

**OPINION NO. 83-055****Syllabus:**

1. Moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare constitute "public money" within the meaning of R.C. 117.10.
2. Except as otherwise provided in R.C. 5153.33, moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare must be paid into the county treasury pursuant to R.C. 117.17, in which case they may be deposited and invested pursuant to R.C. 135.31 to 135.40 and the interest earned upon such moneys will, pursuant to R.C. 135.351, be credited to the general fund of the county. If such interest has been restricted to use for a particular purpose by the terms of the donation, it may not be expended for another purpose.
3. Moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare may be retained and invested directly by the county children services board or department of welfare pursuant to R.C. 5153.33, in which case their investment is limited to "bonds of the United States or of any political subdivision of the state" and the interest earned upon such moneys will be added to the principal sum for investment or expenditure pursuant to R.C. 5153.33 and related provisions.

**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983**

I have before me your request for an opinion on several questions concerning donations received by a county children services board or county department of welfare. Your specific questions may be stated as follows:

1. Are moneys donated to a children services board or county department of welfare "public money" within the meaning of R.C. 117.10?
2. Are such moneys required to be paid into the county treasury pursuant to R.C. 117.17?
3. May such moneys be deposited and invested pursuant to R.C. 135.31 to 135.40, or is their investment limited to "bonds of the United States or of any political subdivision of the state"?
4. How is the interest earned upon such moneys to be disposed of?
5. Is the answer to the preceding question affected by conditions imposed by the donor restricting expenditure of the principal sum donated?

The particular moneys with which you are concerned are those received by a county children services board or county department of welfare pursuant to R.C. 5153.30. That section states:

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<sup>1</sup> R.C. 5153.01(B) defines "[c]ounty department of welfare," for purposes of R.C. 5153.30 and related sections, as a "county department of welfare which has assumed the administration of child welfare." See R.C. 5153.02, 5153.06, 5153.07, 5153.15. I use the term as so defined throughout this opinion.

The county children services board or county department of welfare may accept and receive bequests, donations, and gifts of funds or property, real or personal, for child care and services. The facilities or services to be established or maintained through any such gift shall be subject to the approval of the department of public welfare.

R.C. 117.01 creates the Bureau of Inspection and Supervision of Public Offices, in the Office of the Auditor of State, and gives the Bureau the duty of inspecting and supervising the accounts and reports of all public offices, as provided in R.C. 117.01 to 117.19. R.C. 117.10 describes the procedures for filing and enforcing the reports of examinations made by the Bureau. It indicates that all public moneys are subject to examination, see 1982 Op. Att'y Gen. No. 82-003, and defines "public money" to include "all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order, or otherwise."

It is clear that the moneys about which you have inquired come within the definition of "public money" appearing in R.C. 117.10. A county children services board or county department of welfare is authorized by R.C. 5153.30 to accept and receive money or property donated to it. Money so donated and received is clearly accepted by an appropriate individual in his official capacity, pursuant to the authority and for the purposes prescribed by law. It is, therefore, "received or collected under color of office" and "under authority" of R.C. 5153.30. See 1980 Op. Att'y Gen. No. 80-060 (money in student activity funds, derived from private contributions, constitutes public money because it is received by public officials under color of law). See also 1982 Op. Att'y Gen. No. 82-054 (interest earned on the deposit or investment of prepaid and unearned costs by a probate court is "public money" as defined in R.C. 117.10); Op. No. 82-003 (moneys held in trust for the benefit of patients of institutions within the Department of Mental Health are "public moneys" for purposes of R.C. 117.10); 1975 Op. Att'y Gen. No. 75-079 (assets held in development funds of state colleges and universities are public moneys for purposes of R.C. 117.10).

In response to your first question, it is, therefore, my opinion that moneys donated to a county children services board or county department of welfare constitute "public money" within the meaning of R.C. 117.10.

Your second question is whether such moneys must be paid into the county treasury pursuant to R.C. 117.17. R.C. 117.17 states:

A public officer or employee who collects or receives payments due the public shall deposit all public moneys received by him with the treasurer of the taxing district once every twenty-four consecutive hours. If such officer or employee receives public moneys for a taxing district of which he is not an officer or employee, he shall during Saturday of each week pay to the proper officer of such district the amount so received during the current week.

R.C. 117.17 provides generally for the prompt deposit of public funds. See, e.g., Op. No. 80-060 (employee of a board of education who is designated to collect or receive money earned through the operation of student activities must deposit it with the treasurer within twenty-four hours); 1974 Op. Att'y Gen. No. 74-043 (proceeds from the sale of school lunches must be deposited once every twenty-four hours).

As is concluded above, moneys donated to a county children services board or department of welfare are public moneys. The county is the taxing district for a county children services board or department of welfare. See R.C. 5153.35; R.C. 5705.24. See also R.C. 5153.15 (county children services board or department of welfare is an agency of county government). Thus, R.C. 117.17 seems to require that an officer or employee of a county children services board or department of public welfare who receives donations made to the board or department must deposit those moneys with the county treasurer within twenty-four hours. See

generally R.C. 5705.09 (authorizing a subdivision (including a county) to establish various funds, including, in division (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" and, in division (H), "[a] trust fund for any amount received by a subdivision in trust").

Your question arises from the existence of R.C. 5153.33, which states:

Funds in the hands of the county children services board or county department of welfare, donated or transferred to such board or department under sections 5153.31 and 5153.32 of the Revised Code, and which are not immediately needed, may be invested in bonds of the United States or of any political subdivision of the state.

The moneys with which you are concerned—those received by a county children services board or department of welfare by donation pursuant to R.C. 5153.30—clearly come within this provision. This provision also includes funds transferred from an agency or institution pursuant to R.C. 5153.31<sup>2</sup> and funds transferred from a corporation pursuant to R.C. 5153.32.<sup>3</sup>

Your letter indicates that the Bureau of Inspection and Supervision of Public Offices has attempted to reconcile R.C. 117.17 and R.C. 5153.33 by concluding that these sections authorize a county children services board or department of welfare to receive donations but do not authorize the board or department to invest funds directly, requiring instead that the moneys be paid into the county treasury to the credit of a trust fund on behalf of the board. I do not quarrel with the conclusion that a county children services board or department of welfare may, pursuant to R.C. 117.17 and related provisions, transfer to the county treasury moneys which

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<sup>2</sup> R.C. 5153.31 states:

All personal property, records, files, and other documents and papers belonging to or in the possession of any agency or institution, the powers and duties of which are transferred by sections 5153.01 to 5153.42, inclusive, of the Revised Code, to the county children services board or county department of welfare, the proceeds of all tax levies in process of collection, the unexpended balances of all current appropriations for the use of such agencies and institutions, and the custody of all wards of such agencies and institutions shall be deemed transferred to the board or department.

<sup>3</sup>R.C. 5153.32 states:

Any corporation, organized under the laws of this state for the purpose of establishing, conducting, and maintaining a child welfare institution or agency, which is unable, for any reason, to conduct and maintain such institution or agency, and which has not, for a period of three consecutive years, conducted or maintained a place or establishment for the care of children, and which has in its hands funds or properties acquired by it for the purpose of establishing, conducting, and maintaining such institution or agency, may, subject to the approval of the department of public welfare, and subject to the terms of any deed, will, or other instrument pursuant to which such funds or properties were acquired, transfer such funds or properties to the county children services board or county department of welfare, to be used for the purposes for which such funds or properties were acquired. The transfer of such funds or properties to the board or department shall be a full discharge of the obligation or liability of such corporation and its trustees with respect to the funds and properties so transferred.

have been donated to it under R.C. 5153.30. I do, however, find that R.C. 5153.33 also grants the board or department the option of investing such moneys directly.

R.C. 5153.33 refers to funds "in the hands of the county children services board or county department of welfare" and authorizes the investment of such funds, if they are not immediately needed. If R.C. 117.17 were construed as a mandate that all funds of such a board or department be deposited with the county treasurer within twenty-four hours, R.C. 5153.33 would be rendered meaningless, for the board or department would never have funds "in [its] hands" long enough to make investments practicable.

It is axiomatic that all portions of a statutory scheme are to be given effect. See, e.g., R.C. 1.47; Humphrys v. Winous Co., 165 Ohio St. 45, 133 N.E.2d 780 (1956). To effectuate this result, I read R.C. 5153.33 as carving out an exception to R.C. 117.17 to the extent of permitting a county children services board to retain "in [its] hands" those moneys delineated in R.C. 5153.33 and to invest them as provided therein.

R.C. 1.51 sets forth the rule of construction applicable when two statutory provisions seem to conflict. It states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local 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.

See generally State ex rel. Myers v. Chiamonte, 46 Ohio St. 2d 230, 348 N.E.2d 323 (1976).

It is clear that R.C. 5153.33, which deals specifically with the investment of funds donated to a county children services board or department of welfare, or transferred to such board or department pursuant to particular statutory provisions, is a special provision. It was both more recently enacted, see 1945-1946 Ohio Laws 538, 548 (H.B. 418, eff. Jan. 1, 1946) (enacting G.C. 3070-34, which contained substantially the same language as R.C. 5153.33); 1902 Ohio Laws 511, 513 (H.B. 1050, eff. May 10, 1902) (containing, in Section 6, substantially the same language as R.C. 117.17), and more recently amended, see 1969-1970 Ohio Laws, Book I, 72, 109 (Am. S.B. 49, eff. Aug. 13, 1969) (among other amendments, changing "child welfare board" to "children services board" in R.C. 5153.33); 1953 Am. H.B. 1 (eff. Oct. 1, 1953) (as part of the adoption of the Revised Code to replace the General Code, enacting R.C. 117.17 with minor changes from G.C. 289), than R.C. 117.17. Thus, absent a manifest intent to the contrary, to the extent that the conflict between R.C. 117.17 and R.C. 5153.33 is irreconcilable, R.C. 5153.33 carves out an exception to the general provisions of R.C. 117.17.

I am aware of no indications of an intent that the general provisions of R.C. 117.17 should prevail over the specific terms of R.C. 5153.33. To the contrary, the history of R.C. 5153.33 suggests a legislative intent that donations for purposes of children's services be accepted and invested directly by the body with responsibility for those services. G.C. 3075, predecessor to G.C. 3070-34 and R.C. 5153.33, predated the establishment of child welfare boards and authorized the board of county commissioners to invest funds received for purposes of an orphan asylum. It stated:

Funds coming into the hands of the county commissioners for such purposes [orphan asylum], not immediately needed therefor, may be invested by them in unincumbered real estate mortgages or bonds of the state or United States, the proceeds to be credited to the asylum fund.

See R.S. 927. G.C. 3083 authorized the trustees of a county children's home to accept and use bequests made to the home "as they deem for the best interests of the institution consistent with the provisions and conditions of such bequest." See

1943 Op. Att'y Gen. No. 6169, p. 344. One of my predecessors opined that this provision authorized the trustees to control and use moneys directly, whereas all other money matters involving a county children's home were to be handled through the county treasury. 1938 Op. Att'y Gen. No. 1843, vol. I, p. 208.<sup>4</sup> See 1943 Op. No. 6169 at 347 (concluding that, by adoption of G.C. 3083 and related provisions, the legislature intended to "give to the trustees full control of bequests made to an established home to be used by them as they deem for the best interests of the institution, consistent with the provisions and conditions of such bequests"). Compare R.C. 5153.33 with R.C. 5126.05 ("[a]ll money received [by a county board of mental retardation and developmental disabilities] 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"). The boards of trustees of county children's homes were changed to child welfare boards by G.C. 3070-6, enacted by 1945-1946 Ohio Laws 538, 540 (H.B. 418, eff. Jan. 1, 1946). See 1953 Op. Att'y Gen. No. 2393, p. 82 at 84; 1949 Op. Att'y Gen. No. 409, p. 143 at 146. See generally R.C. 9.20; 1957 Op. Att'y Gen. No. 1150, p. 545.

The use of the word "may" in R.C. 5153.33, of course, denotes the granting of discretion, rather than the imposition of duty. See, e.g., *Dennison v. Dennison*, 165 Ohio St. 146, 134 N.E.2d 574 (1956). Thus, R.C. 5153.33 authorizes a county children services board or department of welfare to invest moneys from donations as provided therein, but does not require that it do so. When a county children services board or department of welfare does not choose to invest funds directly pursuant to R.C. 5153.33, it is subject to the general requirement that funds be deposited with the county treasurer pursuant to R.C. 117.17.

It is, therefore, my opinion that the specific provisions of R.C. 5153.33 prevail over the conflicting provisions of R.C. 117.17, and that moneys donated to a county children services board or department of welfare may be invested by that board or department pursuant to R.C. 5153.33.

Your third question is whether moneys donated to a county children services board or department of welfare may be deposited and invested pursuant to R.C. 135.31 to 135.40 or whether their investment is limited to "bonds of the United States or of any political subdivision of the state."

As I indicated above, since the provisions of R.C. 5153.33 are permissive, rather than mandatory, a county children services board or department of welfare may choose to invest funds directly pursuant to that section, or may simply deposit the funds with the county treasurer pursuant to R.C. 117.17. Funds which are deposited with the county treasurer are subject to R.C. 135.31 to 135.40 and may be deposited and invested as provided therein. See R.C. 135.31(E) (defining "public moneys" for purposes of R.C. 135.31 to 135.40 as "all moneys in the treasury of a county or moneys coming lawfully into the possession or custody of the [county] treasurer").

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<sup>4</sup> 1938 Op. No. 1843 states, in part, at 209:

The Boards of Trustees of County Children's Homes are granted broad powers in the administration of such homes. However, in regard to money matters, the administration is limited to withdrawal of public funds from the county treasury only upon the same being properly vouchered to the County Auditor for him in turn to draw his warrant on the treasury of the county. The only provision that is found authorizing the board of trustees to control and use moneys in [sic] Section 3083, General Code, wherein it is provided that the board of trustees may accept and use a bequest for the best use of the Home. There is no statutory authority for the Trustees of a Children's Home to otherwise use public funds.

Funds which are invested directly by a county children services board or department of welfare pursuant to R.C. 5153.33 are not subject to R.C. 135.31 to 135.40, since they do not enter the county treasury or come into the possession of the county treasurer. Rather, such funds are subject to the provisions of R.C. 5153.33 and may be invested only as provided therein, namely, in "bonds of the United States or any political subdivision of the state."<sup>5</sup> See generally Ohio Public Interest Action Group, Inc. v. Public Utilities Commission, 43 Ohio St. 2d 175,<sup>6</sup> 331 N.E.2d 730 (1975) (a creature of statute has only the powers granted by statute).

<sup>5</sup> I am aware that R.C. 131.11, which imposes security requirements upon deposits by certain officials, including the director of a county department of welfare, seems, by implication, to authorize such an individual to deposit funds as provided therein. See 1961 Op. Att'y Gen. No. 2119, p. 175. See generally 1961 Op. Att'y Gen. No. 2720, p. 748. However, since R.C. 131.11 contains no reference to a county children services board, it is evident that the authority of a director of a county department of welfare to deposit funds pursuant to that provision does not extend to funds connected with the administration of child welfare by a county department of welfare which has taken on those duties. See note 1, supra.

I am also aware that there is a theory under which funds invested directly by a county children services board or department of welfare under R.C. 5153.33 might be found to be subject to certain provisions of R.C. Chapter 135. R.C. 135.01(L) defines "[s]ubdivision" to include certain municipal corporations, any school district, township, municipal or school district sinking fund, special taxing or assessment district, and any "other district or local authority electing or appointing a treasurer," except a county. R.C. 135.01(M) defines "[t]reasurer" to mean, "in the case of any subdivision, the treasurer, or officer exercising the functions of a treasurer, of such subdivision." My predecessors have construed these definitions as meaning that, whenever a public body receives any funds, that body becomes a subdivision because the person handling the funds must necessarily act as a treasurer. 1953 Op. Att'y Gen. No. 3151, p. 538 (county hospital); 1953 Op. Att'y Gen. No. 3052, p. 439 (overruled on other point by 1960 Op. Att'y Gen. No. 1537, p. 489) (municipal library district); 1938 Op. Att'y Gen. No. 2497, vol. II, p. 1085 (discussed and concurred in, in part, in 1961 Op. Att'y Gen. No. 2648, p. 671) (metropolitan housing authority). As was stated in 1953 Op. No. 3052, at 442: "It seems clear that the General Assembly undertook to make this law all inclusive, so as to include every body or agency which handles public money." I do not, however, find this theory applicable in the instant situation to give the county children services board or department of welfare the authority to make deposits pursuant to R.C. Chapter 135. The language of R.C. 5153.33 is specific and limited, providing for investments only in federal and local bonds. I do not find that such limited handling of money makes a member of the board or department a "treasurer" for purposes of R.C. 135.01(M). See generally 1956 Op. Att'y Gen. No. 7631, p. 944 (trust funds held by wardens and superintendents of institutions under the jurisdiction of a state department are not subject to the Uniform Depository Act, R.C. Chapter 135); 1956 Op. Att'y Gen. No. 7398, p. 765 (syllabus) (R.C. 6101.51, "making special provision as to the powers of conservancy district to invest and deposit its funds, is an exception to the general provisions" of the Uniform Depository Act).

<sup>6</sup> The Supreme Court of Ohio has, in certain instances, recognized the authority of a public official to deposit, in accordance with customary business practices, funds which come into his hands, if the law makes no specific provision as to what is to be done with the funds. See Busher v. Fulton, 128 Ohio St. 485, 191 N.E. 752 (1934). I am, however, aware of no instance in which such implied authority has been found when a statute specifically authorizes certain investments, as does R.C. 5153.33. The principle of expressio unius est exclusio alterius would seem to preclude such a result. See Fidelity & Casualty Co. v. Union Savings Bank Co., 119 Ohio St. 124, 162 N.E. 420 (1928); 1982 Op. Att'y Gen. No. 82-054; 1979 Op. Att'y Gen. No. 79-048.

Your fourth question concerns the disposition of interest earned upon moneys which have been donated to a county children services board or department of welfare.

The disposition of interest earned on moneys in the county treasury is governed by R.C. 135.351. R.C. 135.351(A) states: "Except as provided in section 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." (Footnote added.) R.C. 135.351(B) and (C) provide an exception from this general rule for interest earned on moneys which are collected by a county on behalf of another political subdivision, taxing district, or special district and which are required to be distributed to such subdivision or district rather than being deposited or invested by the county. The exceptions of R.C. 135.351(B) and (C) and R.C. 1545.22 are not applicable to funds which have been donated to a county children services board or department of welfare and transferred by that board or department to the county treasurer pursuant to R.C. 117.17. If such funds are "in the county treasury," the interest on such funds is subject to R.C. 135.351(A).

No provision of R.C. Chapter 5153 specifies what happens to funds of a county children services board or department of welfare which are not invested by the board or department pursuant to R.C. 5153.33 but are, rather, transferred to the county treasurer. R.C. 117.17 speaks only generally of deposit with the treasurer. R.C. 321.05, however, states expressly that, "[e]xcept as otherwise specifically provided by law, all public moneys and property in [the possession of the county treasurer] shall be at all times kept in the county treasury." Since I am aware of no provision of law which would exclude from the county treasury funds of a county children services board or department of welfare which have been deposited with the county treasurer pursuant to R.C. 117.17, I conclude that such funds are in the county treasury and, as a result, are subject to R.C. 135.351(A). Therefore, where a county children services board or department of welfare has transferred to the county treasurer funds received through donations, the interest earned on such funds must be "credited to the general fund of the county," R.C. 135.351(A), even though such donations are held in trust under R.C. 5705.09(H). See 1982 Op. Att'y Gen. No. 82-035 (syllabus) ("Pursuant to R.C. 135.351, interest earned on funds received as a gift by a county board of mental retardation and developmental disabilities and paid into the county treasury pursuant to R.C. 5126.05 must be credited to the general fund of the county treasury"); 1982 Op. Att'y Gen. No. 82-027 (depository interest earned on moneys in a reserve balance account must be credited to the general fund of the county pursuant to R.C. 135.351(A)). See generally 1983 Op. Att'y Gen. No. 83-025; 1982 Op. Att'y Gen. No. 82-026.

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<sup>7</sup> R.C. 1545.22 pertains to funds under the control of a board of park commissioners. See generally 1983 Op. Att'y Gen. No. 83-025; 1982 Op. Att'y Gen. No. 82-026.

<sup>8</sup> The conclusion that, apart from specific statutory exceptions, interest earned on funds in the county treasury must be credited to the general fund of the county applies even though those funds are in a trust fund under R.C. 5705.09(H). R.C. 5705.10 (as amended by Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982), which also enacted R.C. 135.351) states, in part:

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. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund. (Emphasis added.)

Funds invested directly by a county children services board or department of welfare pursuant to R.C. 5153.33 do not enter the county treasury and are not subject to R.C. 135.351(A). Indeed, I am aware of no statute which prescribes the disposition of interest earned on such funds. In the absence of a statute prescribing the disposition of interest earned on such funds, I apply the common law rule that, absent statutory direction, interest should be allocated to the fund to which the principal belongs. See generally Eshelby v. Cincinnati Board of Education, 66 Ohio St. 71, 63 N.E. 586 (1902); 1980 Op. Att'y Gen. No. 80-003; 1974 Op. Att'y Gen. No. 74-060; 1935 Op. Att'y Gen. No. 4759, vol. II, p. 1292.

I conclude, therefore, that interest earned on funds invested directly by a county children services board or department of welfare pursuant to R.C. 5153.33 is to be added to the principal amount of those funds and reinvested or expended as provided in that section and related provisions.

Your final question is whether the disposition of interest earned upon such moneys is affected by conditions imposed by the donor--in particular, conditions under which the donor prohibits the expenditure of principal and provides that the interest derived from his donation shall be used for child care and services. I note, first, that R.C. 5153.30 does not expressly authorize a county children services board or department of welfare to accept donations subject to such restrictions. Compare R.C. 5153.30 with R.C. 9.20 (authorizing various public bodies to "receive by gift, devise, or bequest moneys, lands, or other properties. . .and hold and apply the same according to the terms of the gift, devise, or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservation"). See also 1953 Op. Att'y Gen. No. 3052, p. 439 at 444 (overruled on other point by 1960 Op. Att'y Gen. No. 1537, p. 489) (library boards are authorized to accept endowments, the principal to be held without diminution and the interest or income to be used for the benefit of the library). It appears, however, that the power granted by R.C. 5153.30 to accept and receive

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By enactment of the emphasized portion of this provision, the General Assembly has determined, as a general rule, that interest earned on the principal of any special fund (including a trust fund), regardless of the source or purpose of the principal, is revenue derived from a source other than the general property tax for which the law does not prescribe use for a particular purpose and shall be paid into the general fund. Where the special fund is in the county treasury, the interest must, as provided in R.C. 135.351, be credited to the general fund of the county.

<sup>9</sup> By adoption of Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982), the General Assembly amended R.C. 135.21 and 5705.10 and enacted R.C. 135.351. R.C. 135.21 governs the disposition of interest on certain funds and states: "All other interest earned shall, except as provided in section 135.351 of the Revised Code, 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." When read in conjunction with other portions of R.C. 135.21 and the definitions appearing in R.C. 135.01, this language must be limited to interest earned on funds deposited pursuant to R.C. Chapter 135. It is my opinion that a county children services board or department of welfare does not act under that chapter in investing funds pursuant to R.C. 5153.33. See note 5, *supra*. Therefore, I conclude that moneys invested directly by such a body under R.C. 5153.33 are not subject to R.C. 135.21. Similarly, although R.C. 5705.10 contains provisions stating generally that "revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund," the provisions of R.C. 5705.10, read in context, must be limited to revenue derived by a subdivision. See, e.g., R.C. 5705.09. A county children services board or department of welfare is not a "[s]ubdivision" as that term is defined in R.C. 5705.01. Thus, moneys which such a body invests under R.C. 5153.33 are not subject to R.C. 5705.10.



bequests, donations, and gifts, subject to the approval of the Department of Public Welfare, carries with it the power to accept and receive bequests, donations, and gifts which are subject to reasonable restrictions, since such restrictions simply operate to define the nature and extent of the bequest, donation, or gift. See R.C. 5153.30 (requiring Department of Public Welfare to approve facilities or services to be established or maintained through any gift). See generally Danner v. Shanafelt, 159 Ohio St. 5, 110 N.E.2d 772 (1953) (syllabus, paragraph 1) ("[t]he law favors charitable trusts. . ."); Smith v. Evans, 74 Ohio St. 17, 77 N.E. 280 (1906); Carder v. Commissioners of Fayette County, 16 Ohio St. 353 (1865); State ex rel. Attorney General v. City of Toledo, 13 Ohio Cir. Dec. 327 (Cir. Ct. Lucas County 1902); 1965 Op. Att'y Gen. No. 65-146; 1963 Op. Att'y Gen. No. 110, p. 187; 1962 Op. Att'y Gen. No. 3246, p. 686; 1957 Op. No. 1150; 1924 Op. Att'y Gen. No. 1648, p. 424. I find, therefore, that, subject to the approval of the Department of Welfare, a county children services board or department of welfare may, under R.C. 5153.30, accept donations which are subject to reasonable restrictions.

Assuming that a county children services board or department of welfare has lawfully accepted a donation which is subject to conditions restricting the expenditure of the principal sum donated and providing for expenditure of the interest for specified purposes, and has transferred that donation to the county treasurer pursuant to R.C. 117.17, I see no reason why the provisions of R.C. 135.351 should not apply. The language of R.C. 135.351(A) is clear. Whenever money is within the county treasury and the specified exceptions are not applicable, interest earned on such money "shall be credited to the general fund of the county."

As my predecessor stated in 1982 Op. Att'y Gen. No. 82-057, at 2-81 and 2-82:

R.C. 135.351 was intended to create a special system for counties which differs from 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. See R.C. 135.21. R.C. 135.351(A) clearly states that "all interest earned on money included within the county treasury shall be credited to the general fund of the county" (emphasis added). There are no express exemptions from this provision. . . .<sup>10</sup> [I]t would appear that R.C. 135.351(A) was intended to encompass the interest earned on all funds included within the county treasury. . . . (Footnote added.)

Like my predecessor, I conclude that R.C. 135.351 applies to all funds in the county treasury, except those expressly excluded. I cannot find that money donated to a county children services board or department of welfare is exempt from this provision, regardless of the restrictions placed upon the donation, assuming that the money is transferred to the county treasury. I conclude, therefore, that interest derived from such donation must be credited to the county's general fund.

It is, of course, clear that a county children services board or department of welfare may accept donations which are subject to restrictions only if it is able to comply with the conditions prescribed. See Findley v. City of Conneaut, 145 Ohio St. 480, 62 N.E.2d 318 (1945). A board or department may not accept a gift which requires it to perform actions that exceed its statutory authority. See 1982 Op. Att'y Gen. No. 82-086; 1957 Op. No. 1150 (syllabus, paragraph 2) (R.C. 9.20 authorizes various governmental bodies to "accept real or personal property conveyed to them in trust and administer the same in accordance with the terms of the trust, provided no such term requires such a board or department to exercise powers or perform duties and functions not accorded them by law" (emphasis in original)).

<sup>10</sup> I note that 1982 Op. Att'y Gen. No. 82-057 was issued prior to the enactment of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982), which amended R.C. 135.351(A) and R.C. 1545.22 by providing an exception for funds under the control of a board of park commissioners. See 1983 Op. Att'y Gen. No. 83-025; 1982 Op. Att'y Gen. No. 82-026.

In light of this principle, there arises the question whether a gift which specifies that interest derived from its investment shall be used for a particular purpose is one which a county children services board or department of welfare may lawfully accept and transfer to the county treasurer, given the statutory scheme for the distribution of interest which is outlined above. I think that it is.

There is nothing in the statutory scheme governing the distribution of interest on money held in the county general fund which would prevent such interest from being spent for the purpose for which the donor designated it. In the situation you have described, the county commissioners could make the interest from the funds donated to the county children services board or department of welfare available to the board or department for the specified purposes by appropriating such funds under R.C. 5153.35. Thus, the purpose of the donation may be upheld.

It is, of course, clear that, once a donation is accepted, if the terms of a donation restrict the use of interest derived therefrom to a particular purpose, the interest may not be expended for a purpose other than that prescribed. <sup>12</sup> See, e.g., Louisville & Nashville R.R. Co. v. City of Cincinnati, 76 Ohio St. 481, 505, 81 N.E. 983, 989 (1907) ("the power to control the use of property dedicated to the public must be limited to the purposes of the trust"); 1953 Op. No. 2393, at 88 ("[w]here. . . the gift [to a public body] is to be used for a specific charitable purpose, that, in my opinion constitutes a trust in the hands of the [public body] and the proceeds of the gift must be used only for such purposes"). If it becomes impossible to carry out the object of the gift, as prescribed by the donor, the trust will fail and the gift will lapse. <sup>13</sup> Ward v. Worthington, 28 Ohio App. 325, 333-34, 162 N.E. 714, 717 (Butler County 1928) (devise is void where "trust is not capable of being enforced without altering the purpose and object which the testatrix had in mind"). Thus, in the situation here under consideration, if at any time the interest derived from the restricted principal is appropriated for purposes which are not consistent with its designated use, the terms of the trust will be violated. Therefore, I conclude that, even though interest derived from a gift to a county children services board or department of welfare may be credited to the county general fund, if that interest has lawfully been made subject to restricted use, it may not be expended in violation of such restriction.

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<sup>11</sup> It is true that the intention of the creator of a trust is to be given effect only if it is not contrary to law. Lloyd v. Campbell, 120 Ohio App. 441, 446, 196 N.E.2d 786, 790 (Cuyahoga County 1964) ("the intention of the creator of [a] trust is to be sought and given effect if it is not contrary to law"); 1960 Op. Att'y Gen. No. 1537, p. 489 at 492 ("[a] testator has the unquestioned right to attach any condition to his gift which is not in violation of law or public policy"). Where the purpose of a donation is to assist the functions of a children services board, it is clearly lawful. Action by the donor to designate a particular use for interest derived from his gift limits the purposes for which it may be spent, but so long as the use so designated is one for which the funds may lawfully be expended under the applicable statutory procedure, it is my judgment that the trust is a lawful one and may be given effect. See Christy v. Commissioners of Ashtabula County, 41 Ohio St. 711, 716 (1885) (the designated representative of the county "may take and hold any devise or bequest therefor unless the will requires its expenditure in an unlawful manner, or for an unlawful purpose").

<sup>12</sup> This is the case even though the General Assembly has, by amendment of R.C. 5705.10, indicated that it does not consider a situation in which a donor restricts the use of interest earned on a trust fund to a particular purpose to be a situation in which the law prescribes use for a particular purpose under its scheme for allocation of interest. See note 8, *supra*.

<sup>13</sup> In an appropriate case, a court may, of course, apply the doctrine of *cy pres*, see Craft v. Shroyer, 81 Ohio App. 253, 257, 74 N.E.2d 589, 591 (Montgomery County 1947) ("[i]f the court finds that the execution of a charitable trust is inexpedient or impracticable, a court of equity will execute it, as nearly as it can, according to the original plan"), or deviation, see Findley v. City of Conneaut, 145 Ohio St. 480, 62 N.E.2d 318 (1945).

When money is invested directly by a county children services board or department of welfare pursuant to R.C. 5153.33, rather than being transferred to the county treasury, a restriction by the donor upon expenditure of principal will not affect the disposition of the interest.

In conclusion, it is my opinion, and you are hereby advised, as follows:

1. Moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare constitute "public money" within the meaning of R.C. 117.10.
2. Except as otherwise provided in R.C. 5153.33, moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare must be paid into the county treasury pursuant to R.C. 117.17, in which case they may be deposited and invested pursuant to R.C. 135.31 to 135.40 and the interest earned upon such moneys will, pursuant to R.C. 135.351, be credited to the general fund of the county. If such interest has been restricted to use for a particular purpose by the terms of the donation, it may not be expended for another purpose.
3. Moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare may be retained and invested directly by the county children services board or department of welfare pursuant to R.C. 5153.33, in which case their investment is limited to "bonds of the United State or of any political subdivision of the state" and the interest earned upon such moneys will be added to the principal sum for investment or expenditure pursuant to R.C. 5153.33 and related provisions.