

OPINION NO. 2013-005**Syllabus:**

2013-005

1. When a county that has a community mental health board and an alcohol and drug addiction services board establishes a board of alcohol, drug addiction, and mental health services (“ADAMH board”), the ADAMH board is a newly established board under R.C. 340.021(C).
2. In order to establish an ADAMH board under R.C. 340.021(C), a board of county commissioners must adopt a resolution establishing the board and comply with the requirements of R.C. 340.02 and R.C. 340.021(C)(1) regarding the composition and appointment of board members and all other matters related to the board.
3. Revenues from the 2008 and 2010 mental health tax levies for the Mahoning County Mental Health Board may be used to fund mental health and alcohol and drug addiction services provided by an ADAMH board, so long as the expenditure is consistent with the authorizing tax statute and the tax levies’ authorizing resolutions and ballot language.
4. The Mahoning County Board of Commissioners may designate as a replacement or renewal levy a proposed replacement or renewal of the 2008 and 2010 mental health tax levies for the “current expenses of the Mental Health Board” even though an ADAMH board has been established, so long as the levy questions are submitted in compliance with the requirements of R.C. 5705.192 and R.C. 5705.25 and the ballot language clearly explains the purpose of the levies.

To: Paul J. Gains, Mahoning County Prosecuting Attorney, Youngstown, Ohio

By: Michael DeWine, Ohio Attorney General, February 21, 2013

You have requested an opinion concerning the establishment of a board of alcohol, drug addiction, and mental health services (“ADAMH board”) under R.C. 340.021(C). In your letter, you explain that Mahoning County currently has a community mental health board (the Mahoning County Mental Health Board) and a separate alcohol and drug addiction services board (the Mahoning County Alcohol and Drug Addiction Services Board). You further explain that the Mahoning County Board of Commissioners is considering whether to establish an ADAMH board in place of the two separate boards. You ask the following questions, which we have summarized as follows:

1. When a county that has a community mental health board and an

alcohol and drug addiction services board establishes an ADAMH board, is the ADAMH board a newly established board under R.C. 340.021(C)?

2. What procedures are required in order to merge a community mental health board and an alcohol and drug addiction services board under R.C. Chapter 340?
3. May revenues from the 2008 and 2010 mental health tax levies for the Mahoning County Mental Health Board be used to fund mental health and alcohol and drug addiction services provided by a newly established ADAMH board?
4. After the establishment of an ADAMH board, may the Mahoning County Board of County Commissioners designate as a replacement or renewal levy pursuant to R.C. 5705.192 and R.C. 5705.25 a proposed replacement or renewal of the 2008 and 2010 mental health levies for the “current expenses of the Mental Health Board?”

Alcohol, Drug Addiction, and Mental Health Services Boards (“ADAMH Boards”)

We begin with a brief discussion of the organization and authority of an ADAMH board. Any county or combination of counties with a population of at least fifty thousand people is required to establish an alcohol, drug addiction, and mental health service district (“ADAMH district”). R.C. 340.01(B). An ADAMH district is established in order to provide alcohol and drug addiction and mental health services. *Id.* For each ADAMH district, an ADAMH board, consisting of eighteen members, must be appointed. R.C. 340.02. However, larger counties (those with a population of two hundred fifty thousand or more on October 10, 1989) have the option of forming an ADAMH board or maintaining a community mental health board and a separate board of alcohol and drug addiction services. R.C. 340.021.¹

As the planning agency for mental health and alcohol and drug addiction

¹ In 1989, the General Assembly enacted R.C. 340.021. 143 Ohio Laws, Part III, 4193-4194 (Am. Sub. H.B. 317, eff. Oct. 10, 1989). When R.C. 340.021 was first enacted, the statute required larger counties (those with a population of two hundred fifty thousand or more) to establish an alcohol and drug addiction services board by October 10, 1989, unless prior to that date, the board of county commissioners adopted a resolution designating an ADAMH board as the entity responsible for providing alcohol and drug addiction services. R.C. 340.021 was amended three additional times to extend the period of time in which a larger county could provide for an ADAMH board. 150 Ohio Laws, Part I, 610-612, (Am. Sub. H.B. 95, eff. June 26, 2003); 151 Ohio Laws, Part III, 6160-6162 (Am. Sub. H.B. 530, eff. June 30, 2006); Am. Sub. H.B. 562, 127th Gen. A. (2007-2008) (eff. Sept. 23, 2008). Whether to establish an ADAMH board in a larger county continues to be discretionary under the current version of R.C. 340.021.

services in the counties it serves, an ADAMH board is responsible for evaluating the need for services, establishing a plan for services, and assessing the provision of those services. *See generally* R.C. 340.03 (mental health services); R.C. 340.033 (alcohol and drug addiction services); 2011 Op. Att’y Gen. No. 2011-042, at 2-341. The specific duties of an ADAMH board with respect to mental health services are set forth in R.C. 340.03. The specific duties with respect to alcohol and drug addiction services are set forth in R.C. 340.033.

An ADAMH board may receive funding from private and public sources for the operation of alcohol, drug addiction, and mental health programs and the maintenance or acquisition of facilities. *See* R.C. 340.03(A)(7) (ADAMH board shall “[r]ecruit and promote local financial support for mental health programs from private and public sources”); R.C. 340.033(A)(12) (ADAMH board shall “[r]ecruit and promote local financial support, from private and public sources, for alcohol and drug addiction programs”). Public funding is provided by the counties and the state. R.C. 340.07 (appropriation of funds to an ADAMH board by a board of county commissioners); R.C. 340.09 (assistance from Department of Mental Health for operation of and services provided by ADAMH boards); R.C. 340.14 (“[t]he department of alcohol and drug addiction services shall provide assistance to any county for the operation of [ADAMH boards] and the provision of alcohol and drug addiction services from funds appropriated for that purpose by the general assembly”); R.C. 5119.61(D) (“[a]t the [director of the department of mental health’s] discretion, provide to [ADAMH boards] state or federal funds, in addition to those allocated under [R.C. 5119.62], for special programs or projects the director considers necessary but for which local funds are not available”); R.C. 5119.61(G) (the director of the department of mental health shall “[r]eview each [ADAMH board’s] community mental health plan submitted pursuant to [R.C. 340.03] and approve or disapprove it in whole or in part”); R.C. 5119.62(A) (“[t]he department of mental health shall establish a methodology for allocating to [ADAMH boards] the funds appropriated by the general assembly to the department for the purpose of local mental health systems of care”); 1999 Op. Att’y Gen. No. 99-030, at 2-199 to 2-200. In addition, upon approval of a majority of the electors in a county, a tax may be levied by a board of county commissioners to fund the operation of alcohol, drug addiction, and mental health programs by an ADAMH board. *See* R.C. 5705.19; R.C. 5705.191; R.C. 5705.221; 2009 Op. Att’y Gen. No. 2009-030, at 2-204.

Annually, an ADAMH board is required to develop a community mental health plan for the delivery of mental health services, which is required to be submitted to the Department of Mental Health. R.C. 340.03(A)(1)(c). Approval of the plan determines whether an ADAMH board is eligible for state and federal funding. *Id.* An ADAMH board is also required to develop a plan for the operation of alcohol and drug addiction programs which shall be submitted to the Department of Alcohol and Drug Addiction Services. R.C. 340.033(A)(2), (3); R.C. 3793.05. The plan constitutes an application for funds distributed by the Department of Alcohol and Drug Addiction Services. R.C. 3793.05. Once the plans are approved by the Department of Mental Health and the Department of Alcohol and Drug Addiction Services, a

county is not obligated to provide funding for services that are not included within the plans. See *In re Hays: Ohio Dep't. of Mental Health v. Clermont Cty. Alcohol, Drug Addiction and Mental Health Services Bd.*, 70 Ohio St. 3d 471, 477, 639 N.E.2d 433 (1994). R.C. 340.011(B) provides:

Nothing in [R.C. Chapters 340, 3793, 5119, or 5122] shall be construed as requiring a board of county commissioners to provide resources beyond the total amount set forth in a community mental health plan, as developed and submitted under [R.C. 340.03], . . . , and nothing in those chapters shall be construed as requiring a board of county commissioners to provide resources beyond the total amount set forth in a plan for alcohol and drug addiction services, prepared and submitted in accordance with [R.C. 340.033 and R.C. 3793.05], to provide alcohol and drug addiction services.

Establishment of an ADAMH Board Pursuant to R.C. 340.021

As discussed above, counties with a larger population have the option of maintaining a separate community mental health board and a separate alcohol and drug addiction services board or establishing an ADAMH board. Based on information provided in your opinion request, it appears that Mahoning County has thus far opted to maintain a community mental health board and a separate alcohol and drug addiction services board. Mahoning County is now contemplating the establishment of an ADAMH board to replace the Mahoning County Mental Health Board and the Mahoning County Alcohol and Drug Addiction Services Board. R.C. 340.021 sets forth the procedure for establishing an ADAMH board and provides, in pertinent part:

(A) In an alcohol, drug addiction, and mental health service district comprised of a county with a population of two hundred fifty thousand or more on October 10, 1989, the board of county commissioners shall, within thirty days of October 10, 1989, establish an alcohol and drug addiction services board as the entity responsible for providing alcohol and drug addiction services in the county, unless, prior to that date, the board adopts a resolution providing that the entity responsible for providing the services is a board of alcohol, drug addiction, and mental health services [ADAMH board]. . . .

(B) If a board of county commissioners subject to [R.C. 340.021(A)] did not adopt a resolution providing for [an ADAMH board], the board of county commissioners may establish such a board in accordance with the following procedures:

(1) Not later than January 1, 2007, the board of county commissioners shall adopt a resolution expressing its intent to establish [an ADAMH board].

(2) After adopting a resolution under [R.C. 340.021(B)(1)], the board of county commissioners shall instruct the county's community

mental health board and alcohol and drug addiction services board to prepare a report on the feasibility, process, and proposed plan to establish [an ADAMH board]. The board of county commissioners shall specify the date by which the report must be submitted to the board for its review.

(3) After reviewing the report prepared under [R.C. 340.021(B)(2)], the board may adopt a final resolution establishing [an ADAMH board]. A final resolution establishing such a board shall be adopted no later than July 1, 2007.

(C)(1) If a board of county commissioners subject to [R.C. 340.021(A)] did not adopt a resolution providing for [an ADAMH board] and did not establish such a board under [R.C. 340.021(B)], the board of county commissioners may establish [an ADAMH board] on or after [September 23, 2008]. To establish the board, the board of county commissioners shall adopt a resolution providing for the board's establishment.

(a) For initial appointments to the board, the county's community mental health board and alcohol and drug addiction services board shall jointly recommend members of those boards for reappointment and shall submit the recommendations to the board of county commissioners, director of mental health, and director of alcohol and drug addiction services.

(b) To the greatest extent possible, the appointing authorities shall appoint the initial members from among the members jointly recommended under [R.C. 340.021(C)(1)(a)].

(2) If [an ADAMH board] is established pursuant to [R.C. 340.021(C)(1)], the board has the same rights, privileges, immunities, powers, and duties that were possessed by the county's community mental health board and alcohol and drug addiction services board. When the board is established, all property and obligations of the community mental health board and alcohol and drug addiction services board shall be transferred to the [ADAMH board].

It is evident from the language of R.C. 340.021 that when a board of county commissioners adopts a resolution establishing an ADAMH board, the ADAMH board is a newly established board. Divisions (B) and (C) of R.C. 340.021 refer to the *establishment* of an ADAMH board. Even though the initial members of an ADAMH board are selected from members of a community mental health board and an alcohol and drug addiction services board, the initial members of an ADAMH board must be appointed. R.C. 340.021(C)(1)(a). The requirement that the members be appointed indicates that the ADAMH board is a newly created board, and not simply a merger of two existing boards. Furthermore, all of the property and obligations of the community mental health board and the alcohol and drug addiction services board must be transferred to the ADAMH board. R.C. 340.021(C)(2). This requirement that the property and obligations be transferred from the individual boards

reinforces the notion that the ADAMH board is a separately created entity that replaces the individual boards. Therefore, we conclude that when a board of county commissioners adopts a resolution establishing an ADAMH board pursuant to R.C. 340.021(C), the ADAMH board is a newly established board.²

We now turn to your second question concerning the procedures for establishing an ADAMH board pursuant to R.C. 340.021(C). R.C. 340.021(C)(1) states “[t]o establish [an ADAMH board], the board of county commissioners shall adopt a resolution providing for the board’s establishment.” Thus, initially, the sole requirement to establish an ADAMH board is the adoption of a resolution establishing an ADAMH board by a board of county commissioners. As for the composition, operation, and appointment of members to an ADAMH board, R.C. 340.021(C)(1) requires that a board of county commissioners comply with R.C. 340.02, subject to the exception in R.C. 340.021(C)(1) for appointing the initial members of an ADAMH board.

The initial appointments to an ADAMH board must be, to the extent possible, selected from members of the community mental health board and the alcohol and drug addiction services board who are jointly recommended for appointment by the members of the two separate boards. R.C. 340.021(C)(1)(a), (b). For all other matters related to the composition and function of an ADAMH board, a board of county commissioners and an ADAMH board must comply with the requirements of R.C. 340.02. *Id.*; 1990 Op. Att’y Gen. No. 90-038, at 2-156 to 2-157 (initial appointments to ADAMH board must be consistent with composition requirements of R.C. 340.02, including the qualification requirements).

R.C. 340.02 sets forth several requirements and procedures regarding an ADAMH board. We summarize here only some of the provisions of R.C. 340.02. An ADAMH board shall consist of eighteen members, nine of whom are interested in mental health services and programs and nine of whom are interested in alcohol and drug addiction programs. R.C. 340.02. All members of an ADAMH board must reside in the service district. *Id.* The Director of Mental Health and the Director of Alcohol and Drug Addiction Services must each appoint four members, in addition to ten members appointed by the board of county commissioners. *Id.* In a joint-county district, the county commissioners of each of the participating counties must appoint a number of board members in proportion to each county’s population in the district, but not less than one member from each county. *Id.* R.C. 340.02 also sets forth specific qualifications for some of the members of an ADAMH board. The Director of Mental Health must ensure that at least one of each of the following individuals is appointed to the board: a psychiatrist, a mental health professional, a person who is or has received mental health services paid for by public funds, and a parent or other relative of a person who is or has received publicly funded mental health services. *Id.* Similarly, the Director of Alcohol and Drug Addiction Services

² Although R.C. 340.021 does not use the term “newly established” when referring to the establishment of an ADAMH board under R.C. 340.021(C), we use the term to differentiate between the creation of an entity that previously did not exist and the merger or consolidation of two existing entities.

must ensure that at least one of each of the following individuals is appointed to the board: a professional in the alcohol or drug addiction services field, an advocate for persons receiving alcohol or drug addiction treatment, a person who is or has received treatment services for alcohol or drug addiction, and a parent or other relative of a person who is or has received treatment services for alcohol or drug addiction. *Id.*

Finally, an ADAMH board is required to employ an individual as an executive director. R.C. 340.032. R.C. 340.032 requires that the person employed as an executive director be “a qualified mental health or alcohol or drug addiction services professional with experience in administration or a professional administrator with experience in mental health or alcohol or drug addiction services.” The duties of an executive director of an ADAMH board are prescribed by the ADAMH board. *Id.*

Therefore, we conclude that the procedures required for the establishment of an ADAMH board are those set forth in R.C. 340.02 and R.C. 340.021(C). Initially, a board of county commissioners must adopt a resolution establishing an ADAMH board. R.C. 340.021(C)(1). The composition, operation, and appointment of members to an ADAMH board must be consistent with R.C. 340.02, subject to the exception in R.C. 340.021(C)(1) for appointing the initial members of an ADAMH board. R.C. 340.021(C)(1).³

³ Your opinion request notes the following recommendations made by other counties that have established an ADAMH board pursuant to R.C. 340.021:

Establish a timeline for the merger process.

Develop a working board that will meet several times before the official start date.

Select a leader for the composite board as soon as practical.

Insure that all new board members are supportive of consolidation.

As this is a newly established board, note that all current members of both boards may submit resumes to the County Commissioners for appointment to the new board.

These recommendations, albeit prudential, are not included as part of the requirements the General Assembly has enacted for the establishment of an ADAMH board pursuant to R.C. 340.021. In our research we also have not located a statute elsewhere in the Revised Code or a regulation promulgated within the Ohio Administrative Code that requires compliance with these recommendations when a county decides to establish an ADAMH board. Accordingly, it is left to the discre-

Use of Revenue from Existing Mental Health Tax Levies

Your third question asks whether revenue from the 2008 and 2010 mental health tax levies may be used to fund mental health and alcohol and drug addiction services provided by the newly established ADAMH board. The electors of Mahoning County approved two separate five-year levies, one of which was passed in 2008 and one of which was passed in 2010, for the “current expenses of the Mental Health Board.” Both tax levies currently are in effect and will remain in effect through tax years 2013 and 2015, respectively. To determine whether the revenue generated from the 2008 and 2010 mental health tax levies may be used for services provided by a newly established ADAMH board, we must first understand how tax levies are passed in Ohio.

Ohio Const. art. XII, § 2 provides that

[n]o property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation.

See also R.C. 5705.02 (the aggregate amount of taxes that may be levied against property in a county may not “in any one year exceed ten mills on each dollar of tax valuation of [the county], except for taxes specifically authorized to be levied in excess thereof”). This constitutional limitation (that is reiterated in R.C. 5705.02) is known as the “ten-mill limitation.” R.C. 5705.02. “The taxing authority⁴ of any subdivision⁵ may make tax levies authorized in excess of the ten-mill limitation by a vote of the people under the law applicable thereto, irrespective of all limitations on the tax rate.” R.C. 5705.07 (footnotes added). Levies in excess of the ten-mill limitation that are authorized by the electorate may be either general or special levies. *See* R.C. 5705.04(E).

The term “special levy” is not defined by statute; however, prior Attorney General opinions have read “special levy” to mean “a levy for a specific purpose, as opposed to a general levy for current expenses.” 2011 Op. Att’y Gen. No. 2011-

tion of the Mahoning County Board of Commissioners whether to follow one or more of these recommendations.

⁴ For purposes of R.C. Chapter 5705, the term “taxing authority,” in the case of a county, is the board of county commissioners; in the case of a joint-county ADAMH district, the taxing authority is the district’s ADAMH board. R.C. 5705.01(C). Mahoning County is not part of a joint-county ADAMH district. Therefore, for the purpose of this opinion, the pertinent taxing authority is the Mahoning County Board of Commissioners.

⁵ For purposes of R.C. Chapter 5705, the term “[s]ubdivision” includes, *inter alia*, a county and a joint-county ADAMH district. R.C. 5705.01(A). Mahoning County is the pertinent subdivision involved in this opinion.

009, at 2-72 (quoting 2010 Op. Att’y Gen. No. 2010-028, at 2-205); 1999 Op. Att’y Gen. No. 99-015, at 2-115 (“[a] special levy is a tax that is levied for a special purpose”); 1992 Op. Att’y Gen. No. 92-058, at 2-239 n.1 (“[s]pecial levy’ is not expressly defined by statute However, ‘special levy’ is the term applied to a levy for a specific purpose, as opposed to a general levy for current expenses”). A special levy’s purpose may be limited to a particular use by the authorizing statute and further limited by the language of the levy resolution or ballot. 2012 Op. Att’y Gen. No. 2012-014, at 2-119; 2010 Op. Att’y Gen. No. 2010-028, at 2-205; 2005 Op. Att’y Gen. No. 2005-044, at 2-479 n.1 (“[t]he resolution and ballot language cannot expand the purposes for which tax revenues may be expended beyond the purposes established by the language [of the levy statute], but may restrict the purposes for which tax revenues may be expended to specified purposes that come within the purposes authorized by [the levy statute]”); 1998 Op. Att’y Gen. No. 98-023, 2-126 to 2-127; 1977 Op. Att’y Gen. No. 77-097, at 2-323 (“the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein”). Revenue collected as a result of a special levy must be credited to a special fund and used only for the purpose for which the levy was imposed. R.C. 5705.10(C) and (H); 2011 Op. Att’y Gen. No. 2011-031, at 2-251; 2009 Op. Att’y Gen. No. 2009-054, at 2-408 n.6; 1998 Op. Att’y Gen. No. 98-023, at 2-127; 1987 Op. Att’y Gen. No. 87-107, at 2-711.

In contrast, the purpose of a general levy for current expenses is to generate revenue from which “any expenditures for current expenses of any kind may be made.” R.C. 5705.05; 2011 Op. Att’y Gen. No. 2011-009, at 2-72; 2010 Op. Att’y Gen. No. 2010-028, at 2-205. Because revenue from a general levy is used to make expenditures of any kind, the purpose of a general levy may not be limited by resolution or ballot language. 2009 Op. Att’y Gen. No. 2009-054, at 2-407 to 2-408 n.5. Furthermore, “proceeds of a general levy for current expenses must be available for all current expenses of a subdivision.” 2010 Op. Att’y Gen. No. 2010-028, at 2-205 (quoting 1992 Op. Att’y Gen. No. 92-058, at 2-239).

In your letter, you reference two statutes under which you propose that the 2008 and 2010 Mahoning County mental health tax levies were passed: R.C. 5705.19(A) and R.C. 5705.221. R.C. 5705.19 sets forth numerous purposes for which a taxing authority may levy a tax in excess of the ten-mill limitation. R.C. 5705.19(A)-(WW); 2011 Op. Att’y Gen. No. 2011-009, at 2-72. R.C. 5705.19(A) allows a taxing authority to levy a tax for “current expenses of the subdivision.” A levy passed pursuant to R.C. 5705.19(A) is a general levy for current expenses. 2011 Op. Att’y Gen. No. 2011-009, at 2-72; 2009 Op. Att’y Gen. No. 2009-054, at 2-407. Revenue generated by a tax levied pursuant to R.C. 5705.19(A) must be paid into the general fund and “must remain available for all current expenses of the subdivision, rather than being earmarked for a particular purpose.” 1988 Op. Att’y Gen. No. 88-101, at 2-498 n.1; *see also* 1990 Op. Att’y Gen. No. 90-069, at 2-288 n.1. A levy passed pursuant to R.C. 5705.19(A) may have “the current expenses of the subdivision” as its only purpose. 1988 Op. Att’y Gen. No. 88-101, at 2-498 n.1 (quoting 1955 Op. Att’y Gen. No. 5585, p. 339 (syllabus, paragraph one)). While

the presence of the phrase “current expenses” in the resolution and ballot language may be indicative of whether a tax levy was passed pursuant to R.C. 5705.19(A), it is not dispositive. 2010 Op. Att’y Gen. No. 2010-028, at 2-206 to 2-207; 1988 Op. Att’y Gen. No. 88-101, at 2-498 n.1.

R.C. 5705.221(A) authorizes a board of county commissioners to declare by resolution at any time, that:

the amount of taxes which may be raised within the ten-mill limitation . . . will be insufficient to provide the necessary requirements of the county’s [ADAMH district] . . . , and that it is necessary to levy a tax in excess of such limitation for the operation of alcohol and drug addiction programs and mental health programs and the acquisition, construction, renovation, financing, maintenance, and operation of alcohol and drug addiction facilities and mental health facilities.

A tax levied pursuant to R.C. 5705.221(A) is a special levy as the purpose for which the tax is imposed is restricted to providing funds for expenses related to alcohol, drug addiction, and mental health services.

The resolutions and ballot language of the two mental health levies that are the subject of your opinion request have “current expenses of the Mental Health Board” as their stated purpose. As the purpose is restricted to expenses related to a particular entity, rather than the current expenses of the subdivision (Mahoning County), it appears that the 2008 and 2010 mental health tax levies were passed pursuant to R.C. 5705.221(A) for the Mahoning County Mental Health Board.

It is well established that the “provisions of a tax statute cannot be extended beyond the clear import of the language used. Nor can their operation be enlarged to embrace subjects not specifically enumerated.” 1983 Op. Att’y Gen. No. 83-069, at 2-283 (quoting *Roddy v. Andrix*, 95 Ohio L. Abs. 311, 314 (C.P. Madison County 1964)). Nevertheless, “tax levy revenue may be used for projects that were neither contemplated nor anticipated when the tax levy was originally authorized, so long as the expenditure is reasonable and otherwise consistent with the tax levy’s authorizing resolution and ballot language.” 2012 Op. Att’y Gen. No. 2012-014, at 2-120.

To determine whether revenue generated from the 2008 and 2010 mental health tax levies may be used to fund mental health and alcohol and drug addiction services provided by a newly established ADAMH board, we must determine whether providing mental health and alcohol and drug addiction services by an ADAMH board is consistent with the purpose for which the tax levies were established as identified in the authorizing statute, the county commissioners’ resolutions, and the ballot language. In other words, we must determine whether funding the costs associated with providing mental health and alcohol and drug addiction services by the proposed ADAMH board is consistent with the terms of R.C. 5705.221(A) and funding the current expenses of the Mahoning County Mental Health Board.

R.C. 340.021(A) states that “[a] community mental health board has all the

powers, duties, and obligations of [an ADAMH board] with regard to mental health services.” Similarly, “[a]n alcohol and drug addiction services board has all the powers, duties, and obligations of [an ADAMH board] with regard to alcohol and drug addiction services.” R.C. 340.021(A). Furthermore, “[a]ny provision of the Revised Code that refers to [an ADAMH board] with regard to mental health services also refers to a community mental health board and any provision that refers to [an ADAMH board] with regard to alcohol and drug addiction services also refers to an alcohol and drug addiction services board.” *Id.* Once an ADAMH board is established pursuant to R.C. 340.021(C)(1), the newly established board has “the same rights, privileges, immunities, powers, and duties that were possessed by the county’s community mental health board and alcohol and drug addiction services board.” R.C. 340.021(C)(2). In addition, following the establishment of an ADAMH board, all of the property and obligations of the community mental health board and alcohol and drug addiction services board are transferred to the ADAMH board. *Id.*

The provisions of R.C. 340.021(A) and (C)(2) indicate that although an ADAMH board is a newly established board, it possesses the same duties and responsibilities of a community mental health board and an alcohol and drug addiction services board. The newly established ADAMH board replaces those separate boards more in name than in function. The same tasks and services performed by the individual boards are performed by the ADAMH board. Thus, if a mental health service or an alcohol and drug addiction service performed by a newly established ADAMH board would have been a duty or responsibility of a community mental health board, then the cost related to providing that service would have been an expense of a community mental health board. As an expense of, in this case, the Mahoning County Mental Health Board, the expenditure would then also be an appropriate use of funds generated from the 2008 and 2010 mental health tax levies.

However, whether a particular mental health or alcohol and drug addiction program or service would have been a service performed by the Mahoning County Mental Health Board, and therefore, an appropriate expense of the Mental Health Board, is a factual determination that is beyond the scope of an opinion of the Attorney General. *See* 1985 Op. Att’y Gen. No. 85-066, at 2-254 (“determinations as to whether particular expenses were incurred in the performance of statutory duties involve questions of fact, and this office is, therefore, unable to provide advice concerning particular expenditures”); 1981 Op. Att’y Gen. No. 81-040, at 2-163 (“[the determination of whether a particular expenditure is connected with an official duty] is largely dependent on the resolution of issues of fact and is not, therefore, the proper subject for an opinion of the Attorney General”). Ultimately, whether a particular expenditure is appropriate lies within the reasonable exercise of discretion of the governmental entity authorized to make the expenditure. *See* 2012 Op. Att’y Gen. No. 2012-039, slip op. at 2-3 n.1. ⁶

In sum, revenues from the 2008 and 2010 mental health tax levies for the

⁶ R.C. 340.033 sets forth a broad range of duties of an alcohol and drug addiction services board and an ADAMH board with respect to alcohol and drug addiction

current expenses of the Mahoning County Mental Health Board may be used to pay for mental health and alcohol and drug addiction services provided by a newly established ADAMH board, so long as the expenditure is consistent with the authorizing tax statute and the tax levies' authorizing resolutions and ballot language. Accordingly, if providing a mental health or alcohol and drug addiction service would have been an appropriate expense of the Mahoning County Mental Health Board, revenue from the tax levies may be used to pay for the services when they are provided by the county's ADAMH board.

Renewal or Replacement of Mental Health Levies

Your fourth question asks whether, in the future, a board of county commissioners may propose as a renewal or replacement levy, a renewal or replacement of the 2008 and 2010 mental health tax levies once an ADAMH board is established. You question whether the replacement or renewal levies may be considered to have the same purpose as the previous mental health levies (for the "current expenses of the Mental Health Board") when the Mahoning County Mental Health Board no longer exists.

R.C. 5705.192(B) authorizes a taxing authority to propose to replace an existing tax levy. "The taxing authority may propose to replace the existing levy in its entirety at the rate at which it is authorized to be levied; may propose to replace a portion of the existing levy at a lesser rate; or may propose to replace the existing levy in its entirety and increase the rate at which it is levied." R.C. 5705.192(B). If a taxing authority proposes to replace an existing levy, the ballot language must reflect that the levy is a replacement levy. *Id.* A replacement levy must appear separately on the ballot, "shall be limited to the purpose of the existing levy," and must not be conjoined with a renewal of another levy. *Id.* A replacement levy "supplants the existing levy with a substitute" and "renders the existing levy ineffective." 1988 Op. Att'y Gen. No. 88-068, at 2-348.

R.C. 5705.25(A) provides, in pertinent part:

services. By identifying the duties of a community mental health board and an alcohol and drug addiction services board separately, it is evident that the General Assembly intended that the individual boards provide different services. At the same time, however, we note that there is some degree of overlap between mental health and alcohol and drug addiction. *See generally* National Institute on Drug Abuse, Research Report Series, Comorbidity: Addiction and Other Mental Illnesses, <http://www.drugabuse.gov/sites/default/files/rrcomorbidity.pdf> (last visited December 20, 2012) (article notes that "[m]any people who regularly abuse drugs are also diagnosed with mental disorders and vice versa . . . [and] [t]he high rate of comorbidity between drug use disorders and other mental illnesses argues for a comprehensive approach to intervention that identifies and evaluates each disorder concurrently, providing treatment as needed"). Furthermore, that mental health services and alcohol and drug addiction services in a county may be planned, coordinated, and evaluated by a single ADAMH board is indicative of the General Assembly's recognition of the overlap in mental health services and alcohol and drug addiction services.

a resolution to renew an existing levy . . . shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year.

R.C. 5705.25(B) and (C) specify the form of the ballots for a renewal levy. A renewal levy “may be at the same rate as the existing levy; at a higher rate, indicated by designating the proposal as a renewal and an increase; or, at a lower rate, indicated by designating the proposal as a renewal and a reduction in the millage.” 2007 Op. Att’y Gen. No. 2007-016, at 2-160. “A renewal levy is one that begins again or extends an existing levy.” *Id.*

To propose the replacement or renewal of an existing levy, the purpose of the replacement or renewal levy must be the same as the levy that is to be renewed or replaced. With respect to your particular situation, in order for the Mahoning County Board of Commissioners to propose the replacement or renewal of the 2008 and 2010 mental health tax levies once the ADAMH board is established, the replacement or renewal levies must have the same purpose as the 2008 and 2010 mental health tax levies that will be replaced or renewed.

A similar question was addressed in 2007 Op. Att’y Gen. No. 2007-016. In that opinion, the existing levy had the stated purpose of “funding the Butler County Children Services Board for services to abused, neglected, and dependent children.” *Id.* at 2-150. Subsequently, the Butler County Board of Commissioners designated the county’s department of job and family services as the agency to provide children services in the county. In light of this change, the Attorney General was asked whether a levy for children services, which would commence at the end of the term of the existing levy, could be in the form of a replacement or renewal levy. *Id.* at 2-150 to 2-151. The Attorney General answered the question affirmatively, reasoning that a levy to fund the Butler County Children Services Board for children services had the same purpose as a levy to fund the county department of job and family services for children services. *Id.* at 2-158 and 2-160 to 2-161. The purpose of the existing levy (to provide children services) remained the same regardless of the change in the designation of the agency providing those services. *Id.* Thus, a levy replacing or renewing the existing children services levy could be designated as a replacement or renewal levy. *Id.*

We find that a similar analysis may be applied to your situation. A community mental health board “has all the powers, duties, and obligations of [an ADAMH board] with regard to mental health services.” R.C. 340.021(A). In addition, a newly established ADAMH board “has the same rights, privileges, immunities, powers, and duties that were possessed by the county’s community mental health board and alcohol and drug addiction services board.” R.C. 340.021(C)(2). Once an ADAMH board is established pursuant to R.C. 340.021(C)(1), “all property and obligations of the community mental health board and alcohol and drug addiction services board shall be transferred to the [ADAMH board].” R.C. 340.021(C)(2). R.C. 340.021’s language demonstrates that the replacement of a community mental

health board with an ADAMH board is essentially a change in name or form, rather than a change in function or purpose. An ADAMH board has the same duties and responsibilities with respect to mental health services as a community mental health board. Expenses incurred by a community mental health board in fulfilling its statutory duties will be the same as the expenses incurred by an ADAMH board in fulfilling its statutory duties with respect to mental health services. Revenue generated by tax levies for the “current expenses of the Mental Health Board” will be used to provide the same services and perform the same functions by an ADAMH board with respect to mental health services as would have been provided and performed by a community mental health board. We find that the stated purpose of the 2008 and 2010 mental health tax levies (“current expenses of the Mental Health Board”) extends to expenses of an ADAMH board that are for services that would have been expenses of the Mahoning County Mental Health Board.

Therefore, we conclude that the Mahoning County Board of Commissioners may designate as a replacement or renewal levy a proposed replacement or renewal of the 2008 and 2010 mental health tax levies for the “current expenses of the Mental Health Board” after the establishment of an ADAMH board, so long as the levy questions are submitted in compliance with the requirements of R.C. 5705.192 and R.C. 5705.25 and the ballot language clearly explains the purpose of the levies. A clear explanation of the purpose of the levies will include language in the resolution and ballot stating that the Mahoning County Mental Health Board has been replaced by an ADAMH board. *See* 2007 Op. Att’y Gen. No. 2007-016, at 2-158 n.6.⁷

Conclusions

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

1. When a county that has a community mental health board and an alcohol and drug addiction services board establishes a board of alcohol, drug addiction, and mental health services (“ADAMH board”), the ADAMH board is a newly established board under R.C. 340.021(C).
2. In order to establish an ADAMH board under R.C. 340.021(C), a board of county commissioners must adopt a resolution establishing the board and comply with the requirements of R.C. 340.02 and R.C. 340.021(C)(1) regarding the composition and appointment of board members and all other matters related to the board.
3. Revenues from the 2008 and 2010 mental health tax levies for the

⁷ The determinative factor in whether ballot language is valid is “whether the voters were misled.” *See Bratton v. Couch*, 5th Dist. No. 05 CA 25, 2006-Ohio-6799, at ¶36. With respect to your particular situation, the voters of Mahoning County will be less likely to be misled if the resolution and ballot language of a replacement or renewal levy specify that the levy is for the expenses of the ADAMH board.

Mahoning County Mental Health Board may be used to fund mental health and alcohol and drug addiction services provided by an AD-AMH board, so long as the expenditure is consistent with the authorizing tax statute and the tax levies' authorizing resolutions and ballot language.

4. The Mahoning County Board of Commissioners may designate as a replacement or renewal levy a proposed replacement or renewal of the 2008 and 2010 mental health tax levies for the "current expenses of the Mental Health Board" even though an ADAMH board has been established, so long as the levy questions are submitted in compliance with the requirements of R.C. 5705.192 and R.C. 5705.25 and the ballot language clearly explains the purpose of the levies.