

**OPINION NO. 960****Syllabus:**

A sum transferred from the general fund of a county to the general drainage improvement fund, created under Section 6131.50, Revised Code, may not be transferred back to the general fund upon a finding, pursuant to Section 6131.31, Revised Code, that the contemplated improvement is not necessary and conducive to the public welfare, except as authorized under Section 5705.15, Revised Code, and in the manner provided in Section 5705.16, Revised Code.

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**To: Robert L. Balyeat, Allen County Pros. Atty., Lima, Ohio**  
**By: William B. Saxbe, Attorney General, April 3, 1964**

I am in receipt of your request for my opinion which reads in material part as follows:

"This office is addressing this letter to you on behalf of the County Commissioners of Allen County, Ohio who are desirous of obtaining a legal opinion as to the following matter.

"It is the desire of the Board of County Commissioners of Allen County to establish a sanitary sewer district within a portion of Allen County, but before so doing it is necessary that there be a preliminary plan prepared to first determine the feasibility of such a project.

"The over all costs of such a plan would be approximately \$27,000.00. The County Commissioners have established a rotary ditch fund which has a present balance of approximately \$50,000.00 and of which approximately 20% is presently encumbered for other projects. We are desirous of an opinion as to the following:

1. May the County Commissioners by resolution transfer \$27,000.00 from this fund to the general fund?

2. May the County Commissioners by resolution pay out of the general fund the sum of \$27,000.00 to finance such a sewer survey and preliminary planning?

"The ditch fund would then be reimbursed said money out of proceeds derived from assessments and from revenue bonds which would finance the entire project at a later date."

I am further informed that the fund referred to is the general drainage improvement fund established pursuant to Section 6131.50, Revised Code; that the unexpended balance in this fund represents a sum originally transferred by the board of county commissioners from the general fund to the general drainage improvement fund to defray preliminary expenses and in anticipation of the levying of special assessments; and that on appeal to the court of common pleas, under Sections 6131.25 to 6131.36, inclusive, Revised Code, it was the judgment of the court that the improvement was not necessary and was not conducive to the public welfare and, accordingly, the assessments were not levied and the improvement was not constructed.

Section 6131.50, Revised Code, provides:

"The board of county commissioners of each county shall provide and establish the 'general drainage improvement fund,' which fund shall be used as a sinking fund for all bonds issued under sections 6131.01 to 6131.64, inclusive, of the Revised Code. Said funds shall consist of:

"(A) Any taxes levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of;

"(B) The proceeds of all bonds issued and sold under sections 6131.01 to 6131.64, inclusive, of the Revised Code;

"(C) The collections from all special assessments for benefits to property as provided in such sections;

"(D) Such other funds as by law are provided to be paid therein."

Payments from the general drainage improvement fund are authorized under Section 6131.51, Revised Code, as follows:

"All costs and expenses of improvements under sections 6131.01 to 6131.64, inclusive, of the Revised Code, including contract prices of construction and the costs of locating the improvement, shall be paid from the general drainage improvement fund. No warrants shall be drawn to be paid from such fund unless it contains a sufficient amount not otherwise specifically appropriated to pay the same.

"The letting and approving of any contract for an improvement shall be deemed a specific appropriation of the amount of such obligation, and such amount shall be set apart for the purpose of such payment and contingently charged against said fund. If at any time said fund contains the proceeds of bonds issued and sold under such sections, then said fund shall not be depleted below the obligations incurred by such bond issue unless assessments or levies have been made or ordered made in sufficient amount to redeem the bonds as they fall due. If at any time obligations legally incurred exceed the amount of said drainage improvement fund, an amount of the general revenue funds in the county treasury, unless otherwise appropriated, equal to the deficiency, may by resolution of the board of county commissioners be transferred to the general drainage improvement fund.

"At any time after assessments collected for a drainage improvement have exceeded eight and one-half per cent of the engineer's preliminary estimate of cost of that improvement, the board of county commissioners may by resolution transfer from the drainage improvement fund to the general revenue fund of the county an amount equal to such eight and one-half per cent, as reimbursement of the sum previously transferred under the provisions of section 6131.12 or section 6131.30 of the Revised Code."

The transfer authorized by the last paragraph of this section from the drainage improvement fund to the general revenue fund of the county to reimburse the sum previously transferred from the general revenue fund to the drainage improvement fund is not available here because no assessments have ever been collected. The question then is whether there is any other authority -- express or implied -- for transferring \$27,000.00 from the drainage improvement fund to the general revenue fund of the county.

Directing consideration first to the question of the implied authority of the board of county commissioners to transfer funds from the drainage improvement fund to the general fund, I am of the opinion that a board of county commissioners lacks such authority, even under the circumstances of this case. While in a

sense a transfer in this instance would appear to be no more than a return of funds to the county general revenue fund, in fact these funds are a part of the general drainage improvement fund and are withdrawable or expendable subject to the limitations and conditions impressed by statute upon all moneys -- regardless of their source -- in this special fund. In arriving at this conclusion, I am not unaware of the conclusion of a predecessor in Opinion No. 859, Opinions of the Attorney General for 1951, which, as disclosed by the syllabus, is as follows:

"For the purpose of paying the preliminary costs and expenses involved in the establishment of a garbage disposal district and constructing disposal plants as contemplated by Section 6600, General Code, funds may be advanced from the general fund of the county, and upon the sale of revenue bonds for such purpose as provided by Section 6600-6, General Code, a portion of the proceeds from such bonds may be used to reimburse the general fund for monies so advanced."

The rationale of the then Attorney General was that the funds in that instance were advanced from the general fund for preliminary expenses and were not transferred. A conclusion which is not justified here because Section 6131.12, supra, provides for a transfer of funds "from the general revenue funds of the county, not otherwise appropriated, to the general drainage improvement fund" and, presumably, the funds in question were transferred pursuant to this authority. The fact that the particular improvement contemplated was thwarted by court action does not change the character of the fund or reduce or remove the limitations on the use of moneys in such fund. The situation is the same as if the improvement had been completed and the sum in question was a remaining balance. The general statutory authority for the transfer of funds within a subdivision must be examined.

Section 5705.14, Revised Code, authorizes transfers from funds from special tax levies and for special bond issues, and specific permanent improvement funds and other designated funds, within a subdivision when, broadly speaking, the purpose for which a special fund was created has terminated. It is not by its terms applicable to the general drainage improvement fund. However, Section 5705.15, Revised Code, provides:

"In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose."

I am of the opinion that a transfer of funds from the general drainage improvement fund to the general fund of a county may be made under the authority of this section.

Section 5705.16, Revised Code, provides in substance that the transfers authorized under Section 5705.15, supra, shall be with the approval of the board of tax appeals and upon petition to the court of common pleas of the county in which the funds are held.

In specific answer to your question, therefore, it is my opinion that a sum transferred from the general fund of a county to the general drainage improvement fund, created under Section 6131.50, Revised Code, may not be transferred back to the general fund upon a finding, pursuant to Section 6131.31, Revised Code, that the contemplated improvement is not necessary and conducive to the public welfare, except as authorized under Section 5705.15, Revised Code, and in the manner provided in Section 5705.16, Revised Code.