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FEES FOR BUILDING PERMITS, COLLECTED BY THE BOARD OF COUNTY COMMISSIONERS SHOULD GO IN THE GENERAL FUND UNLESS A SPECIAL FUND HAS BEEN ESTABLISHED FOR THE DEPOSIT OF SUCH FEES—§§307.37, R.C., 307.40, R.C.; OPINION 7442, OAG, 1956, §§5705.09, R.C., 5705.12, R.C.

SYLLABUS:

Fees for building permits issued under Section 307.37, Revised Code, and collected by the board of county commissioners, should be paid into the general fund of the county, as established under Section 5705.09, Revised Code, unless pursuant to Section 5705.12, Revised Code, a special fund has been established for the deposit of such fees, in which case the fees should be paid into such special fund.

Columbus, Ohio, April 23, 1962

Hon. Dennis J. Callahan, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have received from the Lawrence County Commissioners a letter regarding Building Permit Receipts which reads in part as follows:

“‘Would you please advise us as to how checks which we receive for building permits should be made out? We do not want this money to go into the County General Fund, but to be set up in a separate account. There will be individual files of each permit holder along with a numerical journal book of permits issued. A cash journal will show all funds received.

“‘The funds in question will be derived from the sale of code book permits for building, remodeling, etc., with possibly some service or inspection fees and supervision cost in movement of buildings.

“‘Our intention is to receive and handle all funds so derived in a separate account so that all expenses and salaries pertaining to the building code will be separate and self-supporting.’

“The Board of County Commissioners had requested me to obtain an opinion from you as to the legality of handling the funds received in this manner.”

Section 307.37, Revised Code, reads in part as follows :

“The board of county commissioners, in addition to its other powers, may adopt, administer, and enforce regulations pertaining to the erection, construction, repair, alteration, and maintenance of single-family, two-family, and three-family dwellings, within the unincorporated territory of the county, or the board may establish districts in any part of the unincorporated territory and may adopt, administer, and enforce such regulations in the districts. When adopted, all such regulations, including service charges, shall be the same for each district in which building codes have been established. In no case shall such regulations go beyond the scope of regulating the safety, health, and sanitary conditions of such buildings.* * *

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“The board of county commissioners may provide for a building regulation department and may employ such personnel as it determines to be necessary for the purpose of enforcing such regulations. Upon certification of the building department under section 3781.10 of the Revised Code, the board of commissioners may direct the county building department to exercise enforcement authority and to accept and approve plans pursuant to sections 3781.03 and 3791.04 of the Revised Code for any other kind or class of building in the unincorporated territory of the county.”

Section 307.38, Revised Code, creates the office of county building inspector and assigns to that officer the duties of administration and enforcement of the building regulations.

Section 307.40, Revised Code, reads in part :

“No person shall erect, construct, alter, repair, or maintain any single-family, two-family, or three-family dwellings, within the unincorporated portion of any county, wherein the board of county commissioners has enacted building regulations as provided in section 307.37 of the Revised Code, unless such building regulations are fully complied with. * * *”

While the above-noted statutes do not specifically provide for the issuance of building permits, one of my predecessors in Opinion No. 7442, Opinions of the Attorney General for 1956, page 833, concluded that the power to enforce building regulations reasonably implies the power to require persons desiring to build in the regulated area to secure building permits prior to beginning construction. My predecessor also concluded that the board of county commissioners can require the payment of a pre-

designated fee for the building permit, even though the statutes do not specifically provide for such a fee. This latter conclusion was based on the premise that the power to charge a fee is incident to the duty to inspect and regulate.

The first paragraph of the syllabus of said Opinion No. 7442 reads as follows:

“Under the terms of Section 307.37, Revised Code, the board of county commissioners is empowered to require those affected by building regulations controlling construction in unincorporated areas to apply to a county building inspector for a permit prior to beginning construction of a building, and may require the payment of a fee therefor in an amount reasonably designed to cover the cost of inspection incident to the issuance of such permit.”

On reviewing the statutes in question, I find that I am in agreement with the conclusions of the 1956 opinion. I might add that since that opinion was rendered, the language in Section 307.37, *supra*, as to “service charges” was inserted in that section, thereby strengthening the conclusion that a fee may be charged.

Coming to your specific question, I note that under Section 325.31, Revised Code, fees collected by a county auditor, county treasurer, probate judge, sheriff, clerk of the court of common pleas, county engineer, or county recorder are paid into the county treasury to the credit of the general county fund. Said Section 325.31 does not, however, apply to fees collected by a board of county commissioners.

Under Section 305.12, Revised Code, money recovered by a board of county commissioners must be paid into the county treasury. The question here is into what fund in the treasury is the money paid?

There being no specific statutory authority as to the charging of building permit fees, there is also a lack of specific direction as to the disposition of such fees once collected. In a somewhat similar instance, it was held in the third paragraph of the syllabus of *State v. Allen*, 86 Ohio St., 244 (1912), as follows:

“Where funds reach a county treasurer, either by gift or otherwise, that belong to no particular fund, or where there is nothing whatever to show in which fund the money belongs, the board of county commissioners has authority to determine and direct the fund to which such moneys shall be credited.”

While *State v. Allen, supra*, gives the board of county commissioners authority to determine the fund to which moneys shall be credited, where there is nothing to show in what fund the money belongs, Sections 5705.09 and 5705.12, Revised Code, appear to be here pertinent, since under those sections authority may be found regulating the deposit of the moneys here concerned.

Section 5705.09, *supra*, reads:

“Each subdivision shall establish the following funds:

“(A) General fund;

“(B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;

“(C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;

“(D) A special fund for each special levy;

“(E) A special bond fund for each bond issue;

“(F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;

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

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

Section 5705.12, *supra*, provides:

“In addition to the funds provided for by sections 5705.09 and 5705.13 of the Revised Code, the taxing authority of a subdivision may establish, with the approval of the bureau of inspection and supervision of public offices, such other funds as are desirable, and may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into such funds.”

Section 5705.09, *supra*, sets forth the funds to be established by each subdivision into which moneys of the subdivision are to be deposited. It is obvious that the fees collected for building permits could properly be paid into only one of the funds so established, that being the general fund.

Section 5705.12, *supra*, does, however, provide an exception. Under that provision of law a special fund for the fees here concerned may be established by resolution of the board of county commissioners provided the bureau of inspection and supervision of public offices approves such proceeding.

Thus, in answer to your specific question, it is my opinion and you are advised that fees for building permits issued under Section 307.37, Revised Code, and collected by the board of county commissioners, should be paid into the general fund of the county, as established under Section 5705.09, Revised Code, unless pursuant to Section 5705.12, Revised Code, a special fund has been established for the deposit of such fees, in which case the fees should be paid into such special fund.

Respectfully,
MARK MCELROY
Attorney General