

OPINION NO. 84-089**Syllabus:**

1. Interest earned on moneys which are derived from a special tax levied pursuant to R.C. 5705.19(L) and which have been transferred to a permanent improvement fund established pursuant to R.C. 5705.12 must be credited to the general fund of the county.
2. Interest which is earned on moneys included in a permanent improvement fund and which is credited to the general fund of the county may, pursuant to R.C. 5705.14(F), be transferred to the permanent improvement fund.

To: Robert B. Hines, Holmes County Prosecuting Attorney, Millersburg, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 21, 1984

I have before me your request for my opinion concerning the allocation of interest earned on moneys in a permanent improvement fund established by the

county on behalf of the county board of mental retardation and developmental disabilities (county board). You state in your letter of request:

The Holmes County Board of Mental Retardation and Developmental Disabilities has had an operating levy since 1976. Due to the fact that there were surplus funds in this account, a separate Permanent Improvement Fund was established pursuant to Section 5705.09 and 5705.12 Ohio Revised Code. With the approval of the Department of Taxation money was transferred to this Permanent Improvement Fund. The interest from this fund has been going to the Holmes County General Fund.

You wish to know whether the interest has properly been credited to the general fund or whether such interest should be credited to the permanent improvement fund.

R.C. 5705.19(L) authorizes a board of county commissioners to submit before the voters a tax levy in excess of the ten mill limitation "[f]or community mental retardation and developmental disabilities programs and services pursuant to Chapter 5126, of the Revised Code." Funds derived from a tax levied pursuant to R.C. 5705.19(L) are placed in a special fund to be used for the purpose for which the tax was levied. See R.C. 5705.09(D); R.C. 5705.10. See also Ohio Const. art. XII, §5; 1969 Op. Att'y Gen. No. 69-015. In the situation you present, surplus funds accumulated in this special fund, and pursuant to R.C. 5705.12, a permanent improvement fund was established, to which the surplus moneys in the special fund were transferred pursuant to R.C. 5705.15 and R.C. 5705.16. See R.C. 5705.01(E) (defining "permanent improvement" to mean "any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more").

R.C. 135.351(A) provides: "Except as provided in section 1545.22 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." The funds received by a county board of mental retardation and developmental disabilities which are derived from a tax levied pursuant to R.C. 5705.19(L) are clearly moneys within the county treasury, regardless of the particular fund to which they are credited; further, the moneys of the county board are held within the county treasury as county moneys rather than as custodial funds. See R.C. 5126.05; R.C. 5705.09; Op. No. 69-015; 1968 Op. Att'y Gen. No. 68-093. Thus, pursuant to R.C. 135.351(A), interest earned on moneys included in a permanent improvement fund which has been established by the county on behalf of a county board of mental retardation and developmental disabilities must be credited to the general fund of the county.

This conclusion comports with the provisions of R.C. 5705.10, which reads:

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

¹ Moneys which belong to another political subdivision, taxing district or special district, but which are held by the county in a custodial account are not part of the county treasury or available for use by the county itself. See 1982 Op. Att'y Gen. No. 82-082; 1974 Op. Att'y Gen. No. 74-102. See also R.C. 135.31(E). Arguably, the interest earned on custodial funds must, under some circumstances, be credited to the other political subdivision, taxing district or special district for which the funds are held, rather than to the county general fund. See R.C. 135.351(B). See also section 32 (uncodified) of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982); 1983 Op. Att'y Gen. No. 83-025.

All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund.

All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision.

If a permanent improvement of the subdivision is sold, the amount received for the same shall be paid into the sinking fund, the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds 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.

Money paid into any fund shall be used only for the purposes for which such fund is established. (Emphasis added.)

Interest earned on the deposit or investment of the principal in a fund is considered to be revenue derived from that source. See 1982 Op. Att'y Gen. No. 82-031; 1980 Op. Att'y Gen. No. 80-003. Interest earned on the moneys derived from a special tax levied pursuant to R.C. 5705.19(L) and transferred to a permanent improvement fund is revenue derived from a source other than the general property tax. Further, the law does not address the purpose for which the interest earned on moneys derived from a special tax levy and included within a permanent improvement fund must be used. Thus, R.C. 5705.10 clearly provides that the interest earned on moneys derived from a special tax levy and included within a permanent improvement fund of the county must be credited to the general fund of the county.²

In conclusion, both R.C. 135.351(A) and R.C. 5705.10 require that interest earned on moneys derived from a special tax levy and included within a permanent improvement fund must be credited to the general fund of the county. I note, however, that R.C. 5705.14(F) provides that, "[m]oney appropriated for the general fund may be transferred from such fund to a fund authorized by section 5705.12 or 5705.13 of the Revised Code or to the proper fund of a district authority." Thus,

² I note that pursuant to R.C. 5705.10, the proceeds from the sale of bonds must be paid into a special fund established for the purpose of the bond issue, and any interest earned on such moneys must be used for the purpose for which the bonds were issued. Thus, if the moneys in a permanent improvement fund are derived from the sale of bonds, the interest earned on such moneys must be used for the purposes of the bond issue.

the county commissioners may, if they wish, transfer the interest earned on the moneys in the permanent improvement fund (a fund authorized by R.C. 5705.12), which has been credited to the general fund, back to the permanent improvement fund.

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

1. Interest earned on moneys which are derived from a special tax levied pursuant to R.C. 5705.19(L) and which have been transferred to a permanent improvement fund established pursuant to R.C. 5705.12 must be credited to the general fund of the county.
2. Interest which is earned on moneys included in a permanent improvement fund and which is credited to the general fund of the county may, pursuant to R.C. 5705.14(F), be transferred to the permanent improvement fund.