

OPINION NO. 80-033**Syllabus:**

The proceeds from the sale of transportation research revenue bonds, and other revenues pledged as security for such bonds, either by Board resolution or by a trust agreement, may be deposited with and held by a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, and need not be deposited into the transportation research fund established in the state treasury.

To: **George J. Arnold, Chairman, Transportation Research Board of Ohio, East Liberty, Ohio**

By: **William J. Brown, Attorney General, June 4, 1980**

I have before me your request for my opinion concerning whether the proceeds from the sale of transportation research revenue bonds, and other revenues pledged as security for such bonds, may be held by a corporate trustee in trust for the bondholders or whether the deposit of such moneys with the Treasurer of State is required by statute.

You have informed me that the Transportation Research Board of Ohio ("Board") desires to issue transportation research revenue bonds under the authority of R.C. 5507.04, the proceeds of which will be used to construct a motor vehicle test crash facility and other capital improvements on the site of the Transportation Research Center ("Center"). The Board proposes to use as security for the bonds a gross pledge of all of the revenues of the Center, and wishes to designate a commercial bank or trust company to act as the trustee thereof, pursuant to a trust agreement providing, *inter alia*, that the trustee shall receive the bond proceeds and pledged revenues, account for them, hold them in properly designated accounts and disburse them in accordance with the requirements of the trust agreement. Your specific question, therefore, is whether the actual delivery to and deposit of such revenues and bond proceeds with a corporate trustee is permissible under R.C. Chapter 5507, which governs the operations of the Board.

The Board itself is a body corporate and politic, R.C. 5507.01, which I have previously characterized as a "rather unique entity with an indisputable state-affiliated identity, but with a quasi-public character distinguishing it from most other state agencies." 1977 Op. Atty Gen. No. 77-023 at 2-80. Its purpose is to conduct research in automotive, vehicular and related forms of transportation, and to develop improved highway facilities for vehicular traffic. R.C. 5507.01. See 1979 Op. Atty Gen. No. 79-011. In pursuance of these goals, the Board is granted extensive powers and discretionary authority, including the power to issue transportation research revenue bonds ("bonds"), payable solely from revenues, where the proceeds will be applied to the payment of any part of the cost of its research projects or facilities. R.C. 5507.03(G); R.C. 5507.04; R.C. 5507.06; R.C. 5507.09. R.C. 5507.03 also grants the Board a broad power to enter into "all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and execution of its powers." R.C. 5507.03(J).

The Board's authority to issue such bonds is broad but not unlimited. They may be issued only for a proper purpose, which purpose is described in R.C. 5507.02 as being the payment of the cost of "acquiring, constructing and operating the necessary facilities." The information provided me indicates that the proposed bond issue would in fact meet this requirement, and I therefore assume that the only question raised herein concerns the authority of the Board to deposit with a corporate trustee the bond proceeds themselves and the general revenues pledged as security for bond repayment.

Numerous sections of R.C. Chapter 5507 touch upon this question, and it presents a problem of statutory construction because one of those sections is in apparent conflict with the others. I am aided in the resolution of the conflict by R.C. 5507.22 which states: "Sections 5507.01 to 5507.21 of the Revised Code being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof" (emphasis added). In light of the expression of legislative intent in this regard, I am obligated to construe the statute liberally and in a fashion which furthers this legislative intent, because that is the ultimate goal of statutory construction. Cochrel v. Robinson, 113 Ohio St. 526, 527, 149 N.E. 871, 872 (1925). See also Humphrys v. Winous, 165 Ohio St. 45, 133 N.E. 2d 780 (1956); State v. Stouffer, 28 Ohio App. 2d 229, 276 N.E.2d 651 (Ct. App. Franklin County 1971). And this canon of statutory construction also requires a reconciliation of conflicting provisions where such will yield a reasonable result. Lucas County Commissioners v. Toledo, 28 Ohio St. 2d 214, 217, 277 N.E. 2d 193, 194 (1971); Humphrys v. Winous.

The issuance of bonds by the Board is authorized and controlled by R.C. 5507.04, which states in pertinent part:

[E] very issue of its bonds or notes shall be general obligations of the board payable out of the revenues of the board that are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. (Emphasis added.)

Thus, the legislature has specifically empowered the Board to enter into agreements with the holders of particular bonds concerning the pledging of revenues, often referred to as "trust agreements." See R.C. 5507.06. This authorization constitutes a further particularization of the powers already granted to the Board to enter into contracts and agreements and execute all instruments "necessary or incidental to the performance of its duties and execution of its powers." R.C. 5507.03(J). It also demonstrates implicit legislative recognition of the practices generally accepted in the commercial bond market, a recognition that is made explicit in R.C. 5507.06, which states in part:

Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders, and of the trustee, and may restrict the individual right of action by bondholders and noteholders as is customary in trust agreements or trust indentures securing similar bonds. (Emphasis added.)

R.C. 5507.04 requires that the Board's authorization for the issuance of bonds be evidenced by a Board resolution. The statute provides, in this regard, as follows:

Any resolution or resolutions authorizing any bonds... may contain provisions, subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof, as to: the pledging of all or any part of the revenues of the board to secure the payment of the bonds...; the use and disposition of the revenues of the board;... the crediting of the proceeds of the sale of the bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes;... limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and the pledging of such proceeds to secure the payment of the bonds or notes...; securing any bonds or notes by a trust agreement in accordance with section 5507.06 of the Revised Code.... (Emphasis added.)

The language of R.C. 5507.04 is significant in several respects. First, it again acknowledges that there may be separate agreements with bondholders concerning the terms on which the obligations evidenced thereby will be met by the Board, and that such a trust agreement may secure the obligations. Second, R.C. 5507.04 also provides explicitly, as do other sections of R.C. Chapter 5507, that proceeds and general revenues of the Board may be pledged to secure payment and that proceeds may be credited to specific "funds referred to or provided for in the [Board] resolution authorizing the issuance of the bonds."

The nature of the trust agreement authorized under R.C. 5507.04 is further explored in R.C. 5507.06, which provides that the Board may in its discretion enter into a trust agreement with a corporate trustee, which may be "any trust company or bank having the powers of a trust company within or without the state." R.C. 5507.06 thus recognizes that where the issuer proposes to sell bonds to a large group of people, an efficient and commercially reasonable way of setting forth the terms of the sale is in a trust agreement with a trustee, which trust agreement typically contains provisions for "protecting and enforcing the rights and remedies of the bondholders... as are reasonable and proper." R.C. 5507.06. See R.C. 5507.08 (concerning bondholders' power to enforce rights granted under the Board resolution, the trust agreement or R.C. Chapter 5507). Moreover, the covenants

which the Board is empowered to include in a trust agreement with a trustee under R.C. 5507.06 include one which provides for "the custody, safeguarding and application of all monies," and the statute also states that "[a]ny bank or trust company that may act as depository of the proceeds of bonds or notes or of revenues may furnish such indemnifying bonds or may pledge such securities as are required by the board" (emphasis added).

Finally, R.C. 5507.09 determines the status of the obligations issued by the Board pursuant to R.C. 5507.04. It provides that such bonds will not constitute a debt or a pledge of the faith and credit of the state or of any political subdivision thereof, and are payable solely from revenues and funds of the issuing Board; R.C. 5507.09 further requires that bonds issued by the Board bear a legend to this effect on their face.

When read together, R.C. 5507.04, R.C. 5507.06 and R.C. 5507.09 provide a comprehensive and logical framework for the issuance of the bonds described in your request. There appears to be ample authority for the Board's entering into a trust agreement with a corporate trustee, which is the arrangement the Board wishes to use in this instance. Moreover, these three statutory sections enable the Board to effect a gross pledge of revenues of the Center to secure the obligations assumed under the trust agreement. R.C. 5507.04 specifically refers to the Board's power to provide in such a trust agreement for the crediting of proceeds from the bond sale to "funds referred to or provided for in the resolution"; this language implies that the Board may, in its authorizing resolution, create a fund into which the pledged proceeds are deposited. Assuming that the fund is controlled by the corporate trustee, appointed under R.C. 5507.06, who represents the bondholders, the deposit of proceeds therewith would perfect the pledge and secure the obligation in a commercially acceptable fashion. Cf. R.C. 1309.23 (UCC §9-304) (a security interest in money can only be perfected by the secured party's taking possession of it).

Thus, a fair reading of R.C. 5507.01 through R.C. 5507.09, in light of the mandate of liberal interpretation imposed by R.C. 5507.22, requires a preliminary conclusion that the Board's use of a corporate trustee in conjunction with a sale of bonds is in compliance with the governing statutes. However, that conclusion may be placed in doubt by some of the language of R.C. 5507.10, which states as follows:

(A) All moneys, funds, properties, and assets acquired or received by, or appropriated to the transportation research board of Ohio under Chapter 5507. of the Revised Code, whether as proceeds from the sale of transportation research revenue bonds or as revenues, or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused as provided in such chapter.

(B) Any resolution authorizing the issuance of transportation research revenue bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to such conditions as such chapter and such resolutions or trust agreement provide.

(C) Moneys and funds held in trust by the transportation research board under division (A) of this section shall be deposited in the state treasury to the credit of the transportation research fund, which is hereby created.

The effect of divisions (A) and (B) is easily discernible; division (A) is a general declaration of trust as to all funds and property received by the Board and division (B) requires that any Board resolution or trust agreement which governs the issuance of transportation research revenue bonds include a declaration that the "officer to whom, or any bank or trust company to which, such moneys are paid" is a trustee as to those moneys and is bound by all the conditions set forth in R.C. Chapter 5507, the Board's resolution and the trust agreement itself. Essentially,

division (B) substitutes a declaration of trust more specific than that set forth in division (A) where the funds involved are either generated by the sale of such bonds or pledged as security for their repayment, and is thus triggered when the Board issues bonds. The language of R.C. 5507.10(B) is certainly consistent with the statutory scheme outlined above, and expands it only insofar as it requires that either the Board resolution or the trust agreement itself must include a specific declaration of trust applicable to the trustee, be it a person or a corporation.

While R.C. 5507.10(A) and R.C. 5507.10(B) do not at all conflict with the statutory sections discussed above, such a conflict does exist with respect to R.C. 5507.10(C) which, on its face, appears to require that the Board deposit all proceeds from sales of bonds and all other revenues into a fund established in the state treasury. Does R.C. 5507.10(C) therefore preclude the deposit, pursuant to R.C. 5507.10(B), with a corporate trustee of bond proceeds and revenues pledged as security for the payment of such bonds? Clearly, a negative answer to this question may constitute a nullification of R.C. 5507.10(C); similarly, a positive answer may be tantamount to an evisceration of substantial portions of R.C. 5507.04, R.C. 5507.06, R.C. 5507.09 and all of R.C. 5507.10(B). Therefore, I must be guided in this regard by two relevant canons of statutory construction: the disfavor with which the law views a statutory construction which has the effect of nullifying a statute or a portion thereof, where a reconciling interpretation is possible, State v. Berry, 25 Ohio St. 2d 255, 267 N.E. 2d 775 (1971), and the cognate duty to harmonize all sections of a statute so that all may be given effect. State ex rel. Krauss v. Lucas County Liquor Licensing Board, 93 Ohio St. 373, 113 N.E. 265 (1916); State ex rel. Semetko v. Board of Commissioners, 30 Ohio App. 2d 130, 283 N.E. 2d 648 (1971).

Of the four sections involved herein—R.C. 5507.04, R.C. 5507.06, R.C. 5507.09 and R.C. 5507.10—three remain precisely as they were upon the enactment of Am. S.B. No. 508 (1971-1972 Laws 1041, eff. Oct. 19, 1972), the purpose of which was stated as follows: "To amend sections 5507.01 to 5507.05. . . , and to enact sections 5507.011 and 5507.06 to 5507.22. . . , to enable the Transportation Research Board of Ohio to issue transportation revenue bonds, to make it a body corporate and politic, and to define its powers and functions." However, the fourth section, R.C. 5507.10, which was also enacted as part of Am. S.B. 508, was subsequently amended by Sub.H.B. 204, 112th General Assembly (1979) (eff. July 30, 1979). Therefore, it is instructive to compare R.C. 5507.10 in its present form with the language originally enacted by the legislature in 1972; such a consideration is proper where, as here, it is necessary to construe the terms of the amended statute. State v. Schmuck, 77 Ohio St. 438, 83 N.E. 797 (1908); Heck v. State, 44 Ohio St. 536, 9 N.E. 305 (1886).

R.C. 5507.10, prior to its amendment in 1979, read as follows:

All monies, funds, properties, and assets acquired by the transportation research board of Ohio under Chapter 5507. of the Revised Code, whether as proceeds from the sale of transportation research revenue bonds or as revenues, or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, shall be used and reused as provided in such chapter, and shall at no time be part of other public funds. Such funds, except as otherwise provided in any resolution authorizing its transportation research revenue bonds or in any trust agreement securing the same, or except when invested pursuant to section 5507.11 of the Revised Code, shall be kept in depositories selected by the board in the manner provided in Chapter 135. of the Revised Code, and the deposits shall be secured as provided in Chapter 135. of the Revised Code. The resolution authorizing the issuance of such bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such monies are paid shall act as trustee of such monies and hold and apply them for the purposes hereof, subject to such conditions as such chapter and such resolutions or trust agreement provide. (Emphasis added.)

R.C. 5507.11, referred to in the text of R.C. 5507.10 above, and repealed in 1979 by H.B. 204, stated as follows:

Monies in the funds of the transportation research board of Ohio, except as otherwise provided in any resolution authorizing the issuance of its transportation research revenue bonds or in any trust agreement securing the same, in excess of current needs, may be invested in notes, bonds, or other obligations of the United States of America or any agency or instrumentality thereof, or in obligations of this state or any political subdivision thereof. Income from all such investments of monies in any fund shall be credited to such funds as the board determines, subject to the provisions of any such resolution or trust agreement and such investments may be sold at such times as the board determines.

When the language of the two versions of R.C. 5507.10 is compared and contrasted, several things become evident. First, current R.C. 5507.10(A) is a verbatim reenactment of the first portion of former R.C. 5507.10, and only excises therefrom the declaration that "such monies shall at no time be part of other public funds." Second, with the exception of certain minor changes, such as the substitution of the phrase "transportation research revenue bonds" for "such bonds," the final sentence of former R.C. 5507.10 reappears in the current statute as R.C. 5507.10(B). The only truly substantive changes brought about by H.B. 204 were its elimination of the prohibition against the commingling of the Board's funds with other public funds (with the ancillary repeal of the Board's independent investment powers and the statutory standards therefor set out in R.C. 5507.11), and its creation of a fund in the state treasury into which the Board's funds would be deposited. See R.C. 131.32(D)(8) (creates transportation research fund). It is thus for this purpose that R.C. 5507.10(C) appears to have been enacted: to provide a fund into which Board revenues which are not otherwise committed may be deposited. Those funds would of course then be available for investment by the Treasurer of State in accordance with the standards provided for investment of public moneys. See generally R.C. Chapter 135 (Uniform Depository Act).

Can I ascribe to the action of the legislature in amending R.C. 5507.10 an intention to also withdraw from the Board the power to use a corporate trustee as the depository of funds which are either proceeds of a bond issue or subject to a pledge securing the payment of such bonds? I believe that the language of R.C. Chapter 5507 strongly militates against such a conclusion, notwithstanding that the literal language of R.C. 5507.10(C) seems to require that all funds, regardless of origin or use, be deposited with the state treasury. In other words, I believe that funds which fall within the parameters of R.C. 5507.10(B) are a fortiori outside the scope of R.C. 5507.10(C), and therefore may be deposited with a corporate trustee in accordance with a Board resolution or a trust agreement.

This conclusion obtains for a number of reasons. In the first instance, the canons of construction referred to above require me to reach a conclusion which reconciles all portions of R.C. Chapter 5507 if possible. State v. Berry; State ex rel. Krauss v. Lucas County Liquor Licensing Board. And as stated hereinbefore, if I were to reach the conclusion that R.C. 5507.10(C) in fact mandates the deposit of all funds of the Board, notwithstanding their origin or the use to which they are pledged, I would in effect be reaching a conclusion that completely vitiates the effect of language elsewhere in the statute which provides for the deposit of certain moneys with corporate trustees. For example, R.C. 5507.10(B), quoted above, requires a specific declaration of trust to be made by "any officer to whom, or any bank or trust company to which, such moneys [proceeds from issuance of bonds] are paid" (emphasis added). Yet, if R.C. 5507.10(C) is interpreted to apply to all funds of the Board, and actually requires their deposit with the state treasurer, then no moneys could be paid to such an "officer" or a "bank or trust company," and R.C. 5507.10(B) would be absolutely without effect. A similar conclusion obtains with regard to language appearing in R.C. 5507.04, inter alia, under which the Board is empowered to pledge the revenues of the Board as security for the bonds, and to "credit the proceeds. . .to and among the funds

referred to or provided for in the resolution." If all monies must be paid to the state treasury pursuant to R.C. 5507.10(C), then the Board's power to provide for other depositories is nullified. Most striking in this regard is the language of R.C. 5507.06; if R.C. 5507.10(C) is read to require the deposit of all funds with the treasury, R.C. 5507.06 is virtually eviscerated, and the language appearing therein concerning banks or trust companies which "may act as [a] depository of bonds or notes or of revenues" is rendered meaningless.

Such an interpretation of R.C. 5507.10(C) would, as demonstrated above, have the effect of repealing numerous other sections of R.C. Chapter 5507. That there is a policy against repeal by implication is axiomatic. State v. Ruppert, 54 Ohio St. 2d 263, 375 N.E. 2d 1250 (1978); Lucas County Board of Commissioners v. Toledo, 28 Ohio St. 2d 214, 277 N.E. 2d 193 (1971). To find here that the legislature intended to repeal all the language in R.C. Chapter 5507 which is inconsistent with the deposit of all Board funds with the State Treasurer is unreasonable, given the absence of any specific language of repealer and the availability of a rational, reconciling interpretation which gives effect to all parts of R.C. Chapter 5507. I believe that the better interpretation is that set forth herein: that R.C. 5507.10(B) controls where the Board, by resolution or by the terms of a trust agreement, properly designates a corporate trustee for the bondholders. Of course, all funds not pledged or otherwise committed under the resolution or trust agreement would be subject to the general rule of R.C. 5507.10(A) and therefore required to be deposited in the state treasury pursuant to R.C. 5507.10(C).

Therefore, it is my opinion, and you are advised, that the proceeds from the sale of transportation research revenue bonds, and other revenues pledged as security for such bonds, either by Board resolution or by a trust agreement, may be deposited with and held by a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, and need not be deposited into the transportation research fund established in the state treasury.