OPINION NO. 96-030

Syllabus:

1. When territory in a community reinvestment area created by a county pursuant to R.C. 3735.66 is annexed into a municipality, the county no longer has jurisdiction to grant new tax exemptions in the annexed territory. The county retains jurisdiction to administer any tax exemption to which a property owner has acquired a vested right prior to the annexation.

2. A municipality is not required to comply with the school district compensation provisions of R.C. 5709.82(C)-(D) when the municipality annexes territory in which a company with over one million dollars in new annual payroll has already been granted a tax exemption by a county or township, through a preexisting community reinvestment area or enterprise zone program as provided in R.C. 3735.65-.70 or R.C. 5709.61-.69.

3. When a municipality has committed a portion of the municipal income tax revenue generated by new development to another municipality pursuant to a joint economic development zone (JEDZ) agreement under R.C. 715.69, and subsequently becomes subject to the mandatory school district compensation requirement of R.C. 5709.82(C)-(D), neither obligation may be offset against the other, except as follows: (1) The parties to a JEDZ agreement may voluntarily agree to adjust any payments due thereunder in order to accommodate new obligations incurred under R.C. 5709.82(C)-(D); or (2) If the payments due under the JEDZ agreement are infrastructure costs, as defined at R.C. 5709.82(A)(2), such costs may be used as an offset in the calculation of the amount due the school district, as is provided by the formula set out in R.C. 5709.82(D).

To: Alan R. Mayberry, Wood County Prosecuting Attorney, Bowling Green, Ohio
By: Betty D. Montgomery, Attorney General, May 29, 1996

I am in receipt of your letter asking for my opinion on several issues regarding real property tax exemption programs. Your questions are substantially as follows:

1. If a community reinvestment area is established by a county under R.C. 3735.66 and subsequently part of that community reinvestment area is annexed into a municipality, does the annexed territory continue to be part of the community reinvestment area?

2. Is a municipality required to comply with the school district compensation provisions of R.C. 5709.82(C)-(D), when the municipality annexes territory in which a company with over one million dollars in new annual payroll has already been granted a tax exemption by a county or township through a preexisting community reinvestment area or enterprise zone program, as provided in R.C. 3735.65-.70 or R.C. 5709.61-.69?

3. How are the mandatory compensation provisions of R.C. 5709.82(C)-(D) to be applied in a situation where a municipality has previously committed a portion of the municipal income tax generated by new development to another municipality pursuant to a joint economic development zone agreement under R.C. 715.69?

Question 1: Effects of Annexation on a Community Reinvestment Area

Your first question concerns the effect of annexation on a previously established community reinvestment area (CRA). A CRA is an area of land in which real property tax exemptions are available to property owners who invest in remodeling or new construction of residential, commercial, or industrial facilities. *See* R.C. 3735.65(B); R.C. 3735.66. The authority to establish a CRA within municipal limits is vested in the municipality; the authority of a county to establish a CRA is limited to the unincorporated areas of the county. R.C. 3735.65(B); R.C. 3735.66. The legislative authority of the municipality or the county determines the size and number of CRAs within its jurisdiction and also the characteristics of the tax exemptions available in each CRA, subject to applicable statutory requirements.[1] In this manner, the municipality or county can tailor its CRA program to attract particular types of investments to the locations the municipality or county considers most suitable. The local legislative authority which has established the CRA appoints a housing officer to administer the exemption program therein. R.C. 3735.65(A). With respect to CRAs established prior to July 1, 1994, a property owner may apply for an exemption after completing the remodeling or new construction for which the exemption is sought. The housing officer must grant the tax exemption if the project described in the application meets the standards set out in the local enabling legislation. With respect to CRAs created on or after July 1, 1994, commercial and industrial applicants must apply prior to beginning a project and negotiate with the local legislative authority for an exemption. R.C. 3735.66-.671. Given these characteristics, the question of whether annexed territory continues to be part of a county-created CRA involves two issues: first, the effect of annexation on tax exemptions that already have been granted or applied for; and second, the effect of annexation on the authority of the county to grant new exemptions in the annexed territory.

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[1] In 1994, the General Assembly made major revisions in Ohio's property tax exemption programs, including the CRA program. *See* Am. Sub. S.B. 19, 120th Gen. A. (1994) (eff. July 22, 1994). Because of this legislation, the statutory requirements for CRAs created before July 1, 1994 differ from those applicable to CRAs created on or after July 1, 1994. *See* Am. Sub. S.B. 19, § 3 (uncodified). In general, a local government now has more flexibility in setting the duration and size of the exemptions available. *See generally* Mahaffey, Carol, "*Ohio's Community Reinvestment Program After Amended Substitute Senate Bill 19*," 8.3 Capital U. Ohio Tax Review 12 (Fall 1994); Stempfer, Robert, "*Ohio Community Reinvestment Program - Summary*," Public Practice CLE "Current Issues in Taxation" (Ohio Dept. of Taxation, Dec. 1, 1994).

The right to a tax exemption in a CRA is a substantive right that, once vested or accrued, cannot be modified, altered, or extinguished by subsequent legislative enactments. *See Stasia v. City of Dublin*, 93 Ohio App. 3d 185, 638 N.E.2d 108 (Franklin County 1994), *appeal denied*, 69 Ohio St. 3d 1488, 365 N.E.2d 43 (1994). *See generally Herrick v. Lindley*, 59 Ohio St. 2d 22, 391 N.E.2d 729 (1979) (considering whether right to an exemption from the state income tax had vested yet). The vesting of a right to a tax exemption is governed by the same principles articulated by the courts with respect to the vesting of rights under zoning law. *Stasia* at 190, 638 N.E.2d at 111. Although *Stasia* did not involve annexation, it is established in the context of zoning law that a substantive right that has vested under township or county legislation survives annexation and subsequent municipal zoning changes. *See, e.g., City of Columbus v. Union Cemetery Ass'n*, 45 Ohio St. 2d 47, 341 N.E.2d 298 (1976) (zoning); *Williams v. Village of Deer Park*, 78 Ohio App. 231, 69 N.E.2d 536 (Hamilton County 1946) (same). Accordingly, I conclude that annexation of part of the territory of a county-created CRA does not deprive a property owner therein of any right to a tax exemption that has vested prior to the annexation.

The court in *Stasia* held that the right to the CRA exemption considered therein had vested at the time of application. *Stasia*, 93 Ohio App. 3d at 190, 638 N.E.2d at 111. This holding was "heavily dependent" on the fact that under applicable law the housing officer had little or no discretion to deny an exemption once the facts asserted in the application were verified. *Id.* at 191, 638 N.E.2d at 112. In CRAs formed on or after July 1, 1994, however, commercial and industrial exemptions are not automatic upon verification of the application but must be negotiated with the local legislative authority and documented by a written agreement formally adopted by the legislative authority and binding on both the property owner and that legislative authority. R.C. 3735.67(A); R.C. 3735.671. Additionally, in these new CRAs, an application for an exemption on a commercial or industrial project must be filed before the project is begun, so at the time of application the owner has not yet performed any acts that entitle him or her to the exemption. A right does not vest until its existence becomes independent of any action or inaction of another. *See Hatch v. Tipton*, 131 Ohio St. 364, 368, 2 N.E.2d 875, 877 (1936); *see also Torok v. Jones*, 5 Ohio St. 3d 31, 448 N.E.2d 819 (1983) (syllabus, paragraph two) ("property owner fails to secure a vested right...where there has been no substantial change of position or expenditures...in reliance upon the zoning permit"). *See generally Smith v. Juillerat*, 161 Ohio St. 424, 119 N.E.2d 611 (1954) (syllabus, paragraph four); 1990 Op. Att'y Gen. No. 90-056. Thus, the right to an exemption for commercial and industrial projects in newly formed CRAs vests at the time that the written agreement is adopted and the property owner has made a substantial change of position or expenditure in reliance thereon.

The property owners in the annexed territory have no vested right, however, in the continuing existence of the CRA itself or in a continuing ability to apply for tax exemptions. *Cf. State ex rel. Bd. of Educ. v. Board of Educ.*, 172 Ohio St. 237, 240, 175 N.E.2d 91, 93 (1961) ("[t]here is no vested right in the establishment or transfer of a school district in, or to, a particular territory. The entire matter is subject to legislative control"); *Curtiss v. City of Cleveland*, 166 Ohio St. 509, 525, 144 N.E.2d 177, 187 (1957) ("no property owner has a vested right to have the zoning classification which is in effect when he acquires or improves real estate to remain unchanged"). *See generally State ex rel Bouse v. Cikelli*, 165 Ohio St. 191, 134 N.E.2d 834 (1956) (there can be no vested right in existing legislation which precludes its amendment or repeal); *Buehler v. Buehler*, 67 Ohio App. 2d 7, 9, 425 N.E.2d 905, 907

(Hamilton County 1979) (an expectation based upon anticipated continuance of existing law is not a vested right). With respect to those property owners in the annexed territory who have not acquired any vested rights, the issue is whether annexation terminates the county's jurisdiction to continue to grant exemptions in that territory.

Since there are no statutes expressly governing the annexation of CRAs, I address this issue by examining the law pertaining to similar kinds of districts. Just as the authority of a county to create CRAs is limited to unincorporated territory, R.C. 3735.65(B), the authority of a county to create sewer districts and zoning districts is limited to the unincorporated areas of the county. *See* R.C. 303.02; R.C. 6117.01.[2] Also like CRAs, zoning and sewer districts remain administrative units of the entity that created them. The statutes governing zoning and sewer districts, however, expressly provide that a county retains certain limited jurisdiction when such districts are annexed. R.C. 303.18 provides that county zoning regulations in effect at the time of annexation remain in effect and are to be enforced by the county until the municipality officially adopts or replaces the regulations with respect to the annexed territory. R.C. 6103.04 provides that the county retains jurisdiction over annexed portions of a sewer district until planned improvements have been completed or abandoned. It can be inferred from these statutes that a county has no jurisdiction over annexed portions of the districts except to the extent expressly provided in these statutes. *See Ohio Water Serv. Co. v. Board of Comm'rs*, 25 Ohio Misc. 19, 265 N.E.2d 808 (C.P. Lake County 1968) (interpreting R.C. 6103.04); *see also* 1921 Op. Att'y Gen. No. 2071, vol. I, p. 387 (syllabus, paragraph one) (concluding prior to the enactment of the provisions of R.C. 6103.04, that a county lost jurisdiction over any annexed portion of a sewer district where no sewers had yet been established). It follows that, in the absence of similar statutes with respect to CRAs, the county has no continuing jurisdiction over any portion of a CRA that is annexed into a municipality.

This result is consistent with the policy reflected in the CRA statutes. The use of tax exemptions generally is intended to attract economic development to an area. The flexibility given to local legislative authorities in determining the location of CRAs and the types of exemptions available therein indicates an intent on the part of the General Assembly that a local government be able to control such development within its own jurisdiction. There is no indication in the statutes that a CRA becomes an independent entity with a territorial jurisdiction separate from that of its creator. Thus when territory in a CRA is annexed into a municipality, the municipality's authority to direct and control the future development of that area supplants that of the county.

In response to your first question, therefore, I conclude that when territory in a CRA created by a county pursuant to R.C. 3735.66 is annexed into a municipality, the county no longer has jurisdiction to grant new tax exemptions in the annexed territory. The county retains jurisdiction to administer any tax exemption to which a property owner has acquired a vested right prior to the annexation.

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[2] With respect to sewer districts, a municipality may authorize a county to establish a district that is located entirely or partly within the municipality. R.C. 6117.03. The county, however, has no authority to do so unilaterally.

Introduction to Questions 2-3: Overview of R.C. 5709.82(C)-(D)

Both of your remaining questions involve implementation of the school district compensation provisions of R.C. 5709.82(C) and (D). These questions and the specific discussions thereof will be more easily understood if I first provide a general overview of the statutory provisions involved. R.C. 5709.82(C) and (D) are part of the legislative scheme enacted in S.B. 19 for the purpose of protecting school districts from the loss of revenue that results from real property tax exemptions.[3] R.C. 5709.82(C) and (D) provide that, under certain conditions, a municipality that has granted an exemption must either negotiate a compensation agreement with the school district or pay that school district an amount determined by a statutory formula that is based on the increased municipal income tax revenue attributable to the exemption.

In order to trigger the negotiation requirement of R.C. 5709.82(C), three conditions must occur. First, the municipality must act to grant or consent to a tax exemption under one of these specified programs: community reinvestment area, R.C. 3735.67-.671, enterprise zone, R.C. 5709.62; R.C. 5709.63; R.C. 5709.632, urban renewal, R.C. Chapter 725, community urban redevelopment, R.C. Chapter 1728, brownfield sites, R.C. 5709.88, or tax increment financing, R.C. 5709.40-.41. Second, the action granting the exemption must occur on or after July 1, 1994.[4] Third, the annual payroll attributable to new employees at the site of the tax exempt project must equal or exceed one million dollars. New employees are persons employed in construction of the real property receiving the exemption, and also persons employed at the exempt site under specified conditions which tend to indicate that their employment is attributable to the exemption. R.C. 5709.82(A)(1).

If the municipality and the school district fail to negotiate a mutually acceptable agreement within six months of the date the municipality approves the exemption, the mandatory compensation requirement of R.C. 5709.82(C) is triggered. The municipality must then pay the school district an amount equal to fifty percent of the difference between (1) the amount of municipal income tax collected from new employees and (2) any allowable infrastructure costs incurred by the municipality. R.C. 5709.82(D). This payment must be made each year of the tax exemption in which the payroll threshhold is met, unless or until the municipality and school district negotiate an acceptable alternative compensation agreement. *Id.*

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[3] Other protective measures enacted by S.B. 19 include requirements that school districts be notified when tax exemption agreements are under consideration, caps on the size of exemptions that can be granted without school district approval, and authority for school districts to propose compensation agreements as a condition of such approval. *See, e.g.*, R.C. 3735.671(A)(1); R.C. 5709.62(D); R.C. 5709.83.

[4] I note that this is primarily a grandfather clause which excepts tax exemption agreements approved prior to S.B. 19 from the requirements of R.C. 5709.82. Additional grandfathering provisions appear in uncodified sections three and eight of S.B. 19. You have not raised any questions regarding the application of these provisions. I will assume for purposes of discussion that your questions relate to exemptions that satisfy all pertinent time requirements.

Question 2: Whether Annexation Activates School District Compensation Provisions of R.C. 5709.82(C)-(D)

Your second question asks whether a municipality is required to comply with the school district compensation provisions of R.C. 5709.82(C) and (D) if the municipality annexes territory in which a company with over one million dollars in new annual payroll has already been granted a tax exemption by a county or township, through a preexisting CRA or enterprise zone program. In order to answer this question, I must examine whether the conditions that trigger the negotiation requirement of R.C. 5709.82(C) have been met. It is established in your question that the payroll condition is satisfied. I assume, for purposes of discussion, that the action granting the exemption occurred on or after July 1, 1994. Thus, the issue presented by your question is whether the first condition of the negotiation requirement is satisfied.

Pursuant to the express language of R.C. 5709.82(C), municipalities are required to negotiate with a school district only "[i]f *the legislative authority of any municipal corporation has acted* under the authority of...section 3735.671 [CRAs]...5709.62, 5709.63, 5709.632 [enterprise zones]...or a housing officer under section 3735.67 of the Revised Code [CRAs], *to grant or consent to the granting of an exemption* from taxation for real or tangible personal property on or after July 1, 1994." (Emphasis added.) Additionally, the mandatory compensation provision is imposed only if there is no negotiated agreement within six months of the time the legislative authority of the municipality has formally approved the instrument granting the exemption. *Id.* Thus, R.C. 5709.82(C) requires more than the mere existence of an exemption. It expressly requires that the municipality itself act, under one of the specified statutes, to grant or consent to the exemption.

None of the CRA or enterprise zone statutes specified in division (C) provide any means for a municipality to grant or consent to a tax exemption in unincorporated territory. As discussed in the context of your first question, tax exemptions in CRAs outside of municipal limits are granted and administered by the county or its housing officer. *See* R.C. 3735.65-.66. In the enterprise zone program, tax exemptions for facilities in unincorporated territory are granted by the county with the consent of the affected township, and administered by either the county or township. R.C. 5709.63; R.C. 5709.632.[5] Neither the CRA program nor the enterprise zone program provides any authority for a municipality to grant or consent to the grant of an exemption outside the municipal limits. Thus, prior to annexation, neither the municipality nor its housing officer can have taken any action that would require negotiation of a compensation agreement with the school district or that would impose mandatory compensation under R.C. 5709.82(C)-(D).

The remaining issue, then, is whether the annexation itself is an action which triggers the negotiation or mandatory compensation requirements. I note first and foremost in this regard, that a municipality that annexes territory acts pursuant to the provisions of R.C. Chapter 709,

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[5] In contrast to CRAs, a county may form an enterprise zone that includes territory within municipal limits. R.C. 5709.63; R.C. 5709.632. The municipality must consent to the inclusion of its territory in the enterprise zone and also to each specific tax exemption granted by the county to facilities within the municipal limits. *Id.* A municipality also has independent authority to form enterprise zones within the municipal limits and to grant tax exemptions therein directly. R.C. 5709.62; R.C. 5709.632(A)(1) and (C). In either case, municipal authority with respect to exemptions in enterprise zones is exercised only within the municipal limits.

not pursuant to any of the CRA or enterprise zone statutes that are cited in R.C. 5709.82. Additionally, annexation cannot be construed as an implied consent to any tax exemption under the CRA or enterprise zone statutes. As indicated in response to your first question, when part of a county-created CRA is annexed, the county continues to administer previously granted exemptions, in accord with the terms and conditions established between the county and the grantee. A municipality acquires no control over a preexisting exemption by virtue of annexation.

The result does not differ for enterprise zones. Enterprise zones, governed by R.C. 5709.61-.69, are areas in which tax incentives, including real property tax exemptions, are available for certain types of business development. As already noted, the creation of enterprise zones and the granting of exemptions in unincorporated territory are functions of the county, acting with township consent. Thus, as was true of CRAs, vested exemptions will continue to be administered by the county or the township in accord with the terms and conditions negotiated with the business concerned. Since the municipality acquires no control over these preexisting exemptions, the annexation cannot be construed as an implied consent.

In further support of this result, I note that the goals of a local government in negotiating a tax exemption agreement with a business are shaped in part by the accommodations that must be made with the school district as a result of the exemption. A municipality wishing to avoid the possible loss of fifty percent of the income tax revenue generated by an exempted business may negotiate a very different agreement with that business than would a county or township that is under no such restraint. The General Assembly cannot have intended that a municipality be forced to share its income tax revenue in situations where the municipality had no authority to control the terms and conditions of the tax exemption in the first place. I conclude, therefore, in answer to your second question, that a municipality is not required to comply with the school district compensation provisions of R.C. 5709.82(C)-(D) when the municipality annexes territory in which a company with over one million dollars in new annual payroll has already been granted a tax exemption by a county or township, through a preexisting CRA or enterprise zone program as provided in R.C. 3735.65-.70 or R.C. 5709.61-.69.

Question 3: Relationship Between Obligations Under a Joint Economic Development Zone Agreement and Mandatory Compensation Provisions of R.C. 5709.82(C)-(D)

Your third question asks how the mandatory compensation requirement of R.C. 5709.82(C)-(D) is to be applied in a situation where a municipality has previously committed a portion of the income tax revenue generated by new development to another municipality pursuant to a joint economic development zone (JEDZ) agreement under R.C. 715.69. The JEDZ program is a means for municipalities to cooperate in providing improvements necessary for the economic and commercial development of a designated zone. The participating municipalities enter a contract designating the territory to be included in the JEDZ and setting forth each municipality's contribution to the zone. The contract terms may include the provision of services, money, or equipment and the sharing of municipal income tax revenue attributable to business development in the JEDZ. The JEDZ program itself does not involve property tax exemptions, and thus does not trigger any requirement to negotiate with or compensate a school district under R.C. 5709.82(C)-(D).

Your question arises in situations where a municipality wishes to take additional action to encourage development in the JEDZ by offering tax exemptions under one of the programs listed in R.C. 5709.82(C). If the mandatory compensation requirement is then triggered, the municipality could be required to pay the school district an amount equal to as much as fifty percent of the municipal income tax revenue collected from new employees at the tax exempt site. R.C. 5709.82(D). Because under the JEDZ agreement the municipality has already committed a percentage of the new income tax revenue generated in the JEDZ to another purpose, imposition of mandatory compensation to the school district without some adjustment of either the school district compensation formula or of the JEDZ commitment could deprive the municipality of most or all of the financial benefit that the municipality hoped to gain from the tax exemption. On the other hand, any adjustments would deprive either the school district or the other party to the JEDZ agreement of the amount that otherwise would be due to them. The issue thus presented is whether the municipality must fully comply with both obligations or whether the amount due under either R.C. 5709.82(D) or the JEDZ agreement can be offset in some way against the other.[6]

In examining this issue, I look first to whether the governing statutes permit or require such offsets. R.C. 715.69(C) provides that the JEDZ contract between participating municipalities "may provide for the parties to distribute among themselves, in the manner they agree to, any municipal income tax revenues derived from the income earned by persons employed by businesses that locate within the zone," and further provides that the parties may amend, renew, or terminate the contract by mutual consent. Pursuant to this language, the contracting municipalities are free to negotiate an adjustment of amounts due under the contract in order to accommodate financial obligations incurred under other statutes. Absent such an agreement between the parties however, nothing in R.C. 715.69 permits or requires any

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[6] The following scenario, utilizing facts that gave rise to your question, helps illustrate this issue. The City of Perrysburg levies and collects a one and one-half per cent municipal income tax. Pursuant to a JEDZ agreement between Perrysburg and the City of Toledo, Toledo provides water service to a JEDZ located in Perrysburg in return for sixty percent of the first one percent collected from employees of businesses locating in the JEDZ. This is, in effect, forty percent of the entire one and one-half percent tax. If Perrysburg were to grant a tax exemption to a company locating in the JEDZ and also trigger the mandatory compensation provisions of R.C. 5709.82(C)-(D), Perrysburg would be required to pay the school district an amount equal to fifty percent of the difference between the tax revenue collected from the incomes of new employees at the tax exempt site and any allowable infrastructure costs. In order to simplify the following calculation examples, I assume that there is no difference between the revenue streams used to calculate the school district obligation and the JEDZ obligation, *but see* discussion *infra* p. 10, and that there are no other contractual obligations with respect to that revenue. I further assume that Perrysburg has no infrastructure costs which can be offset in determining the amount owed the school district.

Under these circumstance, if the JEDZ agreement and R.C. 5709.82(D) each apply fully, Toledo would get forty percent of the new tax revenue, the school district would get fifty percent, and Perrysburg would retain only ten percent. If the JEDZ obligation could be offset from the school district calculation, Toledo would get forty percent of the new tax revenue, while the school district and Perrysburg would each get half of the remaining sixty percent. Alternatively, if the school district obligation could be offset from the JEDZ calculation, the school district would get fifty percent of the new revenue, while Toledo and Perrysburg would split the remaining fifty percent sixty-forty. Although there are other possible formulas for offsets, these examples are sufficient to demonstrate the effect of differing calculations.

exception to full implementation of the contract as negotiated. Nor can R.C. 5709.82(C)-(D) be construed to require any reduction of payments due under the JEDZ agreement. *See generally* Ohio Const. art. II, § 28 (prohibiting laws impairing the obligations of contracts).

R.C. 5709.82(C)-(D) do, however, specify one exception to their own application and one allowable offset. First, a complete exception to both the negotiation and mandatory compensation requirements exists when a municipality has consented to the grant of a tax exemption in a joint economic development *district*, under R.C. 715.81.[7] R.C. 5709.82(C). Second, the calculation prescribed by R.C. 5709.82(D) excludes certain infrastructure costs, thereby effectively offsetting those amounts from the amount to be paid to the school district. *See also* R.C. 5709.82(A)(2) (defining infrastructure costs). If the amount due under a JEDZ agreement constitutes an infrastructure cost, it is offset as provided in R.C. 5709.82(D). No express offset is provided, however, for any other financial obligations of the municipality. Nor is any express exception provided for exemptions granted in joint economic development zones as opposed to districts. It is axiomatic that when a statute makes express mention of certain things, other things of the same class are excluded by implication. *See Weirick v Mansfield Lumber Co.*, 96 Ohio St. 386, 397, 117 N.E. 362, 365 (1917). It does not appear, therefore, that the preexisting commitment of certain tax revenues under a JEDZ agreement can constitute an exception to the full application of the mandatory compensation provisions of R.C. 5709.82(C)-(D).

It is true that I recently concluded that "the portion of a shared income tax that is required by agreement, ordinance, and ballot language to be paid to the school district" could be offset from the fifty percent calculation required by R.C. 5709.82(D), even though there was no express provision for such an offset. 1996 Op. Att'y Gen. No. 96-012 (syllabus). The key factor in this conclusion, however, was that even though the shared portion of the tax was "levied and collected by the municipality" within the literal requirement of R.C. 5709 82(D), the tax was not levied and collected for the use and benefit of the municipality. "Proceeds of that portion of the tax are never available to the municipal corporation, and the municipal corporation receives no benefit from that percentage of the tax." *Id.*, slip op. at 4. A JEDZ agreement may be adopted by ordinance, and in the case of newer JEDZs, approved by the voters, *see* R.C. 715.69(E) (as amended by Am. Sub, H.B. 269, 121st Gen. A. (1995) (eff. Nov. 15, 1995)). The JEDZ agreement is not a shared income tax, however. It is a contract pursuant to which one municipality may pledge future tax revenue as consideration for desired services, equipment, or financial assistance from other municipalities. The only sense in which this tax revenue is not available for the use and benefit of the municipality is that it has already been spent. Accordingly, there is no implied exception in R.C. 5709.82(C)-(D) for tax revenue committed pursuant to a JEDZ agreement.

I note as a final matter that, although there is an appearance of conflict, there is no inherent conflict between the JEDZ statute and the revenue sharing provisions of R.C. 5709.82(C)-(D). The amounts due under a JEDZ agreement and under R.C. 5709.82(D) are

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[7] Joint economic development districts (JEDDs) are created, pursuant to R.C. 715.70-.81, by one or more municipalities and one or more townships that wish to facilitate the economic development of a designated area. A political subdivision that is a party to a JEDD agreement is prohibited from granting certain tax exemptions in the JEDD unless all the other parties agree. *See* R.C. 715.70(H); R.C. 715.71(A); R.C. 715.81.

not necessarily calculated on the same revenue stream. *Cf.* note 6, *infra*. Pursuant to R.C. 715.69(C), a JEDZ contract may provide for participating municipalities to share "municipal income tax revenues derived from the income earned by persons employed by businesses that locate within the zone after it is designated...and from the net profits of such businesses." The fifty per cent formula in R.C. 5709.82(D) applies to the amount municipal income taxes "levied and collected...on the incomes of new employees" but not to taxes on business profits. The terms "new employee," R.C. 5709.82(D), and "persons employed by businesses that locate within the zone," R.C. 715.69(C), are not synonymous. The term "new employee" includes persons employed in the construction of exempt real property regardless of where their employer is located, R.C. 5709.82(A)(1)(a), and excludes persons employed by a business in the zone, if prior to employment at the exempt site they paid tax to the municipality on income from the same employer, R.C. 5709.82(A)(1)(b). Thus, the degree of identity between the revenue streams depends upon the terms of the particular JEDZ agreement and the facts pertaining to each exempt business. The statutes themselves set up separate and independent methods for determining the exact revenues to which they apply.

Additionally, R.C. 5709.82(D) does not require that the school district be paid directly or exclusively from the proceeds of the increase in municipal income tax revenue. *See* 1996 Op. Att'y Gen. No. 92-012, n.3. The amount of new tax revenue collected is simply a variable in the formula used to determine what is owed. Payment may be made from the "general fund or a special fund established for the purpose," R.C. 5709.82(D), and is not required to be made from funds expressly obligated to other purposes. Thus, payment of both a JEDZ obligation and the R.C. 5709.82(D) amount is possible, even in situations where the combined amount owed exceeds the total amount of new revenue collected. The question of whether a tax exemption should be offered under such circumstances is a matter of policy for the municipality to decide. Increased income tax revenues are not the only benefit derived from new development. It is possible that other benefits may justify granting a tax exemption, even though the mandatory compensation provision might be activated. Since exemptions granted prior to the enactment of R.C. 5709.82(C)-(D) do not trigger either the negotiation or revenue sharing requirements, the General Assembly has insured that a municipality is able to take the school district compensation provisions into account when negotiating tax exemption agreements.

I conclude therefore, in response to your third question, that when a municipality has committed a portion of the municipal income tax revenue generated by new development to another municipality pursuant to a JEDZ agreement under R.C. 715.69, and subsequently becomes subject to the mandatory school district compensation requirement of R.C. 5709.82(C)-(D), neither obligation may be offset against the other, except as follows: (1) The parties to a JEDZ agreement may voluntarily agree to adjust any payments due thereunder in order to accommodate new obligations incurred under R.C. 5709.82(C)-(D); or (2) If the payments due under the JEDZ agreement are infrastructure costs, as defined at R.C. 5709.82(A)(2), such costs may be used as an offset in the calculation of the amount due the school district, as is provided by the formula set out in R.C. 5709.82(D).

Conclusion

It is, therefore, my opinion and you are hereby advised that:

1. When territory in a community reinvestment area created by a county pursuant to R.C. 3735.66 is annexed into a municipality, the county no longer has jurisdiction to grant new tax exemptions in the annexed

territory. The county retains jurisdiction to administer any tax exemption to which a property owner has acquired a vested right prior to the annexation.

2. A municipality is not required to comply with the school district compensation provisions of R.C. 5709.82(C)-(D) when the municipality annexes territory in which a company with over one million dollars in new annual payroll has already been granted a tax exemption by a county or township, through a preexisting community reinvestment area or enterprise zone program as provided in R.C. 3735.65-.70 or R.C. 5709.61-.69.

3. When a municipality has committed a portion of the municipal income tax revenue generated by new development to another municipality pursuant to a joint economic development zone (JEDZ) agreement under R.C. 715.69, and subsequently becomes subject to the mandatory school district compensation requirement of R.C. 5709.82(C)-(D), neither obligation may be offset against the other, except as follows: (1) The parties to a JEDZ agreement may voluntarily agree to adjust any payments due thereunder in order to accommodate new obligations incurred under R.C. 5709.82(C)-(D); or (2) If the payments due under the JEDZ agreement are infrastructure costs, as defined at R.C. 5709.82(A)(2), such costs may be used as an offset in the calculation of the amount due the school district, as is provided by the formula set out in R.C. 5709.82(D).