied pursuant to R.C. 5739.024(A) and contributed to a convention and visitors' bureau may be used by such bureau to aid in the support of a local historical museum.

To: W. Allen Wolfe, Muskingum County Pros. Atty., Zanesville, Ohio
By: William J. Brown, Attorney General, December 21, 1981

I have before me your request for my opinion concerning whether revenue derived from a tax levied pursuant to R.C. 5739.024 and contributed to a convention and visitors' bureau may be used by the bureau to aid in the support of a historical museum (in your situation, the National Road Zane Grey Museum).

R.C. 5739.024(A) permits a board of county commissioners to levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. With regard to the disposition of the proceeds of the tax, R.C. 5739.024(A) provides as follows:

The board shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations shall provide, after deducting the real and actual costs of administering the tax, for the return to each municipal corporation or township that does not levy an excise tax on such transactions, a uniform percentage of the tax collected in the municipal corporation or in the unincorporated portion of the township from each such transaction, not to exceed thirty-three and one-third per cent. The remainder of the revenue arising from the tax shall be deposited in a separate fund and shall be spent solely to make contributions to the convention and visitors' bureau operating within the county. (Emphasis added.)

After deductions for the cost of administering the tax collected pursuant to R.C. 5739.024(A) have been paid, and payments to municipal corporations and townships not levying such a tax have been made, the board of county commissioners must contribute the remainder of the revenue to the convention and visitors' bureau operating within the county. See Dorrian v. Scioto Conserv. Dist., 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) ("shall" is construed as imposing a mandatory duty in absence of clear intent to the contrary).

I note at this point that the term "convention and visitors' bureau" is not defined in R.C. 5739.024, nor am I aware of any state statutes specifically concerned with the creation, organization or operation of convention and visitors' bureaus. However, since R.C. 5739.024(A) clearly intends the referenced convention and visitors' bureau to be the recipient of a public grant, one important limitation on the nature of that entity is necessarily implied. That limitation is imposed by Ohio Const. art. VIII, §6, which provides in part that "[n]o laws shall be passed authorizing any county, city, town or township. . .to raise money for, or to loan its credit to, or in aid of, any. . .company, corporation or association. . . ." This constitutional provision prohibits a county from furnishing money or credit for the benefit of a private enterprise. Walker v. Cincinnati, 21 Ohio St. 14 (1871); 1979 Op. Att'y Gen. No. 79-101. As I indicated in 1977 Op. Att'y Gen. No. 77-049, however, the Ohio Supreme Court has held that, while art. VIII, §6 forbids the giving or loaning of aid or credit to or in aid of a private enterprise, it does not prohibit such a gift or loan to a public organization created for a public purpose or to a private non-profit organization for a public purpose. See Bazell v. Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (lending city's credit to a county for construction of a sports stadium held constitutional); State ex rel. Speeth v. Carney, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (statute authorizing a subway to be built by the county and used by municipally-owned transit system held constitutional); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922) (statute providing county financial support for non-profit agricultural society designed for public instruction held constitutional).

Legislative bodies possess great latitude in determining what constitutes a public purpose, and a court will not overrule a legislative determination of a public purpose, unless the determination is manifestly arbitrary or unreasonable. Bazell v. Cincinnati, *supra*. The General Assembly, by enacting R.C. 5739.024(A), has implicitly determined that conventions and tourism are valid public purposes, and I cannot say that its determination is, as a matter of law, either arbitrary or unreasonable. Cf. 1927 Op. Att'y Gen. No. 393, vol. I, p. 678 (the expenditure of public funds for the purpose of paying the cost of a municipal exhibit at an industrial exhibition is an expenditure for a "public purpose"). See also R.C. 307.692 (county may appropriate money for the public purpose of encouraging economic development of the county or area through promotion of tourism). Since one aspect inherent in the concept of "tourism" is that potential tourists be given incentive to visit a particular area, it does not appear to be unreasonable to conclude that the support of a local historical museum is within the permissible purposes for which a convention and visitors' bureau may use the proceeds of the tax levied pursuant to R.C. 5739.024. See Cleveland v. Coughlin, 16 Ohio N.P. (n.s.) 468 (C.P. Cuyahoga County 1914) (celebration of anniversary of Perry's victory on Lake Erie held valid public purpose).

In your letter of request you have indicated that there is a question as to the eligibility of the museum to receive a portion of the tax levied pursuant to R.C. 5739.024(A), since the museum is supported in part by state funds. I am not aware of any Ohio law which restricts the use of the tax levied pursuant to R.C. 5739.024(A) in such manner. To the contrary, the fact that the museum is a part of and administered by the Ohio Historical Society adds credence to the fact that the furtherance of the purposes of the museum is a valid public purpose. See R.C. 149.30 (the General Assembly may appropriate funds for the Ohio Historical Society "to carry out [its] public functions").

Based on the foregoing, it is my opinion, and you are hereby advised, that revenue derived from the tax levied pursuant to R.C. 5739.024(A) and contributed to a convention and visitors' bureau may be used by such bureau to aid in the support of a local historical museum.