

OPINION NO. 90-069**Syllabus:**

1. A county children services board may use moneys derived from a levy under R.C. 5705.24 to support a Child Assault Prosecution Unit within the county prosecutor's office if the children services board, in the reasonable exercise of its discretion, determines that support of such a Unit is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language.
2. Moneys derived from a levy under R.C. 5705.24 may be used for any purpose within the language of the resolution and ballot adopting the tax. It is not necessary for a particular use, such as the support of a Child Assault Prosecution Unit, to appear on the ballot, although the presence of such language does not appear to be prohibited.
3. Moneys derived from a levy under R.C. 5705.24 may be transferred to the general fund of the county pursuant to the procedures set forth in R.C. 5705.15 and 5705.16 and expended for purposes for which the levy moneys may be expended — including the employment of assistant prosecutors and other expenses related to the operation of a Child Assault Prosecution Unit, if such purposes are found to be necessary for the support of children services and the care and placement of children and come within the purposes set forth in the resolution and ballot language.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September, 13, 1990

I have before me your request for an opinion concerning the funding of the Trumbull County Child Assault Prosecution Unit (C.A.P. Unit). You have stated that the C.A.P. Unit specializes in prosecuting cases of child sexual and physical abuse, and you have described the C.A.P. Unit as follows:

The C.A.P. Unit was originally funded through a grant from the Bureau of Justice Assistance in Washington, D.C. for a period of eighteen (18) months. Trumbull County was one of seven (7) sites nationwide to receive the federal funds. The intent was to provide seed money to hire personnel, train them in the specifics of prosecuting child abuse cases, and provide them with the necessary equipment. The unit is totally dedicated to ensuring that children are properly cared for and placed in the county by prosecuting offenders.

You have stated that the C.A.P. Unit has been extremely successful, but that its existence is jeopardized due to funding problems. In particular, you have stated: "The County Commissioners have not to-date allocated sufficient funds in the Prosecutor's budget to maintain the three (3) person unit. The unit consists of one (1) full time prosecutor, one (1) part-time prosecutor, and one (1) full time investigator." In light of the funding problems, the Trumbull County Children Services Board is considering funding the C.A.P. Unit with levy funds, and the Trumbull County Board of Commissioners supports the proposal. You have stated that the Trumbull County Children Services Board proposes to "place a renewal levy on the November, 1990 ballot with a small increase in millage to fund the C.A.P. Unit....A contract would be entered into between Children Services and the Trumbull County Prosecutor pursuant to [R.C. 5153.16] setting forth the specific services to be provided and the funds to be provided."

Your letter sets forth the following questions:

(1) Is it proper for the Children Services Board to use levy funds to support the C.A.P. Unit[?] Specifically, if it is proper, should language appear on the ballot indicating an intent to use a portion of the funds to support the C.A.P. Unit[?]

The funds provided would be used for the following activities:

- salaries for prosecutors who prosecuted child abuse and child sex offenders;
- salaries for investigators and clerical support;
- services purchased by the C.A.P. Unit, ex: polygraphs, forensic psychology, training, and in-service education for staff members, all services directly given to children or for detecting child abusers (many of whom are family members);
- implementation and operation of a diversion alternative sentencing and treatment program for offenders; that is, a new program wherein a prosecutor with judicial approval would mediate certain minor offenses with the victims' approval. Such a program would involve a close daily working relationship with the Children Services Board.

(2) If support of a C.A.P. Unit is a proper usage of levy funds, is a contractual agreement between the parties a necessary element[?] A contract is envisioned for the full length of the levy with funds earmarked for each particular calendar year. This would assure stable funding for the Prosecutor's Office and limit the Children Services Board's obligation to a predetermined amount of funds.

(3) In your opinion is there any conflict of interest in Children Services Board providing funds to operate a C.A.P. Unit in the Prosecutor's Office, as Children Services Board is the investigating agency[?] Would there [be] any conflict or compromise upon the Prosecutor's independent decision to prosecute a particular case[?] Presently the Trumbull County C.A.P. Unit is being funded through a grant and contract between the State Department of Human Services and the Trumbull County Children Services Board. The State money is funded to the prosecution unit through the local agency.

Your first question is whether the Trumbull County Children Services Board may use levy funds to support the C.A.P. Unit. I assume that your question relates to a tax levy for children services imposed under R.C. 5705.24.¹ R.C. 5705.24 states, in part:

¹ The operations of a county children services board could also be funded by county general fund appropriations. See R.C. 5705.24. Funds from a levy adopted under R.C. 5705.19(A) or under R.C. 5705.191 could be used for the operations of a county children services board. A levy under R.C. 5705.19(A) is a levy for "current expenses" of a subdivision. It may be used for any current expenses of the subdivision, but it may not be restricted by ballot language to only certain types of current expenses. See, e.g., 1988 Op. Att'y Gen. No. 88-101 at 2-497 to 2-498 n. 1; 1984 Op. Att'y Gen. No.

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of children services and the care and placement of children, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose. *Taxes collected from a levy imposed under this section may be expended for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children.*

....
If the majority of the electors voting on a levy to supplement general fund appropriations for the support of children services and the care and placement of children vote in favor thereof, the board may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and *for the purpose stated in the resolution* or at any less rate or for any of the said years. (Emphasis added.)

Your first question thus asks whether the Trumbull County Children Services may use money collected from a levy imposed under R.C. 5705.24 to support the C.A.P. Unit.

Ohio Const. art. XII, §5 states: "No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." R.C. 5705.24 states that taxes collected from a levy imposed under that section "may be expended for any operating or capital

84-083 at 2-280 to 2-281 (a levy under R.C. 5705.19(A) "would not be limited to...particular purposes...but could..be used for any current expenses of the district"); 1965 Op. Att'y Gen. No. 65-187 (syllabus) ("[w]hen a tax is proposed to be levied under [R.C. 5705.19(A)], the term 'current expenses' must appear on the ballot, and additional words suggesting a limitation within the category of current expenses may not be added to the ballot"); 1963 Op. Att'y Gen. No. 154, p. 240; 1962 Op. Att'y Gen. No. 2780, p. 66; 1957 Op. Att'y Gen. No. 1123, p. 508. In your case, a levy adopted under R.C. 5705.19(A), or a levy adopted under R.C. 5705.191 for the purpose set forth in R.C. 5705.19(A), *see* 1963 Op. No. 154, would be available for any current expense of the county, and could not be restricted to use for only children services and the C.A.P. Unit. Funds derived from such a levy would be paid into the general fund, *see* R.C. 5705.10; 1957 Op. No. 1123, and could be used, for example, to pay current expenses of the county prosecutor's office.

A levy under R.C. 5705.191 could be for any of the purposes set forth in R.C. 5705.19 or for one or more of the following purposes set forth in R.C. 5705.191: public assistance, human or social services, relief, welfare, hospitalization, health, and support of general or tuberculosis hospitals. Children services appear to come within the category of human or social services, and a levy under R.C. 5705.191 could be limited to specified uses. *See, e.g.*, 1963 Op. No. 154. The questions whether expenditures for the C.A.P. Unit come within the uses specified and whether such expenditures may be paid from the special levy moneys raise issues that are analogous to those discussed in this opinion with regard to R.C. 5705.24.

Your letter states that the proposed levy is a renewal levy with a small increase in millage. I am assuming that the proposal is to renew a levy under R.C. 5705.24. I am not considering what ballot language would appropriately describe the proposed levy. *See* R.C. 5705.25.

improvement expenditure necessary for the support of children services and the care and placement of children." Taxes collected from a levy imposed under R.C. 5705.24 may be expended for no purpose other than that set forth in the statute. Such taxes may, therefore, be expended for the support of the C.A.P. Unit only if such support is "necessary for the support of children services and the care and placement of children." R.C. 5705.24. See generally *Clark Restaurant Co. v. Evatt*, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph 3) ("[i]n the construction and application of taxing statutes, their provisions cannot be extended by implication beyond the clear import of the language used; nor can their operation be so enlarged as to embrace subjects not specifically enumerated. A strict construction is required..."); *Roddy v. Andrix*, 32 Ohio Op. 2d 349, 201 N.E.2d 816 (C.P. Madison County 1964) (holding that funds arising from a special levy "for the purpose of the maintenance and operation of schools for retarded children" may not be used for the acquisition of real estate and construction of a school building, and stating, 32 Ohio Op. 2d at 350, 201 N.E.2d at 818: "Taxes cannot be justified on equitable consideration. Their burden can only be sustained when authorized by positive law"); 1988 Op. Att'y Gen. No. 88-101. A levy under R.C. 5705.24 is a special levy. See, e.g., R.C. 5705.04. Funds derived from such a levy shall be placed in a special fund for the purpose for which the levy was imposed and may be expended only for that purpose. See R.C. 5705.09-.10.

In conversations with members of my staff you have stated that a close working relationship exists between the Children Services Board and the C.A.P. Unit. It is, however, not clear whether the particular expenses that you have listed may reasonably be determined to be "necessary for the support of children services and the care and placement of children." R.C. 5705.24.

The question of what is necessary for the support of children services and the care and placement of children is a matter of fact, and its determination involves the exercise of judgment. Responsibility for children services and the care and placement of children within each county has, by statute, been placed upon the county children services board or department of human services within that county. See, e.g., R.C. 5153.15 ("[t]he powers and duties enumerated in [R.C. 5153.16-.19], with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of county government, namely, a county department of human services or a county children services board"). The county children services board has a duty to make investigations concerning children who may have been abused or neglected or may otherwise be in need of care, protection, or service; the board also has a duty to make recommendations to the county prosecuting attorney or city law director on matters that it considers necessary for the protection of children that have been brought to its attention. See R.C. 2151.421;² R.C. 5153.16. A county children services board has discretion to determine whether a particular activity serves the purpose of supporting children services and the care and placement of children. R.C. 5153.35 requires the board of county commissioners to "levy taxes and make appropriations sufficient to enable the county children services board...to perform its functions and duties under [R.C. 5153.01-.42]." See generally 1958 Op. Att'y Gen. No. 1744, p. 98 (finding under former R.C. 335.35, analogous to R.C. 5153.35, that the board of county commissioners had discretion in determining amounts to be budgeted to a child welfare board, even though the county commissioners had a duty to provide a sufficient amount). The county children services board is, however, responsible for

² Duties of a county children services board with respect to reports of known or suspected child abuse or neglect are set forth in R.C. 2151.421(F), as follows:

The county department of human services or children services board shall *investigate*, within twenty-four hours, each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under this section to *determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries,*

determining the manner in which the money appropriated to the board is expended and has discretion to allocate the money to particular expenditures within the purposes for which it has been appropriated. *See, e.g.*, 1958 Op. No. 1744. The board is authorized to exercise its discretion under R.C. 5705.24 in any reasonable manner. *See generally, e.g., Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878); 1958 Op. No. 1744.

I am aware of no authority that directly considers whether the costs of particular purposes that you have listed may reasonably be considered to be "necessary for the support of children services and the care and placement of children." R.C. 5705.24. It is, however, clear that the activities of a C.A.P. Unit constitute a public effort to assure that children residing within the county are provided with proper care and a safe environment.³ It appears that a county children services board may use funds derived from a levy under R.C. 5705.24 for the support of the various functions of a C.A.P. Unit if the children services board, in the reasonable exercise of its discretion, finds that the expenditures are necessary for the support of children services and the care and placement of children.

Your first question also asks whether "language [should] appear on the ballot indicating an intent to use a portion of the [levy] funds to support the C.A.P. Unit." It does not appear that such ballot language is necessary. R.C. 5705.24 states that, after the board of county commissioners has provided the normal and customary percentage of the total general fund appropriations for the support of children services and the care and placement of children, the board may declare by resolution "that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose." The board may then submit to the electors the question of a levy. Pursuant to R.C. 5705.25, the language used on the ballot proposing such a levy includes the "purpose stated in the resolution." Taxes collected from such a levy may be expended "for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children." R.C. 5705.24. To adopt a levy under R.C. 5705.24, it is sufficient for the resolution and the ballot language to use the statutory language — *i.e.*, to indicate that the tax shall be "for the support of

abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency. The county department of human services or children services board shall report each case to a central registry which the state department of human services shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The department or board shall submit a report of its investigation, in writing to the law enforcement agency.

The county department of human services or children services board shall make any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention. (Emphasis added.)

See generally 1989 Op. Att'y Gen. No. 89-108.

³ It should be noted that a county children services board has no authority to delegate to any other agency, public or private, its responsibility to investigate reports of suspected child abuse under R.C. 2151.421. *See Haag v. Cuyahoga County*, 619 F.Supp. 262, 270-71 (N.D. Ohio 1985), *aff'd*, 798 F.2d 1414 (1986); 8 Ohio Admin. Code 5101:2-34-31; 1989 Op. Att'y Gen. No. 89-108 at 2-531. It is, therefore, assumed that any investigatory services performed by the prosecutor's office pursuant to a contract with the children services board would be different from the investigations performed by the county children services board pursuant to R.C. 2151.421.

children services and the care and placement of children." If it is properly found that the support of a C.A.P. Unit comes within the purpose stated in the resolution and on the ballot, then levy moneys may be expended for the support of a C.A.P. Unit.

A line of Attorney General opinions has taken the position that a levy under R.C. 5705.19(A) must be available for all current expenses of a subdivision and may not be restricted by ballot language to particular uses. *See* note 1, *supra*. Special levies may, however, be restricted by resolution and ballot language to particular uses. *See, e.g.* 1963 Op. Att'y Gen. No. 154, p. 240 (the language "child welfare services" used in the resolution and ballot for a levy define the purpose of the special levy). *See generally* R.C. 5705.09-.10 (all revenue derived from a general levy for current expense authorized by vote in excess of the ten-mill limitation is to be paid into the general fund; all revenue derived from a special levy is to be paid into a special fund for the purpose for which the levy was made). It thus appears that the county commissioners are not prohibited from using language in the resolution and on the ballot that provides more specifically than the statutory language the uses for which moneys generated by a levy under R.C. 5705.24 may be expended. *See, e.g.*, 1987 Op. Att'y Gen. No. 87-096 (considering ballot language under R.C. 5705.24 proposing a levy "for the support of children's services and the care and placement of abused and neglected children"). The commissioners may, accordingly, indicate in their resolution and on the ballot that levy moneys are needed for particular uses within the purpose set forth by statute — as, for example, for support of a C.A.P. Unit. It should be noted that no levy moneys may be expended for purposes that are not within the ballot language. Thus, if the ballot language is more narrow than the statutory language, that narrow language restricts the permissible expenditures of levy moneys. *See generally* Op. No. 87-096.

I conclude, therefore, that moneys derived from a levy under R.C. 5705.24 may be used for any purpose within the language of the resolution and ballot adopting the tax. It is not necessary for a particular use, such as the support of a C.A.P. Unit, to appear on the ballot, although the presence of such language does not appear to be prohibited.

Your second question asks whether, if it is determined that support of a C.A.P. Unit is a proper usage of levy funds, a contractual agreement between the parties is a necessary element. It does not appear that such a contract is necessary.

Your questions relate to the expenditure of proceeds derived from a tax levy under R.C. 5705.24. R.C. 5705.24 provides that such proceeds may be expended "for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children." As discussed above, a levy under R.C. 5705.24 is a special levy and funds derived from such a levy shall be placed in a special fund for the purpose for which the levy was imposed and may be expended only for that purpose. *See* R.C. 5705.09-.10. R.C. 5705.15⁴ and 5705.16⁵ set forth procedures for transferring moneys from one fund to another.

4 R.C. 5705.15 states:

In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose.

5 R.C. 5705.16 states:

A resolution of the taxing authority of any political subdivision shall be passed by a majority of all the members

Steps may be taken pursuant to these provisions to transfer proceeds derived from a levy under R.C. 5705.24 from a special fund to the county general fund; on the facts that you have presented, such moneys will be expended for purposes that are within the resolution and ballot language and have been determined to be "necessary for the support of children services and the care and placement of children" within the meaning of R.C. 5705.24.⁶ In order for such a transfer to

thereof, declaring the necessity for the transfer of funds authorized by section 5705.15 of the Revised Code, and such taxing authority shall prepare a petition addressed to the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer. A duplicate copy of said petition shall be forwarded to the tax commissioner for his examination and approval.

If the petition is disapproved by the commissioner, it shall be returned within ten days of its receipt to the officers who submitted it, with a memorandum of the commissioner's objections. This disapproval shall not prejudice a later application for approval. If the petition is approved by the commissioner, it shall be forwarded within ten days of its receipt to the clerk of the court of common pleas of the county to whose court of common pleas the petition is addressed, marked with the approval of the commissioner. If the commissioner approves the petition, he shall notify immediately the officers who submitted the petition, who then may file the petition in the court to which it is addressed.

The petitioner shall give notice of the filing, object and prayer of the petition, and of the time when it will be heard. The notice shall be given by one publication in two newspapers having a general circulation in the territory to be affected by such transfer of funds, preference being given to newspapers published within the territory. If there are no such newspapers, the notice shall be posted in ten conspicuous places within the territory for the period of four weeks.

The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court. Any person who objects to the prayer of such petition shall file his objections in such cause on or before the time fixed in the notice for hearing, and he shall be entitled to be heard.

If, upon hearing, the court finds that the notice has been given as required by this section, that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer.

A copy of the findings, orders, and judgments of the court shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed by the court. All costs of such proceedings shall be paid by the petitioners, except that if objections are filed the court may order such objectors to pay all or a portion of the costs.

⁶ I am aware of *In re Petition for Transfer of Funds*, 52 Ohio App. 3d 1, 556 N.E.2d 191 (Montgomery County 1988), in which the Montgomery County Court of Appeals found that R.C. 5705.15 is unconstitutional under Ohio Const. art. XII, §5, as applied to the transfer of funds from special levies enacted for a particular purpose to funds which may be used for a different purpose. Where, as in the instant case, the moneys that are transferred are to be used for purposes that are permitted by the special levy, there would be no violation of the constitutional prohibition.

occur, the board of county commissioners must pass a resolution declaring the necessity for the transfer of funds and must prepare a petition addressed to the court of common pleas describing the desired transfer and the reason for the transfer. A copy of the petition must be forwarded to the Tax Commissioner. If the petition is approved, it shall be forwarded to the court of common pleas and the county commissioners may file the petition. The court must hold a hearing on the petition and, if the court finds "that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom," the court shall grant the petition and order the county commissioners to make the transfer. R.C. 5705.16.

R.C. 309.06 provides for the court of common pleas to "fix an aggregate sum to be expended for the incoming year for the compensation of assistants, clerks, and stenographers of the prosecuting attorney's office." The prosecutor is authorized to "appoint such assistants, clerks, and stenographers as are necessary for the proper performance of the duties of his office and fix their compensation, not to exceed, in the aggregate, the amount fixed by the judges of such court." R.C. 309.06;⁷ see *State ex rel. Williams v. Zaleski*, 12 Ohio St. 3d 109, 113 n. 5, 465 N.E.2d 861, 864 n. 5 (1984) ("[t]he sole authority of the prosecuting attorney to appoint assistants is set forth in R.C. 309.06..."); 1983 Op. Att'y Gen. No. 83-042 at 2-163 ("[t]he prosecuting attorney's authority to fix his assistants' compensation is limited by the aggregate sum fixed by the court of common pleas for the compensation of assistants, clerks, and stenographers of the prosecuting attorney's office"). R.C. 309.06 states expressly that such compensation shall be paid from the general fund of the county treasury. Similar provisions apply to secret service officers appointed by the prosecutor under R.C. 309.07 "to aid him in the collection and discovery of evidence to be used in the trial of criminal cases and matters of a criminal nature"; the compensation of those officers is fixed by the court and payable out of the county fund.⁸

Your third question asks whether there is any conflict of interest in the Trumbull County Children Services Board's providing funds to operate a C.A.P. Unit in the county prosecutor's office. Under the arrangement outlined above, moneys from a levy under R.C. 5705.24 may be made available to the county prosecutor's office after transfer pursuant to R.C. 5705.15 and 5705.16. Such a transfer will not be made directly by the county children services board. Rather, such a transfer requires a resolution by the board of county commissioners that the transfer of funds is necessary, approval by the Tax Commissioner, and a hearing by the court of common pleas. Any transfer made pursuant to R.C. 5705.16 would be made by the county commissioners pursuant to an order of the court. R.C. 5705.16. Accordingly, no money would be transferred directly by the county children services board to the

⁷ *Ireton v. State ex rel. Hunt*, 12 Ohio Cir. Ct. (n.s.) 202 (Hamilton County 1909), *aff'd*, 81 Ohio St. 562, 91 N.E. 1131 (1910), contains the statement that R.S. 1271, predecessor to R.C. 309.06, authorized the prosecuting attorney to appoint assistants only to perform duties relating to the prosecution of complaints, suits, and controversies on behalf of the state, and not to perform the duties of legal counsel for the commissioners. The court concluded on the basis of R.S. 845, predecessor to R.C. 305.14, that "if the prosecutor himself can not perform the duties of legal counsel...he shall make this fact known to the commissioners and request them to employ legal counsel to act for them." *Ireton v. State ex rel. Hunt*, 12 Ohio Cir. Ct. (n.s.) at 203. R.C. 309.06 has, however, been construed as permitting the appointment of assistants to carry out all sorts of duties of the prosecutor, including the provision of advice to the county commissioners. See R.C. 309.09; *State ex rel. Staby v. Summit County Council*, 7 Ohio App. 3d 199, 454 N.E.2d 1379 (Summit County 1983); 1988 Op. Att'y Gen. No. 88-094.

⁸ The prosecuting attorney also receives certain moneys that may be used for the furtherance of justice, see R.C. 325.12, and may request additional funds for such purpose, see R.C. 325.13.

office of the county prosecuting attorney, and questions of conflict of interest or influence upon the prosecutor's independence would not appear to arise. It should be noted, generally, that both the county children services board and the prosecuting attorney are required to help prepare and subscribe to a plan of cooperation setting forth "the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities" in the investigation and enforcement of matters involving child abuse and neglect. R.C. 2151.421(J). Under R.C. 2151.421(F) a children services board is required to make "any recommendations to the county prosecuting attorney or city director of law that it considers necessary to protect any children that are brought to its attention." Decisions regarding the prosecution of particular individuals must, however, remain within the discretion of the prosecuting attorney.⁹ See generally *State v. Wolery*, 46 Ohio St. 2d 316, 325-26, 348 N.E.2d 351, 358 (1976), ("[t]he discretion vested in a public prosecutor to exercise selectivity in the enforcement of criminal statutes will not be overturned" unless selection is deliberately based on an unjustifiable standard), *cert. denied*, 429 U.S. 932 (1976); *State v. Trocodaro*, 36 Ohio App. 2d 1, 301 N.E.2d 898 (Franklin County 1973), *cert. denied*, 415 U.S. 993 (1974); *Burkholder v. Lauber*, 6 Ohio Misc. 152, 216 N.E.2d 909 (C.P. Fulton County 1965) (where duties involving the exercise of judgment are imposed by statute upon a public officer, they may not be delegated).

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

1. A county children services board may use moneys derived from a levy under R.C. 5705.24 to support a Child Assault Prosecution Unit within the county prosecutor's office if the children services board, in the reasonable exercise of its discretion, determines that support of such a Unit is necessary for the support of children services and the care and placement of children and comes within the purposes set forth in the resolution and ballot language.
2. Moneys derived from a levy under R.C. 5705.24 may be used for any purpose within the language of the resolution and ballot adopting the tax. It is not necessary for a particular use, such as

⁹ A county prosecuting attorney has certain professional and ethical responsibilities with respect to his duty to prosecute criminal offenders. Canon 7 of the Code of Professional Responsibility, adopted by the Supreme Court of Ohio, includes the following:

EC [Ethical Consideration] 7-13 The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts....

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair....

....
DR [Disciplinary Rule] 7-103 PERFORMING THE DUTY OF PUBLIC PROSECUTOR OR OTHER GOVERNMENT LAWYER.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

the support of a Child Assault Prosecution Unit, to appear on the ballot, although the presence of such language does not appear to be prohibited.

3. Moneys derived from a levy under R.C. 5705.24 may be transferred to the general fund of the county pursuant to the procedures set forth in R.C. 5705.15 and 5705.16 and expended for purposes for which the levy moneys may be expended — including the employment of assistant prosecutors and other expenses related to the operation of a Child Assault Prosecution Unit, if such purposes are found to be necessary for the support of children services and the care and placement of children and come within the purposes set forth in the resolution and ballot language.