

**OPINION NO. 85-085****Syllabus:**

1. Pursuant to R.C. 135.21 and R.C. 5705.10, a board of education must credit interest earned on funds received as a gift and held in trust by the board to the general fund of the school district. If, however, the donor or grantor has restricted the purpose for which the interest may be used, the board of education must appropriate and use the interest for such purpose specified in the terms of the donation or grant.
2. A board of education must, pursuant to R.C. 135.21 and R.C. 5705.10, credit the interest earned on the moneys within its student activity fund to the general fund of the school district.
3. Pursuant to R.C. 135.21 and R.C. 5705.10, a board of education must credit interest earned on the money within its replacement fund to the general fund of the school district.
4. Pursuant to R.C. 5705.15, a board of education may transfer money from the general fund to the trust fund, student activity fund, or replacement fund of the school district in accordance with R.C. 5705.16.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 26, 1985**

I have before me your request for my opinion concerning the distribution of interest earned on certain funds established by a school district. In your letter of request, you state:

The Uniform School Accounting System (USAS), prescribed by [the Auditor of State pursuant to R.C. 117.43] establishes three types of trust funds—Fund Number 007, Fund Number 008, and Fund Number 200.

Fund Number 007, entitled "Special Trust Fund," is used to account for moneys held in trust by a school district. This fund is to be used when both the interest and principal may be expended for whatever purpose(s) for which the trust was established. In other words, this is an expendable trust fund.

Fund Number 008, entitled "Endowment," is used to account for moneys held in trust by a school district where only the interest may be expended for the designated purpose. The principal must remain intact. In other words, this is a nonexpendable trust.

Fund Number 200, entitled, "Student Activity Programs," is used to account for the financial transactions of the various student activity groups functioning within the school district. Each student activity program is a "sub-fund" of Fund 200.

Your question concerning these funds is whether "the interest earned from the investment of moneys from Funds 007, 008, and 200 [should] be prorated back to that fund on a pro-rata basis in accordance with Section 135.21, Revised Code, or deposited

into the general fund of the school district in accordance with Section 5705.10, Revised Code?"

You have also inquired about the allocation of interest earned on the investment of replacement fund moneys. You wish to know whether "the amendment to Section 5705.10, Revised Code require[s] interest earned from the investment of replacement fund monies to be credited to the general fund of a school district, or [whether] Section 3315.12, Revised Code, require[s] such interest to be credited to the replacement fund?"

I turn first to a discussion of fund 007, the "Special Trust Fund," and fund 008, the "Endowment" fund. R.C. 135.21, which is part of the Uniform Depository Act, reads in part as follows:

All investment earnings on money included within a public deposit of a subdivision and belonging to undivided tax funds shall, except as otherwise expressly provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportions in which they are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlements. All investment earnings from other moneys deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment, or other district of which he is acting as ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision shall, except as provided in section 135.351 of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong. All other investment earnings shall, except as provided in section 135.351 of the Revised Code, be credited to the general fund of the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs.... (Emphasis added.)

See R.C. 135.01(L) (defining "subdivision" to include any school district including a county school district).

R.C. 5705.10, which is part of the Uniform Tax Levy Law and which is applicable to school districts other than county school districts, see R.C. 5705.01(A), reads in part:

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. 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.)

You note in your request:

The question arises with respect to the interpretation of "custodial funds" [as used in R.C.

135.21]. It would seem that these words could be interpreted to encompass funds held in trust by a treasurer. If so, Section 135.21, Revised Code would require interest earned on the investment of a trust fund to be apportioned back to that fund. However, this creates a direct conflict with the provisions of Section 5705.10, Revised Code.

Thus, I must initially determine whether the moneys held in Funds 007 and 008 are custodial funds.

As the language of R.C. 135.21 suggests, custodial funds are held in the possession of the treasurer of a governmental body for some other entity, but are considered to be outside the treasury of the governmental body, unless specifically made part of the treasury, and are not available for use by the governmental body itself. See R.C. 135.01(K) (defining "public moneys" for purposes of R.C. 135.01-.21 as "all moneys in the treasury of the state or any subdivision of the state, or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision"); 1984 Op. Att'y Gen. No. 84-085 at 2-293 ("[m]oneys held in a custodial account are held by a treasurer as custodian, but are not considered to be part of the treasury...Moneys held by a county treasurer in a custodial capacity are not available for use by the county itself"); 1982 Op. Att'y Gen. No. 82-082 at 2-229 to 2-230 ("the General Assembly has created numerous funds with the intention that they be held by the Treasurer of State as custodian and that they not be considered part of the state treasury"; such moneys "do not require an appropriation prior to expenditure"). See also 1982 Op. Att'y Gen. No. 82-026; 1974 Op. Att'y Gen. No. 74-102.

It is my understanding that the principal deposited in funds 007 and 008 is received from gifts, donations, bequests, and endowments. R.C. 3313.36 empowers a board of education to accept such gratuities, and reads as follows:

By the adoption of a resolution, a board of education may accept any bequest made to it by will or may accept any gift or endowment from any person or corporation upon the conditions and stipulations contained in the will or connected with the gift or endowment. For the purpose of enabling the board to carry out the conditions and limitations upon which a bequest, gift, or endowment is made, it may make all rules and regulations required to fully carry them into effect. No such bequest, gift, or endowment shall be accepted by the board if the conditions thereof remove any portion of the public schools from the control of such board.

Unless otherwise provided by statute, moneys donated to a political subdivision, including those donated funds held in trust by the political subdivision, must be paid into the treasury of the political subdivision. R.C. 9.38; 1983 Op. Att'y Gen. No. 83-055. See 1985 Op. Att'y Gen. No. 85-055. See also R.C. 5705.09(H) (requiring a subdivision to establish in its treasury a "trust fund for any amount received by a subdivision in trust"). Further, moneys donated to a board of education are available for the use of the board, in accordance with the terms of the donation. R.C. 3313.36. See Op. No. 85-055; Op. No. 83-055. See also 1985 Op. Att'y Gen. No. 85-031. Thus, it is apparent that moneys received by a board

of education and held in trust by the board in funds number 007 and number 008 are not custodial funds.

Having determined that the moneys in question are not custodial funds, I turn now to your question as to how the interest earned on moneys invested from funds 007 and 008 is to be credited. As cited above, R.C. 135.21 states that investment earnings on moneys included within a public deposit of a subdivision, other than investment earnings on moneys belonging to undivided tax funds and on custodial funds, and except as provided in R.C. 135.351, must be "credited to the general fund of the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs." Thus, R.C. 135.21 requires that a board of education credit interest earned on the trust funds in question to the general fund of the school district. Cf. Op. No. 83-055 (pursuant to R.C. 135.351(A), interest earned on donations held in trust by the county under R.C. 5705.09(H) must be credited to the general fund of the county).

As I have set forth above, R.C. 5705.10 states:

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.

As I recently noted in 1985 Op. Att'y Gen. No. 85-072 at \_\_\_\_\_, the General Assembly has determined "that interest earned on the principal of any special fund, regardless of the source or purpose of the principal, is revenue derived from a source other than the general property tax for which the law does not prescribe use for a particular purpose and shall be paid into the general fund" (footnote omitted). Thus, R.C. 5705.10 also requires a board of education to credit interest earned on moneys held in a trust fund to the general fund of the school district. See Op. No. 83-055, n. 8 at 2-221 to 2-222 (pursuant to R.C. 5705.10, "the General Assembly has determined, as a general rule, that interest earned on the principal of any special fund (including a trust fund), regardless of the source or purpose of the principal, is revenue derived from a source other than the general property tax for which the law does not prescribe use for a particular purpose and shall be paid into the general fund").

You have indicated in your letter that the donor or grantor may have restricted the purpose for which the interest earned on the trust funds may be used. While R.C. 135.21 and R.C. 5705.10 require a board of education to credit interest earned on trust funds to the general fund, if the use of the interest is restricted by the terms of the grant or donation, then the board of education must appropriate the interest for such purpose specified in the terms of the donation. Op. No. 83-055. The interest may not be expended for a purpose other than that prescribed in the terms of the trust. Id. See also Op. No. 85-055; Op. No. 85-031.

I turn now to your question concerning the allocation of interest earned on student activity funds. R.C. 3315.062 reads in part:

(A) The board of education of any school district may expend moneys from its general revenue fund for the operation of such student activity programs as may be approved by the state board of education and included in the program of each school district as authorized by its board of education. Such expenditure shall not exceed five-tenths of one per cent of the board's annual operating budget.

(B) The state board of education shall develop, and review biennially, a list of approved student activity programs.

(C) If more than fifty dollars a year is received through a student activity program, the moneys from such program shall be paid into an activity fund established by the board of education of the school district. The board shall adopt regulations governing the establishment and maintenance of such fund, including a system of accounting to separate and verify each transaction and to show the sources from which the fund revenue is received, the amount collected from each source, and the amount expended for each purpose. Expenditures from the fund shall be subject to approval of the board. (Emphasis added.)

You state in your letter:

Fund Number 200, entitled, "Student Activity Programs," is used to account for the financial transactions of the various student activity groups functioning within the school district. Each student activity program is a "sub-fund" of Fund 200.

Each activity group is established for a specific purpose, such as Latin Club, Future Farmers of America, Honor Society, etc. The students in each group develop a purpose statement and budget that governs the operations of that particular group. Moneys raised through fund-raising activities or transferred to them by the board of education pursuant to Section 3315.062, Revised Code may only be spent for those items specified in the purpose statement and budget governing that student group.

Like funds 007 and 008, fund 200, a fund created to account for moneys received under student activity programs, is not a custodial fund. Moneys received from student activity programs are deposited in the treasury of the board of education. If fifty dollars or less is received annually from a student activity program, then such money is deposited to the general fund of the school district pursuant to R.C. 5705.10 (revenue "from a source other than the general property tax, for which the law does not prescribe use for a particular purpose... shall be paid into the general fund") or in a special fund established pursuant to R.C. 5705.12 (money from sources other than general property tax may be paid into a special fund created by the taxing authority with the approval of the Auditor of State). 1982 Op. Att'y Gen. No. 82-014. If more than fifty dollars is received annually, then the board must establish a special fund pursuant to R.C. 3315.062(C) in which to deposit the money. See Op. No. 82-014; 1980 Op. Att'y Gen. No. 80-060. Further, moneys in student activity funds are under the control of the board of education and may be expended for any proper public purpose of the board of education, which is not otherwise prohibited. See Op. No. 82-014; Op. No. 80-060; 1975 Op. Att'y Gen. No. 75-021; 1975 Op. Att'y Gen. No. 75-008.

As noted above, R.C. 135.21 requires all investment earnings, with certain exceptions not relevant herein, to be credited to the general fund of the school district. Thus, pursuant to R.C. 135.21, the board of education must credit interest earned on student activity funds to the general fund. R.C. 5705.10 mandates the same result. The language quoted above requires that interest earned on the principal of any special fund, including a student activity fund, be credited to the general fund of the school district. Therefore, a board of education must credit interest earned on its student activity fund to the general fund.

I turn now to your question whether R.C. 5705.10 requires "interest earned from the investment of replacement fund monies to be credited to the general fund of a school district, or [whether R.C. 3315.12] require[s] such interest to be credited to the replacement fund."

R.C. 3315.11 provides for the establishment of a replacement fund, and reads as follows:

The board of education of any city, exempted village, or local school district may establish and maintain a replacement fund, and for that purpose, set aside annually out of its revenue such sum as is necessary for said purpose. In case of total or partial destruction of any of the property of said board from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair, or improve the property so damaged, demolished, or destroyed and for said purposes the board may sell or use any of the securities or moneys of such replacement fund.

See R.C. 3315.14 ("[t]he replacement fund shall not be reduced, disposed of, or expended for purposes other than those specified in [R.C. 3315.11], except by a strict compliance with [R.C. 5705.15 and R.C. 5705.16]"). Pursuant to R.C. 3315.12, the replacement fund "may be invested in the same manner as is provided for the investment of the sinking fund of any school district having a bonded indebtedness, and all interest received from such investments, shall form a part of said fund and may be invested in like manner." R.C. 3315.14 further provides that, "[w]henever the replacement fund reaches the maximum amount deemed necessary by the board of education for the purposes specified in [R.C. 3315.11], the interest received from investments of said fund may be used by the board for any authorized school purposes." Thus, R.C. 3315.12 states that interest earned on moneys in the replacement fund must form a part of the replacement fund, unless the fund reaches the maximum amount deemed necessary, in which case, the interest may be used, pursuant to R.C. 3315.14, for any school purpose. R.C. 3315.12 thus is in irreconcilable conflict with R.C. 135.21 and R.C. 5705.10, which, as discussed above, require that such interest be credited to the general fund of the school district.

In order to resolve this conflict, I turn to R.C. 1.51 which reads as follows:

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.

See R.C. 1.52(A) ("[i]f statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails").

R.C. 3315.12 was enacted as part of the General Code in 1943, 1943-1944 Ohio Laws 475, 549 (H.B. 217, eff. June 17, 1943), and has not been amended since that time. R.C. 135.21 was enacted as part of the General Code in 1937, 1937-1938 Ohio Laws 226, 237 (Am. H.B. 326, eff. April 20, 1937), but has been amended on several occasions, most recently in Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985). The pertinent language of R.C. 5705.10, set forth above, was enacted by 1981-1982 Ohio Laws, Part I, 2079, 2109 (Am. Sub. H.B. 230, eff. March 15, 1982). Thus, even though R.C. 3315.12 is more specific than R.C. 135.21 or R.C. 5705.10, the latter two statutes will prevail as the later adoptions if it is the manifest intention of the General Assembly that they prevail.

As noted above, the pertinent language of R.C. 5705.10, providing that interest earned on a special fund must be credited to the general fund, was enacted in Am. Sub. H.B. 230 in 1982. Am. Sub. H.B. 230 also enacted R.C. 135.351 to create a system for the allocation of interest for counties different from that applicable to the state and its other political subdivisions found in R.C. 135.21. R.C. 135.351, as enacted, provided that all interest earned on money within the county treasury must be credited to the general fund of the county. Am. Sub. H.B. 230 also amended R.C. 135.21, but only to add language referring to R.C. 135.351.

In enacting Am. Sub. H.B. 230, it is apparent that the General Assembly intended to create a consistent and comprehensive scheme for the apportionment of interest earned on public deposits. See generally Op. No. 85-072; 1985 Op. Att'y Gen. No. 85-002; Op. No. 84-085; 1982 Op. Att'y Gen. No. 82-027; Op. No. 82-026. R.C. 135.21, which required, except as otherwise provided therein, that interest earned on a public deposit must be allocated to the general fund, was left basically intact by Am. Sub. H.B. 230. R.C. 5705.10 was amended specifically to provide that interest earned on the special funds of a subdivision must be credited to the general fund, see Op. No. 85-072, and in conformity therewith, R.C. 135.351 was enacted to require that all interest earned on county funds be credited to the general fund of the county. Thus, I believe that it is the legislature's intent that, except as specifically provided therein, R.C. 135.21, R.C. 135.351, and R.C. 5705.10 require that the interest earned on the moneys within the treasury of a subdivision must be credited to the general fund of the subdivision.<sup>1</sup>

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<sup>1</sup> In certain instances, there may be constitutional constraints which otherwise direct the allocation of interest. See Ohio Const. art. XII, §5a; 1982 Op. Att'y Gen. No. 82-031. See also 1982 Op. Att'y Gen. No. 82-084.

Thus, because R.C. 135.21 and R.C. 5705.10 were considered and amended by the General Assembly in 1982 as part of a comprehensive scheme for the apportionment of interest on public deposits, I believe it is the manifest intent of the General Assembly that R.C. 135.21 and R.C. 5705.10 prevail over R.C. 3315.12.

My conclusion is supported by Op. No. 82-027, wherein my predecessor, applying R.C. 1.51, determined that it was the manifest intent of the General Assembly that R.C. 135.351, which as noted above, requires interest earned on county moneys to be credited to the general fund of the county, prevail over R.C. 5705.29(F)(1), the earlier enactment, which provided at that time that money included in a reserve balance account (which may be created by a township, see R.C. 505.83, although the moneys therein are held in the county treasury) must be returned to the township.<sup>2</sup>

R.C. 1.51 was also utilized in 1982 Op. Att'y Gen. No. 82-035 to resolve the conflict between R.C. 135.351 and R.C. 5126.05, which requires interest earned on money received as a gift by a county board of mental retardation and developmental disabilities to be credited to the board. Again, it was found to be the manifest intent of the General Assembly that R.C. 135.351 prevail over R.C. 5126.05, the earlier enactment.<sup>3</sup>

In sum, I find it to be the manifest intent of the General Assembly that R.C. 135.21 and R.C. 5705.10 prevail over R.C. 3315.12, so that the interest earned on the replacement fund must be credited to the general fund of the school district.

As a final matter, I note that R.C. 5705.15 provides, with certain exceptions not relevant herein, that, "the taxing authority of any political subdivision may, in the manner provided in this section and [R.C. 5705.16], transfer from one fund to another any public funds under its supervision." Thus, a board of education may transfer moneys in its general fund to its trust fund, student activity fund, or replacement fund. In transferring funds, however, a board of education must comply with R.C. 5705.16.<sup>4</sup>

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<sup>2</sup> 1982 Op. Att'y Gen. No. 82-027 was approved and followed by 1985 Op. Att'y Gen. No. 85-002.

<sup>3</sup> R.C. 135.351 was amended in Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985) to specifically make an exception for the interest earned on gifts given to a county board of mental retardation and developmental disabilities. Such interest must now, in accordance with R.C. 5126.05, be credited to the county board. As a consequence of this amendment, 1982 Op. Att'y Gen. No. 82-035 was overruled by 1985 Op. Att'y Gen. No. 85-055.

<sup>4</sup> As discussed above, a board of education may establish a special fund pursuant to R.C. 5705.12 for the deposit of moneys from a student activity program if fifty dollars or less is received annually from the program. R.C. 5705.14(F) provides that money appropriated to the general fund may be transferred to a fund authorized by R.C. 5705.12. Such a transfer may be accomplished by resolution of the board of education and the procedure set forth in R.C. 5705.16 need not be followed. See generally 1939 Op. Att'y Gen. No. 791, vol. II, p. 996.



In conclusion, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 135.21 and R.C. 5705.10, a board of education must credit interest earned on funds received as a gift and held in trust by the board to the general fund of the school district. If, however, the donor or grantor has restricted the purpose for which the interest may be used, the board of education must appropriate and use the interest for such purpose specified in the terms of the donation or grant.
2. A board of education must, pursuant to R.C. 135.21 and R.C. 5705.10, credit the interest earned on the moneys within its student activity fund to the general fund of the school district.
3. Pursuant to R.C. 135.21 and R.C. 5705.10, a board of education must credit interest earned on the money within its replacement fund to the general fund of the school district.
4. Pursuant to R.C. 5705.15, a board of education may transfer money from the general fund to the trust fund, student activity fund, or replacement fund of the school district in accordance with R.C. 5705.16.