

**OPINION NO. 82-027****Syllabus:**

1. A township may not establish a reserve balance account with funds derived from a police or fire district levy.
2. A county treasurer is under no duty to invest funds held in a reserve balance account, other than to deposit such funds in a public depository pursuant to R.C. 135.40.
3. The depository interest earned on the moneys in a reserve balance account must be credited to the general fund of the county pursuant to R.C. 135.351(A). If the county fails to distribute the reserve balance to the township on the date it is due, however, any interest subsequently earned must be paid to the township pursuant to R.C. 135.351(C).

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**To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio**  
**By: William J. Brown, Attorney General, May 4, 1982**

I have before me your request for my opinion in response to the following two questions:

1. Can a board of township trustees establish a reserve balance account for the purchase of police equipment and fire

department equipment out of funds which are voted for that purpose under a fire district levy or a police district levy?

2. Where a reserve balance for police department or fire department equipment is included in the township budget and the county auditor retains this reserve balance, is the county treasurer required to invest the same and have the interest thus obtained added to the principal of the reserve balance?

The creation of a reserve balance account by a board of township trustees is governed by R.C. 505.83(A), which reads as follows:

A board of township trustees may adopt a resolution to establish a reserve balance account for the purpose of accumulating sufficient funds from the township general fund over a five-year period to enable the township to purchase fire department or police department equipment. A resolution to establish a reserve balance account shall be adopted by a unanimous vote of the board and shall specify the fire department or police department equipment needs for which the account is being created. Upon adoption of such a resolution, the clerk of the board of township trustees shall certify it to the county auditor.

Thus, pursuant to R.C. 505.83(A), a reserve balance account may be created to accumulate money from the township's general fund for the purpose of purchasing police or fire department equipment. Funds derived from fire or police district levies must, however, be placed in a special fund outside the general fund. R.C. 5705.09(D), R.C. 5705.10. Accordingly, R.C. 505.83(A) does not authorize the establishment of a reserve balance account to accumulate money from a special levy for the purpose of purchasing police or fire department equipment.

In your request, however, you ask whether the power to accumulate funds derived from a special fire or police levy in a reserve balance account can be implied from R.C. 5705.29(F)(1). R.C. 5705.29(F)(1), which governs the inclusion of a reserve balance in a township's budget, reads as follows:

A board of township trustees may include in its budget an estimate of expenditures to be known as a reserve balance for police department or fire department equipment expenditures. This reserve balance shall not exceed ten per cent of the total estimated appropriations included in the township budget estimate. If, in accordance with division (A) of Section 505.83 of the Revised Code, the board of township trustees has unanimously adopted a resolution establishing the reserve balance account and specifying the reason for its creation and has certified the resolution to the county auditor, the full amount of the reserve balance, as allowed by the budget commission, shall be retained each year by the county auditor and county treasurer out of the second semiannual settlement of taxes until the date specified in the resolution, which shall not be later than five years from the date of the first such deposit in the account, or until the reserve amount has been reached, whichever occurs first. At that time, the reserve balance and the depository interest apportioned to it shall be credited to the appropriate fund or account, to be used for the purpose set forth in the resolution. The county budget commission shall not reduce the taxing authority of the board of township trustees as a result of the creation of a township reserve balance account.

R.C. 5705.29 generally specifies the information which may be included in the budget of a political subdivision. In particular, R.C. 5705.29(F)(1) permits a board of township trustees to include a reserve balance account in the township's budget, if such an account has been validly created pursuant to R.C. 505.83. In addition, R.C. 5705.29(F)(1) limits the amount of money that may be reserved and addresses the duty of the county auditor and county treasurer with respect to reserve balance

accounts. It does not, however, act as a grant of authority to a township to create such accounts. Cf. 1982 Op. Att'y Gen. No. 82-013. (R.C. 5705.25 prescribes form to be used on tax levy ballot but does not authorize taxing authority to propose replacement levy for any specific purpose.) Thus, neither R.C. 505.83 nor R.C. 5705.29(F)(1) permits a township to establish a reserve balance account to accumulate money from a fire or police district levy.

Your second question asks whether a county treasurer who retains a reserve balance for police or fire department equipment is under a duty to invest that balance and credit any interest earned to the reserve balance account. A county treasurer is required to deposit the money held in a reserve balance account in a public depository. R.C. 135.40; R.C. 5705.29(F)(1). It is my understanding, however, that you are concerned, not with the county treasurer's duty to place funds in a public depository but, rather, with his duty to make investments, such as the purchase of bonds.

There is no statute which imposes upon a county treasurer a duty to invest township funds which are held in a reserve balance account. It might be argued, however, that a county treasurer acts as a fiduciary with regard to the reserve balance account and, thus, is required to seek a return on those funds through investment. Even if a county treasurer could properly be found to be a fiduciary, however, it has been held that the deposit of funds in an interest-bearing account satisfies the investment requirement. See generally Mosey v. Hiestand, 35 Ohio L. Abs. 544, 42 N.E.2d 186 (Ct. App. Preble County 1941). Thus, the deposit by the county treasurer of funds from a reserve balance account in a public depository would discharge the treasurer's responsibilities as a fiduciary. I must conclude, therefore, that a county treasurer has no duty to invest funds held in a reserve balance account other than to deposit such funds in a public depository.

Your second question also asks about the allocation of interest to such reserve balance accounts. You note in your request an apparent conflict between R.C. 5705.29(F)(1) and R.C. 135.351, which was recently enacted as part of Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). R.C. 5705.29(F)(1) requires that when the time set in the resolution creating the reserve balance account has expired or when the reserve amount has been reached, "the reserve balance and the depository interest apportioned to it shall be credited to the appropriate fund or account, to be used for the purpose set forth in the resolution." (Emphasis added.) However, R.C. 135.351 provides that:

(A) All interest earned on money included within the county treasury shall be credited to the general fund of the county.

(B) Unless otherwise provided by law, with respect to moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county, the county shall, on or before the tenth day of the month following the month in which the county receives such moneys or on or before such later date authorized by the legislative authority or other governing body of the other political subdivision or district, pay and distribute all such moneys to the treasurer or other appropriate officer of the other political subdivision or district. A county shall pay and distribute any advance authorized by section 321.34 or 321.341 of the Revised Code within five business days after the request for the advance is delivered to the county auditor.

(C) If the county fails to make any payment and distribution required by division (B) of this section within the time periods prescribed by that division, the county shall pay to the appropriate other political subdivision, taxing district, or special district any interest that the county has received or will receive on any moneys or advance described in that division which accrues after the date such moneys or advance should have been distributed, together with the principal amount of such moneys or advance. The county shall make this payment of principal and interest within five business days after the treasurer or other appropriate officer of such other political

subdivision or district files a written demand for payment with the county auditor.

Thus, while R.C. 5705.29(F)(1) states that depository interest earned on money included in a reserve balance account shall be returned to the township as part of that account, R.C. 135.351 requires that the county return the interest earned on money included within the county treasury only if the county has failed to return the principal to the subdivision at the appropriate time. Thus, if a reserve balance account is part of the "county treasury" for purposes of R.C. 135.351, the amount of interest to be paid to the township would be limited to the amount accruing after the date the principal became due. Any interest earned prior to the date specified for the distribution of the reserve balance would be credited to the county's general fund, pursuant to R.C. 135.351(A).

R.C. 5705.29(F)(1) does not expressly provide that the county treasurer is to keep a reserve balance account created pursuant to R.C. 505.83(A) in the county treasury. I note, however, that R.C. 321.05 states that "[t]he county treasurer shall keep his office at the county seat. . . which shall constitute the county treasury. Except as otherwise provided by law, all public moneys and property in his possession shall be at all times kept in the county treasury." There is no provision which would require that the reserve balance account be kept other than in the county treasury. In addition, I note that pursuant to R.C. 319.14 all taxes collected by a county treasurer are to be paid into the county treasury to the credit of either the undivided inheritance tax fund or the undivided general tax fund. As was previously discussed, R.C. 5705.29(F)(1) states that the county treasurer and county auditor are to retain the specified reserve balance amount from the second semi-annual settlement of taxes. Thus, the reserve balance remains in the possession of the county treasurer and, pursuant to R.C. 321.05, retains its status as a part of the county treasury. R.C. 135.351, therefore, mandates an allocation of the interest earned on a reserve balance account which differs from that set forth in R.C. 5705.29(F)(1).

The analysis of your question, however, cannot end with the determination that these two statutes appear to conflict. The General Assembly has set forth rules which are to be used in interpreting ambiguous or conflicting statutes. Pursuant to R.C. 1.51:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

In this instance, there is a conflict between R.C. 135.351, which deals generally with the allocation of interest earned on money included within a county treasury, and R.C. 5705.29(F)(1), which specifically concerns the distribution of interest earned on funds included within a reserve balance account. Under R.C. 1.51 the first step is to attempt to construe the statutes so as to give effect to both provisions. Such a construction is, however, impossible. As was discussed above, these statutes are in direct conflict with regard to the allocation of interest earned on a reserve balance account. Any effort to give effect to one statute would necessarily negate the application of the other.

It follows from the conclusion that the conflict between R.C. 135.351 and R.C. 5705.29(F)(1) is irreconcilable that one statute must be found to be controlling. R.C. 1.51 states that a specific statute will prevail as an exception to a general statute unless the general was the later enactment and "the manifest intent is that the general provision prevail." R.C. 135.351 is the later enactment. See Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). Thus, the question becomes whether it was the manifest intent of the General Assembly that the general provision contained in R.C. 135.351 prevail.

As I recently noted in 1982 Op. Att'y Gen. No. 82-026, R.C. 135.351 was intended to create a special system for counties which differs from the rule

generally applicable to the state and its political subdivisions that interest earned on money belonging to another subdivision is to be credited to the fund to which the principal belongs. See R.C. 135.21. R.C. 135.351(A) clearly states that "all interest earned on money included within the county treasury shall be credited to the general fund of the county" (emphasis added). There are no express exemptions from this provision. Thus, it cannot be argued that the reserve balance account was inadvertently excluded from a list of funds which were exempted from the interest allocation prescribed in R.C. 135.351. Rather, it would appear that R.C. 135.351(A) was intended to encompass the interest earned on all funds included within the county treasury including custodial funds. Op. No. 82-026. I must conclude, therefore, that it was the manifest intent of the General Assembly that R.C. 135.351 prevail over R.C.5705.29(F)(1) with regard to the allocation of interest earned on a reserve balance account. Thus, pursuant to R.C. 135.351, interest earned on money included within a reserve balance account prior to the date specified for the distribution of the reserve balance must be credited to the general fund of the county. If the county fails to distribute the reserve balance to the township on the date it is due, however, any interest subsequently earned must be paid to the township.

Therefore, it is my opinion, and you are advised, that:

1. A township may not establish a reserve balance account with funds derived from a police or fire district levy.
2. A county treasurer is under no duty to invest funds held in a reserve balance account, other than to deposit such funds in a public depository pursuant to R.C. 135.40.
3. The depository interest earned on the moneys in a reserve balance account must be credited to the general fund of the county pursuant to R.C. 135.351(A). If the county fails to distribute the reserve balance to the township on the date it is due, however, any interest subsequently earned must be paid to the township pursuant to R.C. 135.351(C).