

April 17, 2018

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room 112
Courthouse
West Union, Ohio 45693

SYLLABUS:

2018-010

1. A board of county commissioners may expend motor vehicle fuel excise tax revenues distributed to the county pursuant to R.C. 5735.27(A)(2) to purchase a building for the housing and repair of county road machinery and the housing of supplies, but may not expend such revenues to purchase the real property on which the building is located. (1988 Op. Att’y Gen. No. 88-004 (syllabus, paragraph 1) extended, on the basis of legislative amendment, and 1998 Op. Att’y Gen. No. 98-008 (syllabus, paragraph 2), overruled, on the basis of legislative amendment.)
2. To determine the fair market value of a parcel of real property apart from the fair market value of a building located upon the real property, a board of county commissioners shall obtain an appraisal of the real property that provides the fair market value of the land and the building. A board of county commissioners may exercise reasonable discretion in selecting a qualified person or entity to conduct such an appraisal.



April 17, 2018

OPINION NO. 2018-010

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room 112
Courthouse
West Union, Ohio 45693

Dear Prosecutor Kelley:

You have requested an opinion about the expenditure of motor vehicle fuel excise tax revenues. You have explained that the board of county commissioners wishes to purchase a parcel of real property that has a building located on it. The board intends to temporarily use the building that is located on the real property to house supplies until a larger building may be constructed to house and repair road machinery. You ask whether a board of county commissioners may use motor vehicle fuel excise tax revenues to purchase the parcel of real property and the building located on that real property. If motor vehicle fuel excise tax revenues may be used to purchase only the building, and not the real property, you ask what method the board of county commissioners should use to separately value the real property and the building.

Use of Motor Vehicle Fuel Excise Tax Revenues

Article XII, section 5 of the Ohio Constitution states “[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied.” The use of revenue from motor vehicle license taxes and motor vehicle fuel excise taxes is addressed in Article XII, section 5a of the Ohio Constitution:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

“Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and

taxes received in relation to vehicles using the public highways to purposes directly connected with the construction, maintenance and repair of highways and the enforcement of traffic laws[.]” *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph 1).

A portion of the revenue generated by the motor vehicle fuel excise tax imposed pursuant to R.C. 5735.05 is distributed to the gasoline excise tax fund in the state treasury. R.C. 5735.051(A)(2); R.C. 5735.27(A). Revenue credited to the gasoline excise tax fund is distributed to municipal corporations, counties, and townships. R.C. 5735.27(A). Adhering to the constitutional restriction on the use of moneys derived from taxes imposed in relation to fuels used for propelling motor vehicles on public highways, the General Assembly enacted statutes specifying purposes for which those moneys may be expended. Pursuant to R.C. 5735.27(A)(2), moneys distributed to counties from the gasoline excise tax fund

shall be used only for the purposes of planning, maintaining, and repairing the county system of public roads and highways within the county; the planning, construction, and repair of walks or paths along county roads in congested areas; the planning, *construction, purchase, lease, and maintenance of suitable buildings for the housing and repair of county road machinery, housing of supplies*, and housing of personnel associated with the machinery and supplies; the payment of costs apportioned to the county under [R.C. 4907.47]; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under that chapter; and the purchase, installation, and maintenance of traffic signal lights. (Emphasis added.)

Thus, R.C. 5735.27(A)(2) authorizes a county to use motor vehicle fuel excise tax revenues to construct or purchase suitable buildings for the housing and repair of county road machinery and for the housing of supplies.¹ Cf. 2013 Op. Att’y Gen. No. 2013-035, at 2-363 (“[i]nsofar as ... state

¹ 1988 Op. Att’y Gen. No. 88-004 (syllabus, paragraph 1) advised that motor vehicle fuel excise tax revenue may not be expended under R.C. 5735.27(A)(3) or (A)(4) to construct a facility for the county engineer, unless the facility was a building suitable for the housing of road machinery and equipment. The opinion reasoned that R.C. 5735.27 authorized construction of a building for the housing of county road machinery and not any other type of facility. 1988 Op. Att’y Gen. No. 88-004, at 2-10 to 2-11.

1998 Op. Att’y Gen. No. 98-008 (syllabus, paragraph 2) advised that “[a] county may not use its share of state motor vehicle fuel tax revenues to purchase, or to pay any portion of the purchase

motor vehicle fuel excise tax revenues distributed to a county under R.C. 5735.27(A) are available to a county for use in constructing, improving, maintaining, and repairing highways, bridges, and culverts under the county's jurisdiction, such revenues may be used for the purposes listed in R.C. 5549.01 and purposes directly connected thereto"); *see generally* R.C. 5549.01 ("[t]he board [of county commissioners] shall provide a suitable place for housing and storing machinery, tools, and equipment .. owned by the county"). R.C. 5735.27(A)(2) does not, however, expressly authorize the expenditure of motor vehicle fuel excise tax revenue to purchase real property upon which the building is located. *Cf.* 2014 Op. Att'y Gen. No. 2014-027 (syllabus) ("[a] township may not expend motor vehicle fuel excise tax revenues distributed to it pursuant to R.C. 5735.27 to acquire real estate upon which the township will construct a building to house road machinery and equipment").

Moreover, authority to acquire real property may not be implied as necessary in R.C. 5735.27(A)(2)'s authorization of the expenditure of a county's share of motor vehicle fuel excise tax revenues for the "construction, purchase, lease, and maintenance of suitable buildings[.]" *See* 1964 Op. Att'y Gen. No. 1499, p. 2-388 (syllabus, paragraph 3) ("[t]he express grant of authority to township trustees to use gas tax funds for the purpose of constructing and maintaining a suitable building for housing road machinery and equipment does not imply the authority to purchase real estate with gas tax funds even though such real estate is to be used to store road machinery and

price of, an *existing* building to be used in part to house county road machinery and in part to provide office space for the county engineer." (Emphasis added.) At the time that 1998 Op. Att'y Gen. No. 98-008 was issued, the pertinent portion of R.C. 5735.27(A)(3) authorized "a county to use its share of state motor vehicle fuel tax revenues only for 'planning, construction, and maintenance,' but not for the 'purchase' or other acquisition of such buildings." 1998 Op. Att'y Gen. No. 98-008, at 2-47. The Attorney General reasoned that "[h]aving omitted the words 'purchase' or 'acquire' from the phrase concerning buildings for the housing of county road machinery, the General Assembly does not appear to have intended that a county use its share of motor vehicle fuel tax revenues to pay the cost of acquiring such a building through the purchase of an existing structure." 1998 Op. Att'y Gen. No. 98-008, at 2-48 (footnote omitted).

Since the issuance of the 1988 and 1998 opinions, the General Assembly amended R.C. 5735.27(A)(3). 1997-1998 Ohio Laws, Part II, 3861, 3863 (Sub. H.B. 419, eff. Aug. 5, 1998). Sub. H.B. 419 authorized a county to use its share of the state motor vehicle excise tax revenues for "the planning, construction, purchase, lease, and maintenance of suitable buildings for the housing and repair of county road machinery, housing of supplies, and housing of personnel associated with the machinery and supplies[.]" Accordingly, as a result of the legislative amendment of R.C. 5735.27, we extend syllabus, paragraph 1 of 1988 Op. Att'y Gen. No. 88-004 and overrule syllabus, paragraph 2 of 1998 Op. Att'y Gen. No. 98-008.

equipment”); *see also* 2014 Op. Att’y Gen. No. 2014-027, at 2-244 (“[w]hile R.C. 5735.27 has been amended on numerous occasions since the issuance of 1964 Op. Att’y Gen. No. 1499, p. 2-388, the General Assembly has not granted a board of township trustees express authority to expend motor vehicle fuel excise tax revenues to purchase real estate upon which to construct a building to house road machinery and equipment”). Therefore, a board of county commissioners may expend motor vehicle fuel excise tax revenues distributed to the county pursuant to R.C. 5735.27(A)(2) to purchase a building for the housing and repair of county road machinery and the housing of supplies, but may not expend such revenues to purchase the real property on which the building is located.

Determining the Fair Market Value of the Parcel of Real Property

We now address your second question, which asks what method the board of county commissioners may use to separately value a parcel of real property and a building located on it. A board of county commissioners shall provide offices for county officers, R.C. 307.01(A), and may purchase or construct those offices, R.C. 307.02. When a board of county commissioners believes that it is necessary to procure real estate to provide county offices or another structure, the board shall follow the requirements of R.C. 163.01-.22. R.C. 307.08(A).

R.C. 163.04(A) requires a board of county commissioners to provide, in accordance with R.C. 163.041, notice to an owner of real property that the board intends to acquire the property. The board shall also make a good faith offer to purchase the property. R.C. 163.04(B). To ascertain the fair market value of the property, the board of county commissioners shall obtain an appraisal of the property. R.C. 163.04(C); *see* R.C. 163.041 (the notice provided to the owner shall state, in part, “[w]e will be presenting you with a written offer based on our determination of the fair market value of your property”).² As addressed above, R.C. 5735.27(A)(2) permits a board of county commissioners to use the county’s share of motor vehicle fuel excise tax revenues to purchase a building, but not the real property upon which the building sits. Accordingly, to comply with R.C. 5735.27(A)(2), the appraisal obtained in accordance with R.C. 163.04(C) shall include a determination of the fair market value of the parcel of real property and a separate determination of the fair market value of the building located upon it. There are several methods of appraising real property. 2011 Op. Att’y Gen. No. 2011-042, at 2-346; *see also* 16B Ohio Admin. Code 5703-25-11(C) (2017-2018 Supplement) (four principal methods of valuing land); 16B Ohio Admin. Code 5703-25-12(A) (2017-2018 Supplement) (methods to determine true value of improvements).

R.C. Chapter 163 does not specify who or what entity shall conduct the appraisal that is obtained by a board of county commissioners in accordance with R.C. 163.04(C). A board of county commissioners may, therefore, exercise reasonable discretion in selecting a qualified person or entity

² “A public utility or the head of a public agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a fair market value of ten thousand dollars or less.” R.C. 163.04(C).

to conduct such an appraisal. *See Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”); 2017 Op. Att’y Gen. No. 2017-001, at 2-9.³

Conclusions

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

1. A board of county commissioners may expend motor vehicle fuel excise tax revenues distributed to the county pursuant to R.C. 5735.27(A)(2) to purchase a building for the housing and repair of county road machinery and the housing of supplies, but may not expend such revenues to purchase the real property on which the building is located. (1988 Op. Att’y Gen. No. 88-004 (syllabus, paragraph 1) extended, on the basis of legislative amendment, and 1998 Op. Att’y Gen. No. 98-008 (syllabus, paragraph 2), overruled, on the basis of legislative amendment.)
2. To determine the fair market value of a parcel of real property apart from the fair market value of a building located upon the real property, a board of county commissioners shall obtain an appraisal of the real property that provides the fair market value of the land and the building. A board of county

³ When assessing real property for tax purposes, a county auditor determines the true value of the land and any improvements on the land separately. R.C. 5713.03(B) (“[the auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property”); 16B Ohio Admin. Code 5703-25-07(B) (“[i]t shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property”); 16B Ohio Admin. Code 5703-25-09(D)(29)(a) (property record cards prepared and maintained by a county auditor shall include “[t]he ‘true value in money’ of the land, improvements to the land, and the total value of the parcel as appraised”); *see generally* 16B Ohio Admin. Code 5703-25-05(A)(1) (defining “true value,” in part, as fair market value or current market value). When the county auditor’s determination of the true value of the real property reflects the current fair market value of the property, a board of county commissioners may use the auditor’s valuation and appraisal to determine the fair market value of the parcel of real property and separately determine the fair market value of the building located upon it. If the board of county commissioners finds that the county auditor’s determination of the true value of the property no longer reflects the current fair market value of the property, the board should obtain another appraisal.

commissioners may exercise reasonable discretion in selecting a qualified person or entity to conduct such an appraisal.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General