

OPINION NO. 93-046**Syllabus:**

The board of county commissioners may not appropriate moneys from the delinquent tax and assessment collection fund, established under R.C. 321.261, to the clerk of courts.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion on the following question: "May the Board of County Commissioners appropriate monies from the DRETAC fund (Delinquent tax and assessment collection fund, O.R.C. 321.261) to the County Clerk of Courts to reimburse the clerk for expenses incurred in [the collection] of delinquent taxes and assessments, pursuant to the statute?"

Delinquent Tax and Assessment Collection Fund

R.C. 321.261 states:

Five per cent of all delinquent real property, personal property, and manufactured home taxes and assessments collected by the county treasurer shall be deposited in the delinquent tax and assessment collection fund, which shall be created in the county treasury. *The moneys in the fund, one-half of which shall be appropriated by the board of county commissioners to the treasurer and one-half of which shall be appropriated to the county prosecuting attorney, shall be used solely in connection with the collection of delinquent real property, personal property, and manufactured home taxes and assessments.*

Annually by the first day of December, the treasurer and the prosecuting attorney each shall submit a report to the board regarding the use of the moneys appropriated to their respective offices from the delinquent tax and assessment collection fund. Each report shall specify the amount appropriated to the office during the current calendar year, an estimate of the amount so appropriated that will be expended by the end of the year, a summary of how the amount appropriated has been expended in connection with delinquent tax collection activities, and an estimate of the amount that will be credited to the fund during the ensuing calendar year. (Emphasis added.)

R.C. 321.261 thus requires each county to establish a delinquent tax and assessment collection fund within the county treasury. Pursuant to R.C. 321.261, "one-half of [the moneys in the fund] *shall* be appropriated by the board of county commissioners to the treasurer and one-half...*shall* be appropriated to the county prosecuting attorney." (Emphasis added.) As stated in *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one): "In statutory construction... the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that [it] receive a

construction other than [its] ordinary usage." Thus, the county commissioners have a mandatory duty to appropriate fifty percent of the delinquent tax and assessment collection fund to the county treasurer and the other fifty percent of the fund to the county prosecuting attorney.

R.C. 321.261 further specifies that the moneys in such fund "shall be used solely in connection with the collection of delinquent real property, personal property, and manufactured home taxes and assessments." It appears that, based upon this portion of the statute, you question whether R.C. 321.261 authorizes the board of county commissioners to appropriate part of the moneys in this fund to the clerk of courts for the expenses of that office incurred in connection with delinquent tax collections. Your opinion request states that the clerk of courts has submitted a statement showing the costs incurred by that office "solely for processing tax foreclosure cases filed by the prosecutor's office on behalf of the treasurer."¹

A reading of R.C. 321.261 that would authorize the board of county commissioners to appropriate moneys from that fund to an entity other than the county prosecutor or the county treasurer, even if such moneys would be used by such entity "solely in connection with the collection of delinquent real property, personal property, and manufactured home taxes and assessments," would ignore the portion of R.C. 321.261 which specifies the two officers to whom the county commissioners are required to appropriate all of the moneys in that fund. Such a reading is contrary to the well established principle that, in interpreting a statute, it is necessary to read the statute in its entirety and to give effect to every part of the statute. R.C. 1.47(B) (it is presumed that, in the enactment of a statute, the General Assembly intended the entire statute to be effective). It is therefore necessary to give effect not only to that part of the statute limiting the purposes for which moneys in that fund may be expended, but also to that part of the statute specifying the officers to whom alone the county commissioners may appropriate those moneys. Effect can only be given to both portions of the statute by requiring the county commissioners to appropriate fifty percent of the moneys in the fund to the county prosecutor and fifty percent to the county treasurer, each of whom may use such appropriations "solely in connection with the collection of delinquent real property, personal property, and manufactured home taxes and assessments."

Further support for the conclusion that R.C. 321.261 does not authorize the county commissioners to appropriate any of the moneys in that fund to the clerk of courts or to any other officer or entity is found in the rule of statutory construction that the expression of one thing in a statute implies the exclusion of another. *See Craftsman Type, Inc. v. Lindley*, 6 Ohio St. 3d 82, 451 N.E.2d 768 (1983). Based upon this rule of construction, having designated the county prosecutor and the county treasurer as the sole officers to whom the county commissioners must appropriate all of the moneys in the delinquent tax and assessment collection fund, one-half to each, the General Assembly has thereby limited the entities to whom the county commissioners may appropriate any of such moneys.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that the board of county commissioners may not appropriate moneys from the delinquent tax and assessment collection fund, established under R.C. 321.261, to the clerk of courts.

¹ Your opinion request states that both the county prosecutor and the county treasurer were amenable to a procedure whereby each would reimburse the clerk of courts for the expenses incurred to process tax foreclosure cases filed in connection with delinquent tax collections. Of course, nothing in this opinion should be construed to prevent any such adjustments from being implemented by means of the general funds otherwise available to each office as part of the regular budgetary process within the county.