

OPINION NO. 81-032**Syllabus:**

1. Pursuant to R.C. 505.56 and R.C. 5739.02(C)(1), a township may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The revenue derived from such tax may be used for any lawful purpose and need not be used to support a convention and visitors' bureau within the county.

2. Pursuant to R.C. 5739.024(B), a township that is not wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to R.C. 5739.024(A) may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. A township that may levy a tax pursuant to R.C. 5739.024(B) may do so regardless of whether a tax has been levied pursuant to R.C. 505.56 and R.C. 5739.02(C)(1). At least half of the revenue derived from any tax levied pursuant to R.C. 5739.024(B) must be deposited into a separate fund, to be spent solely to make contributions to convention and visitors' bureaus operating in the county in which the township is wholly or partly located. (1981 Op. Att'y Gen. No. 81-022, approved and followed.)

To: Roger L. Kline, Pickaway County Pros. Atty., Circleville, Ohio

By: William J. Brown, Attorney General, June 30, 1981

I have before me your request for my opinion concerning the following question:

Pursuant to Ohio Revised Code Section 505.56 and Section 5739.024(B) what amount of a tax can a township levy on lodging and, what amount must the township use from the revenue generated to support a convention and visitors' bureau within the county?

Although you have requested an informal opinion, I have chosen to respond by means of a formal opinion because this is a matter of statewide concern.

R.C. 505.56 authorizes a board of township trustees to levy an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests and provides as follows:

A board of township trustees may by resolution adopted by a majority of the members of the board, levy an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests. The board may establish all regulations necessary to provide for the administration and allocation of the tax. All funds arising from such an excise tax shall be deposited in the township treasury and may be expended for any lawful purpose. A board of township trustees shall not levy the tax authorized by this section in any city or village.

As used in this section, "hotel" and "transient guests" have the same meaning as in section 5739.01 of the Revised Code. (Emphasis added.)

R.C. 505.56 states that revenues derived from the tax may be used for "any lawful purpose." Therefore, a township need not contribute any portion of the revenue derived from a tax levied pursuant to R.C. 505.56 to convention and visitors' bureaus.

Although R.C. 505.56 does not restrict the amount of tax which may be levied pursuant thereto, R.C. 5739.02(C)(1) states that the amount of tax levied by a township for any lawful purpose on transactions by which lodging by a hotel is or is to be furnished to transient guests may not exceed three percent. R.C. 5739.02 levies a state excise tax on such transactions and R.C. 5739.02(C) provides as follows:

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this

section and division (B) of section 5739.01 of the Revised Code does not prevent:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 [5739.02.4] of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section. (Emphasis added.)

Since R.C. 505.56 and R.C. 5739.02 relate to the same subject they should be regarded *in pari materia*. State ex rel. Shipman v. Young, 175 Ohio St. 215, 193 N.E.2d 85 (1963). They should, therefore, be construed together, and harmonized if possible. See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956); National Distillers Products Corp. v. Evatt, 143 Ohio St. 99, 54 N.E.2d 146 (1944). The Ohio Supreme Court has adopted the position that, in construing a statute in connection with other sections *in pari materia*, one or more of the sections should be limited as necessary to give effect to all of the provisions. Southern Surety Co. v. Standard Slag Co., 117 Ohio St. 512, 159 N.E. 559 (1927); City of Cincinnati v. Connor, 55 Ohio St. 82, 44 N.E. 582 (1896). Therefore, pursuant to R.C. 505.56 and R.C. 5739.02(C)(1), a township may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. A township may use the revenue derived from such tax for any lawful purpose and is not required to contribute any portion of such revenue to convention and visitors' bureaus.

Aside from the tax which may be levied on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to R.C. 505.56 and R.C. 5739.02(C)(1), a township is authorized to levy a tax not to exceed three percent on such transactions pursuant to R.C. 5739.02(C)(2) and R.C. 5739.024(B). A township may levy a tax pursuant to R.C. 5739.024(B) only where the county in which it is wholly or partly located does not have in effect a resolution levying an excise tax pursuant to R.C. 5739.024(A). Provided that this condition precedent is met and the tax levied, R.C. 5739.024(B) provides that at least half of the amount of the tax collected pursuant thereto must be deposited into a separate fund which shall be spent solely to make contributions to convention and visitors' bureaus operating within the county in which the township is wholly or partly located. R.C. 5739.024(B) provides as follows:

(B) On or after July 1, 1980, the legislative authority of a municipal corporation or the board of trustees of a township that is not wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to division (A) of this section may by ordinance or resolution levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The legislative authority of the municipal corporation or township shall deposit at least fifty per cent of the revenue from the tax levied pursuant to this division into a separate fund, which shall be spent solely to make contributions to convention and visitors' bureaus operating within the county in which the municipal corporation or township is wholly or partly located, and the balance of such revenue shall be deposited in the general fund. The municipal corporation or township shall establish all regulations necessary to provide for the administration and allocation of the tax. The levy of a tax under this division is in addition to any tax imposed on the same transaction by a municipal corporation or a township as authorized by division (C)(1) of section 5739.02 of the Revised Code. (Emphasis added.)

Thus, pursuant to R.C. 5739.024(B), on or after July 1, 1980, a township that is not

wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to R.C. 5739.024(A) may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The last sentence of R.C. 5739.024(B) clearly states: "The levy of a tax under this division is in addition to any tax imposed on the same transaction by a municipal corporation or township as authorized by division (C)(1) of section 5739.02 of the Revised Code." Therefore, the tax authorized by R.C. 5739.024(B) may be levied regardless of whether a tax has been imposed upon the same transaction pursuant to R.C. 5739.02(C)(1) and R.C. 505.56. As I stated in 1981 Op. Att'y Gen. No. 81-022 in connection with action of a municipality pursuant to R.C. 5739.024(B), at least half of the revenue derived from any tax levied pursuant to R.C. 5739.024(B) must be deposited into a separate fund to be spent solely to make contributions to convention and visitors' bureaus operating within the county.¹

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 505.56 and R.C. 5739.02(C)(1), a township may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The revenue derived from such tax may be used for any lawful purpose and need not be used to support a convention and visitors' bureau within the county.
2. Pursuant to R.C. 5739.024(B), a township that is not wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to R.C. 5739.024(A) may levy a tax not to exceed three percent on transactions by which lodging by a hotel is or is to be furnished to transient guests. A township that may levy a tax pursuant to R.C. 5739.024(B) may do so regardless of whether a tax has been levied pursuant to R.C. 505.56 and R.C. 5739.02(C)(1). At least half of the revenue derived from any tax levied pursuant to R.C. 5739.024(B) must be deposited into a separate fund, to be spent solely to make contributions to convention and visitors' bureaus operating in the county in which the township is wholly or partly located. (1981 Op. Att'y Gen. No. 81-022, approved and followed.)

¹ As a point of reference, note should be taken of S.B. 210, 114th Gen. A. (1981), currently being considered by the General Assembly. S.B. 210 would permit areas with no convention and visitors' bureaus to transfer the portion of a permissive lodging tax earmarked for the bureaus to the general fund.