

OPINION NO. 74-060

Syllabus:

Interest earned on reimbursement funds deposited by a County Treasurer on behalf of a County Board of Mental Retardation must be credited, pursuant to R.C. 135.21, to the fund to which the principal sum of such deposit belongs.

To: William R. Hughes, Knox County Pros. Atty., Fredericktown, Ohio
By: William J. Brown, Attorney General, July 24, 1974

I have before me your request for my opinion, which reads as follows:

"Is interest generated by funds received by County Boards of Mental Retardation as reimbursement for expenditures made in the construction of a County Mental Retardation facility pursuant to Public Law 88-164 and State Issue No. 1, received from the Federal and State Governments to be deposited to the

general fund of the County where the Mental Retardation facility is located and used as other general fund monies or is said interest to be allocated to and for the exclusive use of the Board of Mental Retardation where the County Treasurer is the custodian of said reimbursement funds in light of Sections 135.21 and 5705.10 of the Ohio Revised Code and 1966 OAG No. 66-130?"

R.C. 135.21, mentioned in your request, reads as follows:

"All interest earned on money included within a public deposit [depository] and belonging to undivided tax funds shall, except as otherwise expressly provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportions in which they are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlements. All interest earned from other moneys deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment, or other district of which he is acting as ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision, shall be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong.

"All other interest earned shall be credited to the general fund of the state or the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs. The auditor shall inform the treasurer in writing of the amount apportioned by him to each fund, district, or account."

(Emphasis added.)

Since you stated in your request that the County Treasurer is the custodian of the reimbursement funds upon which interest is earned, it appears that the second sentence of R.C. 135.21 is applicable and such interest must be credited to the special fund established by the county for such reimbursement monies pursuant to R.C. 5705.09(F). R.C. 5705.09 reads as follows:

"Each subdivision shall establish the following funds:

- (A) General fund;
- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular Purpose;

(G) A special fund for each public utility operated by a subdivision;

(H) A trust fund for any amount received by a subdivision in trust."

(Emphasis added.)

The quoted language which is emphasized clearly covers the instant fact situation. The money is derived from a source other than the general property tax, and federal law (Public Law 88-164) requires that it be used for a particular purpose, i.e., construction of mental retardation facilities. Therefore, the money is in the treasurer's custody and held in a special fund, and interest earned from its investment must be credited to such fund, pursuant to R.C. 135.21. For an analogous situation, see Opinion No. 69-015, Opinions of the Attorney General for 1969, which involved state, county, and donated funds earmarked for maintenance of mental retardation facilities. My predecessor advised that such moneys must be held by the county treasurer in a distinct fund.

Furthermore, R.C. 5705.10, which concerns the distribution of revenue, reads in part as follows:

"All revenue derived from the general levy, for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

"All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

"All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

"All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.

"* * * * *"

(Emphasis added.)

In Opinion No. 4759, Opinions of the Attorney General for 1935, my predecessor, in discussing a similar question, said:

"The general rule of law is that in the absence of statute interest follows the fund which earned it."

Where, as here, the funds in question are derived from a source other than the general property tax, and where they are required

by statute to be expended for a particular purpose, I think it clear that they are deposited with the treasurer as custodial funds and that interest earned on such funds should be credited to such special account. See also Opinion No. 1603, Opinions of the Attorney General for 1950; Opinion No. 6198, Opinions of the Attorney General for 1956; Opinion No. 1365, Opinions of the Attorney General for 1957; Opinion No. 64-782, Opinions of the Attorney General for 1964.

Opinion No. 66-130, Opinions of the Attorney General for 1966, mentioned in your request, is not applicable here because that Opinion concerned undivided tax funds invested pursuant to R.C. 321.44, which are not involved in this fact situation.

In specific answer to your question it is my opinion, and you are so advised, that interest earned from reimbursement funds deposited by a County Treasurer on behalf of a County Board of Mental Retardation must be credited, pursuant to R.C. 135.21, to the fund to which the principal sum of such deposit belongs.