

OPINION NO. 92-075**Syllabus:**

Pursuant to R.C. 5126.05(H), interest earned and paid on money received as a gift, grant, or bequest by a county board of mental retardation and developmental disabilities must be deposited in the county treasury to the credit of the board and must be available for the use of the board for any purpose stated by the donor or grantor. (1985 Op. Att'y Gen. No. 85-055, approved and followed.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, December 30, 1992

You have requested an opinion as to whether the interest earned and paid on money received as a gift, grant, or bequest by a county board of mental retardation and developmental disabilities ("county MR/DD board") and deposited in the county treasury is credited pursuant to R.C. 5126.05(H) to the county MR/DD board or pursuant to R.C. 135.351(A) to the general fund of the county.

R.C. 5126.05(H) and R.C. 135.351(A)

R.C. 5126.05(H) empowers a county MR/DD board to

receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the moneys, lands, and property according to the terms of the gift, grant, devise, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. *Any interest or earnings accruing from such gift, grant, devise, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, devise, or bequest.* (Emphasis added.)

R.C. 5126.05(H), thus, requires money received as a gift, grant, or bequest by a county MR/DD board to be deposited in the county treasury to the credit of the county MR/DD board and to be made available for use by the board for any purpose stated by the donor or grantor. Any interest or earnings accruing from such gift, grant, or bequest are required to be treated in the same manner and subject to the same provisions as such gift, grant, or bequest, *id.*, which means that the interest or earnings are to be deposited in the county treasury to the credit of the county MR/DD board and are to be made available for use by the board for any purpose stated by the donor or grantor.

R.C. 135.351(A), however, provides that, except as provided in R.C. 135.352 and R.C. 1545.22, "all interest earned on money included within the county treasury shall be credited to the general fund of the county." Thus, both R.C. 135.351(A) and R.C. 5126.05(H) control the disposition of interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board.

Prior Attorney General Opinions

As your request notes, two prior Attorney General opinions have addressed the question whether the interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board and deposited in the county treasury is credited to the general fund of the county or to the county MR/DD board. 1982 Op. Att'y Gen. No. 82-035 (overruled, on the basis of statutory amendment, by 1985 Op. Att'y Gen. No. 85-055) determined that interest earned on funds received as a gift by a county board and paid into the county treasury must be credited to the general fund of the county. Op. No. 82-035 resolved the conflict between R.C. 135.351 and R.C. 5126.05 as follows:

In 1982 Op. Att'y Gen. No. 82-027, I dealt with a similar conflict between R.C. 135.351 and R.C. 5705.29(F)(1). R.C. 5705.29(F)(1) states that the depository interest earned on money included within a township's reserve balance account shall be returned to the township with the principal of the account. As I stated in Op. No. 82-027, "it would appear that R.C. 135.351(A) was intended to encompass the interest on all funds included within the county treasury including

custodial funds." Thus, I was constrained to conclude that "it was the manifest intent of the General Assembly that R.C. 135.351 prevail over R.C. 5705.29(F)(1) with regard to the allocation of interest earned on a reserve balance account."

The analysis contained in Op. No. 82-027 necessitates a similar conclusion with regard to the conflict between R.C. 135.351 and R.C. 5126.05. R.C. 135.351 was enacted subsequent to R.C. 5126.05. Moreover, R.C. 135.351 is part of a special system which alters the rule generally applicable to the state and its political subdivisions "that interest earned on money belonging to another subdivision is to be credited to the fund to which the principal belongs." Op. No. 82-027. See Op. No. 82-026. As a result, I must conclude that R.C. 135.351 prevails over R.C. 5126.05 with regard to the allocation of interest earned on a gift to a county board of mental retardation and developmental disabilities. See R.C. 1.51. (Footnote omitted.)

Op. No. 82-035 at 2-106.

Subsequent to the issuance of Op. No. 82-035, R.C. 135.351 was amended by 1985-1986 Ohio Laws, Part II, 2761, 2767 (Am. Sub. H.B. 238, eff. July 1, 1985),¹ to provide that, except as provided in sections 1545.22 and 5126.05 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county. Based on the language of R.C. 135.351(A), as amended by Am. Sub. H.B. 238, Op. No. 85-055 overruled Op. No. 82-035 and concluded that:

R.C. 135.351(A), as amended [by Am. Sub. H.B. 238], indicates that R.C. 5126.05 is to prevail over the language of R.C. 135.351(A) directing that interest earned on funds within the county treasury be credited to the general fund of the county. Thus, pursuant to R.C. 5126.05, interest earned on gifts, grants, or bequests must be deposited in the county treasury to the credit of the county board of mental retardation and developmental disabilities and must be available for the use of the board for any purpose stated by the donor or grantor.

Op. No. 85-055 at 2-206.

Interest Earned and Paid on Money Received as a Gift, Grant, or Bequest by a County MR/DD Board Must Be Deposited in the County Treasury to the Credit of the Board

Twice since the issuance of Op. No. 85-055, the General Assembly has amended R.C. 135.351. *See* 1985-1986 Ohio Laws, Part II, 4388 (Am. Sub. H.B.

¹ R.C. 135.351(A) was also amended by 1985-1986 Ohio Laws, Part I, 1472 (Am. Sub. H.B. 146, eff. Sept. 11, 1985). This amendment did not refer to the exception provided in 1985-1986 Ohio Laws, Part II, 2761, 2767 (Am. Sub. H.B. 238, eff. July 1, 1985). However, as concluded in 1985 Op. Att'y Gen. No. 85-055 at 2-205 n.3, Am. Sub. H.B. 238 and Am. Sub. H.B. 146 may be harmonized and put into simultaneous operation. *See generally* R.C. 1.52(B) ("[i]f amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each"). Hence, when Op. No. 85-055 was written, R.C. 135.352, R.C. 1545.22 and R.C. 5126.05 were exceptions to the general rule of R.C. 135.351(A) that interest earned and paid on moneys in the county treasury must be credited to the general fund of the county.

446, eff. July 16, 1986); 1985–1986 Ohio Laws, Part III, 5593 (Am. H.B. 724, eff. Nov. 27, 1985). As set forth above, division (A) of R.C. 135.351 currently reads as follows: "Except as provided in sections 135.352 and 1545.22 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." The language of R.C. 135.351, thus, no longer expressly excepts R.C. 5126.05 from the general rule that interest earned on moneys in the county treasury must be credited to the general fund of the county. Because R.C. 135.351 does not explicitly except R.C. 5126.05 from the operation of R.C. 135.351, it might appear that interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board must be credited to the general fund of the county. *See generally State ex rel. Keller v. Forney*, 108 Ohio St. 463, 467, 141 N.E. 16, 17 (1923) ("the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law").

However, a review of the bill that expressly excepted R.C. 5126.05 from the operation of R.C. 135.351, Am. Sub. H.B. 238, and the bill that deleted the reference to R.C. 5126.05 from the language of R.C. 135.351, Am. H.B. 724, reveals that the General Assembly's removal of the reference to R.C. 5126.05 from the language of R.C. 135.351 does not evidence a legislative intention that interest earned and paid on money received as a gift, grant, and bequest by a county MR/DD board and deposited in the county treasury be credited to the general fund of the county. Rather, Am. Sub. H.B. 238 and Am. H.B. 724 concerned, in part, the disposition of interest earned on appropriations made to the county MR/DD board and revenue derived from tax levies to enable the board to perform its functions and duties. As noted above, Am. Sub. H.B. 238 amended R.C. 135.351 to expressly exclude R.C. 5126.05 from the operation of R.C. 135.351. Am. Sub. H.B. 238 also added the following corresponding language to R.C. 5126.05: "All interest earned on revenue derived from any such tax levies and on any such appropriations to the county board of mental retardation and developmental disabilities shall be credited to the funds of the board for the purposes of chapter 5126. of the Revised Code." Am. Sub. H.B. 238, however, made no changes to the provision of R.C. 5126.05 that interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board must be deposited in the county treasury to the credit of the board and must be available for the use of the board for any purpose stated by the donor or grantor. Thus, pursuant to R.C. 135.351 and R.C. 5126.05, as amended by Am. Sub. H.B. 238, interest earned and paid on (1) appropriations made to the county MR/DD board, (2) revenue derived from tax levies to enable the board to perform its functions and duties, and (3) money received as a gift, grant, or bequest by a board was required to be deposited into the county treasury and credited to the board.

Subsequently, in Am. H.B. 724, the General Assembly deleted the reference to R.C. 5126.05 from the language of R.C. 135.351 and the language of R.C. 5126.05 related to the disposition of interest earned on appropriations made to the county MR/DD board and revenue derived from tax levies to enable the board to perform its functions and duties. Am. H.B. 724, however, did not delete the provision of R.C. 5126.05 requiring interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board to be deposited in the county treasury to the credit of the board. Because the provision of R.C. 5126.05 requiring interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board to be deposited in the county treasury to the credit of the board was not deleted from R.C. 5126.05, it is reasonable to conclude that the General Assembly intended that the interest earned and paid on such money be deposited into the county treasury and credited to the board. Moreover, it is also reasonable to conclude that (1) the deletion of the language of R.C. 5126.05 related to the disposition of interest earned on appropriations made to the county MR/DD board and revenue derived from tax levies and (2) the concurrent deletion of the reference to R.C. 5126.05 from R.C. 135.351 evidences a legislative intention to require only that the interest earned on appropriations and revenue derived from a tax levy be credited to the general fund of the county, rather than an intention that the interest earned on money received as a gift, grant, or bequest by a county MR/DD board be credited to the general fund.

Insofar as the deletion of the reference of R.C. 5126.05 from the language of R.C. 135.351 does not, as a matter of law, require that the interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board be credited to the general fund of the county, it remains that both R.C. 135.351 and R.C. 5126.05 control the disposition of interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board. Consequently, there is an irreconcilable conflict between R.C. 135.351 and R.C. 5126.05.

It is a codified rule of statutory construction that if an irreconcilable conflict exists between a special and a general provision, the special provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. R.C. 1.51. R.C. 135.351 is a general provision in that it requires all interest earned and paid on money included within the county treasury to be credited to the general fund of the county. R.C. 5126.05 is a special provision in that it specifically requires only interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board to be credited to the board.² R.C. 135.351 was enacted after the passage of the special provision of R.C. 5126.05 authorizing a county MR/DD board to accept gifts, grants, and bequests. *See* 1981–1982 Ohio Laws, Part I, 2079 (Am. Sub. H.B. 230, eff. Mar. 15, 1982) (enacting R.C. 135.351); 1971–1972 Ohio Laws, Part II, 2194 (Am. H.B. 815, eff. Feb. 3, 1972) (enacting the provision of law authorizing a county MR/DD board to accept gifts, grants, and bequests).³ However, there is no manifest intent that the general provisions of R.C. 135.351 prevail over the specific provisions of R.C. 5126.05. Rather, as indicated by Am. Sub. H.B. 238 and Am. H.B. 724, it appears that the General Assembly's intention is to require that interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board be credited to the board. The special provision of R.C. 5126.05, thus, prevails as an exception to the general provision of R.C. 135.351. Interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board, therefore, must be deposited in the county treasury to the credit of the board and must be available for the use of the board for any purpose stated by the donor or grantor.

² 1982 Op. Att'y Gen. No. 82–035 (overruled, on the basis of statutory amendment, by Op. No. 85–055) characterized R.C. 135.351 as a special statute and R.C. 5126.05 as a general statute. Although R.C. 135.351 may be a special statute when compared to a more general or broad statute, it is regarded as a general statute when viewed with regard to a more narrowly tailored statute on the same subject. *See* 1989 Op. Att'y Gen. No. 89–103 at 2–500 n.7 (modified, in part, by 1990 Op. Att'y Gen. No. 90–022). A comparison of R.C. 135.351 and R.C. 5126.05 plainly discloses that R.C. 135.351 concerns the disposition of *all* interest earned on money included within the county treasury, while R.C. 5126.05 only concerns the disposition of interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board that is deposited in the county treasury. R.C. 5126.05, thus, is a more narrowly tailored statute with respect to the disposition of interest earned and paid on money received as a gift, grant, or bequest by a county MR/DD board that is deposited in the county treasury. Accordingly, Op. No. 82–035's characterization of R.C. 135.351 as a special statute and R.C. 5126.05 as a general statute was erroneous.

³ R.C. 5126.05 was originally enacted as R.C. 5126.03. 1967–1968 Ohio Laws, Part II–III, 2199 (Am. S.B. 169, eff. Oct. 25, 1967).

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised, that pursuant to R.C. 5126.05(H), interest earned and paid on money received as a gift, grant, or bequest by a county board of mental retardation and developmental disabilities must be deposited in the county treasury to the credit of the board and must be available for the use of the board for any purpose stated by the donor or grantor. (1985 Op. Att'y Gen. No. 85-055, approved and followed.)