

OPINION NO. 2009-001

Syllabus:

2009-001

1. R.C. 1901.26(B)(1) does not authorize the Madison County Municipal Court to donate special projects fund moneys collected thereunder to private or county programs that are neither established nor operated by that court.
2. R.C. 1901.26(B)(1) does not require the Madison County Municipal Court to obtain the approval of the Madison County Commissioners prior to expending moneys collected under that statute.
3. Although the moneys collected under R.C. 1901.26(B)(1) are placed in a special fund in the county treasury, R.C. 5705.10(D) requires that the interest earned on the principal in such fund be paid into the county's general fund.
4. R.C. 5705.14(E) authorizes a board of county commissioners to transfer the interest that is earned on special projects moneys collected under R.C. 1901.26(B)(1) and placed in the county's general fund back to the special fund holding the special projects money collected under R.C. 1901.26(B)(1).

To: Stephen J. Pronai, Madison County Prosecuting Attorney, London, Ohio
By: Nancy H. Rogers, Attorney General, January 5, 2009

You have requested an opinion of the Attorney General concerning the uses and control of special projects fund moneys collected by the Madison County Municipal Court in accordance with R.C. 1901.26(B)(1). Based upon information you provided, we have restated your questions, as follows:

1. May the Madison County Municipal Court donate special projects fund moneys collected under R.C. 1901.26(B)(1) to help fund programs that are not operated or administered by the Court?
2. Must the Madison County Municipal Court obtain the approval of the board of county commissioners prior to the expenditure of special projects fund moneys collected by the court under R.C. 1901.26(B)(1)?
3. Must the interest earned on special projects fund moneys collected by the Madison County Municipal Court under R.C. 1901.26(B)(1) be placed into the county's general fund? If the interest on such moneys

is paid into the county's general fund, may the county commissioners, by resolution, return interest generated by the special projects fund moneys to the special fund in which the special projects fund moneys are held?

Municipal Courts

Before answering your specific questions, let us briefly examine the powers of municipal courts. As stated by the court in *State ex rel. Finley v. Miller*, 128 Ohio St. 442, 443, 191 N.E. 465 (1934): "The several Municipal Courts of the State of Ohio are creatures of statute, and their jurisdiction and powers are only such as are conferred by statute." Within R.C. Chapter 1901, the General Assembly has created the various municipal courts throughout the state. The location, territorial jurisdiction, number of judges, and divisions, among other matters, of each municipal court is prescribed by statute. *See, e.g.*, R.C. 1901.01 (location); R.C. 1901.02 (territorial jurisdiction); R.C. 1901.08 (election of judges); R.C. 1901.181 (jurisdiction of housing and environmental divisions). Thus, whether the Madison County Municipal Court may use the funds it collects under R.C. 1901.26(B)(1) for the purposes you describe depends upon the statutory authority granted to that court.

"Special Projects" for Purposes of R.C. 1901.26(B)(1)

Your first question asks whether the Madison County Municipal Court may donate special projects fund moneys collected under R.C. 1901.26(B)(1) to help fund programs that are not operated or administered by the Court. You have informed us that the court is interested in providing special projects fund moneys to two particular entities. One is a shelter for battered women that is operated by a private organization. The other is a program, operated by the county department of job and family services, that assists individuals obtain their general equivalency diplomas (GEDs). Through donations to the first program, the court hopes to benefit the victims of crimes prosecuted in the Madison County Municipal Court, while donations to the latter may benefit defendants who have been convicted in that court and who have been ordered to obtain their GEDs as a term of their probation. You have stated further that the court has no connection to either program.

R.C. 1901.26(B)(1) specifies the purposes for which "special projects" moneys may be used, as follows:

The municipal court may determine that, *for the efficient operation of the court*, additional funds are necessary *to acquire and pay for special projects of the court* including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession. (Emphasis added.)

As described in 1997 Op. Att’y Gen. No. 97-049 at 2-305, the intent of R.C. 1901.26(B)(1) is “to allow special projects fund moneys to be used for any ‘special projects’ of the court, whether the expenditures are for staff, equipment, facilities, programs, or any services related to such projects.”

R.C. 1901.26(B)(1) expressly authorizes a municipal court “to acquire and pay for” special projects of the court that facilitate its efficient operation. In the absence of a statutory definition of the phrase “to acquire and pay for,” as used in R.C. 1901.26(B)(1), we must look to the common meaning of those words. R.C. 1.42. As defined in *Merriam-Webster’s Collegiate Dictionary* 11 (11th ed. 2005), the word “acquire” means, in part, “to get as one’s own.” Similarly, the word “pay” means, in part, “to make due return to for services rendered or property delivered . . . to engage for money: hire . . . to give in return for goods or service.” *Merriam-Webster’s Collegiate Dictionary* at 910. In other words, the General Assembly’s use in 1901.26(B)(1) of the phrase “to acquire and pay for” indicates its intent that the court will receive something of value in return for moneys paid out by the court from the special projects fund.

According to your description of the proposed uses of these moneys, however, the court plans simply to donate portions of its special projects moneys to programs operated by individuals or entities other than the court. In making such donations, the court would neither acquire something of its own nor pay for any goods or services rendered to the court. Thus, a donation such as you described does not constitute either the acquisition of, or payment for, a special project of the court, and is not, therefore, authorized by R.C. 1901.26(B)(1). *See, e.g.*, 2007 Op. Att’y Gen. No. 2007-036 (syllabus, paragraph 3) (concluding, in part, that a board of township trustees, a creature of statute, “may donate public money to the board of health of a general health district only if the township has statutory authority, either express or necessarily implied, to make such a donation”). *See generally State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys . . . constitute a public trust fund . . . Said trust fund can be disbursed only by clear authority of law”).

We also note that R.C. 1901.26(B)(1) modifies the term “special projects” with the phrase “of the court.” Given this description, it is difficult to imagine circumstances in which a program that is not established, operated, or supervised by a court would be considered a special project “of” the court. *See generally Merriam-Webster’s Collegiate Dictionary* at 860 (defining the word “of” as meaning, in part, “relating to . . . in respect to . . . used as a function word to indicate belonging or a possessive relationship”). In the situation you describe, the court wishes to donate special projects fund moneys to one program, which is operated by a private organization, and to another program, which is operated by the Madison County Department of Job and Family Services.¹ Even though the particular programs you describe may benefit either defendants who have been convicted in the Madison

¹ Although the Madison County Municipal Court has jurisdiction throughout Madison County, R.C. 1901.02(B), and is included within the definition of the term “county-operated municipal court,” R.C. 1901.03(F), it is not an agency of Madi-

County Municipal Court or the victims of crimes prosecuted in that court, the programs are not “special projects of the court” for purposes of R.C. 1901.26(B)(1). We conclude, therefore, that R.C. 1901.26(B)(1) does not authorize the Madison County Municipal Court to donate special projects fund moneys collected thereunder to private or county programs that are neither established nor operated by that court.²

County Commissioners’ Approval of Special Projects Fund Expenditures

Your second question asks whether the Madison County Municipal Court must obtain the approval of the Madison County Commissioners prior to spending the special projects fund moneys the court collects under R.C. 1901.26(B)(1). As is a municipal court, a board of county commissioners is a creature of statute with only those powers and duties conferred upon it by statute. *See State ex rel. Shriver v. Bd. of Comm’rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2) (“[a] board of county commissioners is a creature of statute alone. Such board possesses only such power and jurisdiction as are conferred expressly by statutory enactment”). We must determine, therefore, whether the General Assembly has granted the Madison County Board of Commissioners authority over the Madison County Municipal Court’s expenditure of the special projects fund moneys the court collects under R.C. 1901.26(B)(1).

As provided, in pertinent part, by R.C. 1901.26(B)(1):

All moneys collected under division (B) of this section shall be

son County government. *See, e.g., Mancini v. City of Garfield Heights*, No. 94-3183, 1994 U.S. App. LEXIS 28142 (6th Cir. 1994) at *4 (“the City of Garfield Heights cannot be held responsible for the acts of the Municipal Court employees because municipal courts are part of the state court system and are not subject to the supervision of municipal governments”). *See generally State ex rel. Attorney General v. Bloch*, 65 Ohio St. 370, 391, 62 N.E. 441 (1901) (Ohio Const. Art. IV, § 1 vests in the General Assembly “full power to determine what other courts it will establish, local, if deemed proper, either for separate counties or districts, and to define their jurisdiction and powers”).

² We note, however, that it may be possible for the Madison County Municipal Court to use special projects fund moneys collected under R.C. 1901.26(B)(1) to obtain services or facilities from a private or county-operated program for use in a special project of the court. For example, let us assume that a municipal court determined that the establishment of a dispute resolution program under R.C. 1901.262 would benefit the court’s efficient operation. Let us also assume that the court determined to provide special training for those of its employees operating the program. In such a situation, the court could pay for such special training with special projects fund moneys collected under R.C. 1901.26(B)(1), because the court determined that the dispute resolution program would benefit the efficient operation of the court, the program was a program established and operated by the court, and the moneys were used to pay for services, *i.e.*, training, in conjunction with that program.

paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project.

Nothing in R.C. 1901.26(B)(1), however, requires the approval of the board of county commissioners prior to the court's expenditure of such sums.³ Rather, the General Assembly has vested in the municipal court the discretion to determine whether a special project of the court would be beneficial to the efficient operation of the court, and to use the moneys in the special projects fund to acquire and pay for any such project of the court.⁴

In answer to your question, therefore, we conclude that R.C. 1901.26(B)(1) does not require the Madison County Municipal Court to obtain the approval of the Madison County Commissioners prior to expending moneys collected under that statute.

Interest Earned on Special Projects Moneys Collected under R.C. 1901.26(B)(1)

Your final question asks whether R.C. 5705.10(D) applies to interest earned on moneys generated by R.C. 1901.26(B)(1), and, if so, whether the county commissioners have authority to return the interest earned on such moneys to the fund established for special projects moneys collected under R.C. 1901.26(B)(1).

³ *Cf.*, e.g., R.C. 311.42(B) (stating, “[t]he sheriff, *with the approval of the board of county commissioners*, may expend any county portion of the fees deposited into the sheriff's concealed handgun license issuance expense fund for any costs incurred by the sheriff in connection with performing any administrative functions related to the issuance of licenses or temporary emergency licenses to carry a concealed handgun under [R.C. 2923.125 or R.C. 2923.1213], including, but not limited to, personnel expenses and the costs of any handgun safety education program that the sheriff chooses to fund” (emphasis added)); R.C. 5705.222(A) (stating, in part, “[t]he county board of mental retardation and developmental disabilities, within its budget and *with the approval of the board of county commissioners through annual appropriations*, shall use the proceeds of a levy approved under this section solely for the purposes authorized by this section” (emphasis added)).

⁴ We note that R.C. 319.16, in part, prohibits a county auditor from issuing a warrant for any claim against the county, “unless it is allowed by the board of county commissioners, *except* where the amount due is fixed by law or is *allowed by an officer or tribunal*.” (Emphasis added.) In the situation you describe, R.C. 1901.26(B)(1) provides, in pertinent part, that moneys in a municipal court's special projects fund “shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project.” Thus, R.C. 1901.26(B)(1) excepts payments ordered from a municipal court's special projects fund from the general requirement in R.C. 319.16 that the payment of claims against the county must first be approved by the board of county commissioners.

The use of county revenues is governed, in part, by R.C. 5705.10(D), which states:

Except as otherwise provided by resolution adopted pursuant to [R.C. 3315.01 (school district moneys)], 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. Except as otherwise provided by resolution adopted pursuant to [R.C. 3315.01] or as otherwise provided by [R.C. 3315.40 (board of education's establishment of education foundation fund)], 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.* (Emphasis added.)

Because R.C. 1901.26(B)(1) specifies the particular purposes for which moneys collected thereunder may be used, R.C. 5705.10(D) requires that such moneys be paid into a special fund.

Specifically concerning the interest earned on the principal of a special fund, R.C. 5705.10(D) establishes the general requirement, with certain exceptions not here applicable, that such interest, "regardless of the source or purpose of the principal, shall be paid into the general fund." Thus, although the moneys collected under R.C. 1901.26(B)(1) are placed in a special fund in the county treasury, R.C. 5705.10(D) requires that the interest earned on the principal in such fund be paid into the county's general fund. *See generally* 1999 Op. Att'y Gen. No. 99-025 (discussing the amendment of R.C. 5705.10 in 1981-1982 Ohio Laws, Part I, 2079, 2109 (Am. Sub. H.B. 230, eff. March 15, 1982), to provide for the deposit into the general fund of the interest earned on the principal of a special fund).

Your concern is whether the Madison County Commissioners may return from the county's general fund to the special fund holding the Madison County Municipal Court special projects moneys collected under R.C. 1901.26(B)(1) the amount of money earned as interest on the court's special projects moneys. To address your question, let us first examine the statutory scheme governing general fund moneys. As explained in 2006 Op. Att'y Gen. No. 2006-009 at 2-78 to 2-79:

The term "general fund" suggests that moneys in the fund may be used for general expenses of the county, and many of the moneys in the county general fund are available for those purposes. *See, e.g.,* R.C. 5705.05 (general levy for current expenses); R.C. 5705.10 (general fund); *see also, e.g.,* R.C. 325.14(A) and R.C. 325.31 (in general, fees collected by certain county officers are paid into the county treasury to the credit of the general county fund); 2000 Op. Att'y Gen. No. 2000-044 at 2-266; 1988 Op. Att'y Gen. No. 88-101 at 2-497 to 2-498 n.1; 1986 Op. Att'y Gen. No. 86-081 at 2-458 to 2-459; 1981 Op. Att'y Gen. No. 81-035.

In some instances, however, moneys in the county general fund are restricted to certain purposes. *See, e.g.*, R.C. 311.171(F) (“[a]ll fees paid to a sheriff under this section shall be paid into the county treasury to the credit of the county general fund and shall be allocated to the sheriff to be used to defray the costs of registering sex offenders and child-victim offenders and providing community notification under Chapter 2950. of the Revised Code”); R.C. 2929.28(C)(1) (reimbursements paid by an offender pursuant to court order under R.C. 2929.28 are paid into the county’s general fund, and the county “shall use the amounts deposited in the fund” to pay the costs incurred pursuant to certain sanctions or in operating a facility to confine certain offenders); 2000 Op. Att’y Gen. No. 2000-039 at 2-239 to 2-240. (Footnote omitted.)

Thus, once the interest earned on the special projects money fund is placed in the general fund, as required by R.C. 5705.10(D), it may be used for general county expenses, unless the use of that interest money is restricted to certain purposes.

We note, however, that neither R.C. 1901.26(B)(1) nor R.C. 5705.10(D) limits the purposes for which such interest earned on special projects moneys may be expended. Moreover, no statute requires the use in a particular manner of the interest earned on sums in a court’s special projects fund once such interest is placed in the county’s general fund. Thus, once the interest earned on the special fund containing the court’s special projects money is placed in the county’s general fund, the Madison County Commissioners may appropriate such sum for the general expenses of the county. Because funding the operation of the Madison County Municipal Court is a general expense of the county, *see* R.C. 1901.024 (in part, requiring the board of county commissioners of a county-operated municipal court to “pay all of the costs of operation of the municipal court”), the Madison County Commissioners may include in its appropriation from the county general fund to the Madison County Municipal Court a sum that represents the amount of interest earned on the court’s special projects fund money.

Another option available to the Madison County Board of Commissioners is prescribed by R.C. 5705.14(E), which expressly authorizes the transfer of money from a county’s general fund “to any other fund of the subdivision.” *See* 1984 Op. Att’y Gen. No. 84-089 (syllabus, paragraph 2) (“[i]nterest 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) [analogous provision now at R.C. 5705.14(E)], be transferred to the permanent improvement fund”).⁵

In answer to the final portion of your question, we conclude that R.C.

⁵ Your question asks whether the transfer of moneys from the county’s general fund to the special fund holding the moneys collected under R.C. 1901.26(B)(1) may be accomplished by resolution of the county commissioners. As provided, in part, by R.C. 5705.14: “Except in the case of transfer pursuant to division (E) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members.” Because the transfer you describe would be from the county’s general fund to a

5705.14(E) authorizes a board of county commissioners to transfer the interest that is earned on special projects moneys collected under R.C. 1901.26(B)(1) and placed in the county's general fund back to the special fund holding the special projects money collected under R.C. 1901.26(B)(1).

Conclusions

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

1. R.C. 1901.26(B)(1) does not authorize the Madison County Municipal Court to donate special projects fund moneys collected thereunder to private or county programs that are neither established nor operated by that court.
2. R.C. 1901.26(B)(1) does not require the Madison County Municipal Court to obtain the approval of the Madison County Commissioners prior to expending moneys collected under that statute.
3. Although the moneys collected under R.C. 1901.26(B)(1) are placed in a special fund in the county treasury, R.C. 5705.10(D) requires that the interest earned on the principal in such fund be paid into the county's general fund.
4. R.C. 5705.14(E) authorizes a board of county commissioners to transfer the interest that is earned on special projects moneys collected under R.C. 1901.26(B)(1) and placed in the county's general fund back to the special fund holding the special projects money collected under R.C. 1901.26(B)(1).