

OPINION NO. 83-025**Syllabus:**

Pursuant to section 32 (uncodified) of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982), interest which has accrued since March 15, 1982, the effective date of Am. Sub. H.B. 230, 114th Gen. A. (1981), on money belonging to a park district must be credited to the funds of the park district to which the principal sums belong rather than to the general fund of the county.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 23, 1983

I have before me your request concerning the allocation of interest earned on money which belongs to a park district. Specifically, you wish to know whether a park district is entitled to the interest earned on park district money which accrued from March 15, 1982, the effective date of Am. Sub. H.B. 230, 114th Gen. A. (1981), to November 26, 1982, the effective date of Am. Sub. S.B. 550, 114th Gen. A. (1982).

R.C. 135.351(A), which was enacted as part of Am. Sub. H.B. 230, read as enacted: "All interest earned on money included within the county treasury shall be credited to the general fund of the county." In 1982 Op. Att'y Gen. No. 82-026 my predecessor concluded that, "[p]ursuant to R.C. 135.351 [as enacted], interest earned on the deposit of money belonging to a county park district but included within the county treasury must be credited to the general fund of the county." *Id.* at 2-76 (syllabus). My predecessor examined R.C. 1545.22, which provided in part at the time, that "no contract of the board [of park commissioners] involving the expenditure of money shall become effective until the auditor certifies that there are funds of the board in the county treasury and otherwise unappropriated sufficient to provide therefor," and determined that money belonging to a park district was "included within the county treasury," and, thus, that interest on such money was to be credited to the general fund of the county.¹ As a general matter, it was concluded that R.C. 135.351 controlled the disposition of interest earned on custodial funds held by a county treasurer, as well as interest earned on money available for use by the county itself.

Am. Sub. S.B. 550, which was passed subsequent to the issuance of Op. No. 82-026, amended R.C. 135.351(A) to read: "Except as provided in section 1545.22 of

¹ Prior to the enactment of Am. Sub. H.B. 230, R.C. 135.21, which at the time applied to money deposited in a county treasury, as well as to money deposited in the treasury of the State and the treasuries of other political subdivisions, provided that interest earned on custodial funds was to be credited to the funds to which the principal sums belonged. See 1967-1968 Ohio Laws, Part I, 116 (Am. Sub. S.B. 321). Since the passage of Am. Sub. H.B. 230, R.C. 135.351, which governs the interest earned on money included within the county treasury, stands as an exception to R.C. 135.21.

the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." R.C. 1545.22 was also amended to read in pertinent part:

All funds under the control of a board of park commissioners shall be kept in depositories selected in the manner provided for the deposit of county funds, insofar as such proceedings are applicable, and such deposits shall be secured as provided in the case of county funds. The county treasurer of the county in which the park district is located shall be the custodian of the funds of the board and shall be an ex officio officer of the board. He shall pay the funds out upon the warrant of the county auditor of the county in which the district is located. [Interest earned on all funds under the control of the board of park commissioners shall be credited to such funds.]

The [county] auditor shall be an ex officio officer of the board and no contract of the board involving the expenditure of money shall become effective until the auditor certifies that there are funds of the board in the [custody of the] county [treasurer] and otherwise unappropriated sufficient to provide therefor. The auditor shall issue warrants to the treasurer to disburse the funds of the board upon order of the board, evidenced by the certificate of the secretary in such manner as the bureau of inspection and supervision of public offices prescribes. The accounts of the board shall also be kept in the manner to be prescribed by the bureau.

(The bracketed language indicates that which was added by Am. Sub. S.B. 550.)

Thus, R.C. 135.351 and R.C. 1545.22, as amended by Am. Sub. S.B. 550, now require the interest on money belonging to a park district to be credited to the funds to which the principal sums belong, rather than to the general fund of the county. You wish to know whether the park district is entitled to the interest which accrued on park district funds from March 15, 1982 (the effective date of Am. Sub. H.B. 230) to November 26, 1982 (the effective date of Am. Sub. S.B. 550) or whether such interest is to be credited to the general fund of the county.

R.C. 1.48 states that, "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." This principle of statutory construction has also been judicially recognized. See, e.g., Smith v. Ohio Valley Insurance Co., 27 Ohio St. 2d 268, 272 N.E.2d 131 (1971), cert. denied, 405 U.S. 921 (1972). However, section 32 (uncodified) of Am. Sub. S.B. 550 states:

The purpose of the amendments to sections 135.351 and 1545.22 of the Revised Code in this act is to clarify the intentions of the General Assembly in enacting section 135.351 of the Revised Code in Amended Substitute House Bill No. 230 of the 114th General Assembly, which included the preserving to each board of park commissioners created under Chapter 1545. of the Revised Code the right to the interest earned on moneys of the district held by the county treasurer as its custodian.

Each county treasurer who has credited to the county general fund interest earned on funds of a park district is, therefore, obligated to transfer from the county general fund to the account of such park district an amount equal to the total of such interest credited to the county general fund.

Thus, the amendments to R.C. 135.351 and R.C. 1545.22 found in Am. Sub. S.B. 550 have been expressly made retrospective, and the interest which has accrued since the passage of Am. Sub. H.B. 230 on money belonging to a park district must be credited to the funds to which the principal sums belong. I note that section 32 of Am. Sub. S.B. 550 overrides the general principle found in R.C. 1.58 that the amendment of a statute does not affect the prior operation of a statute, any action taken thereunder, or any rights or obligations acquired thereunder, as well as the

presumption of prospective operation found in R.C. 1.48. See 1981 Op. Att'y Gen. No. 81-100.²

In conclusion, it is my opinion, and you are advised, that pursuant to section 32 (uncodified) of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982), interest which has accrued since March 15, 1982, the effective date of Am. Sub. H.B. 230, 114th Gen. A. (1981), on money belonging to a park district must be credited to the funds of the park district to which the principal sums belong rather than to the general fund of the county.

² I express no opinion on the effect of Ohio Const. art. II, §28 on section 32 of Am. Sub. S.B. 550. Art. II, §28 reads in part: "The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts. . . ." As an executive officer, I have no authority to opine on the constitutionality of statutes. Rather, that is a function of the judicial branch of government. Where a statute is clear, I can only advise you to act in accordance with the terms of the statute, on the assumption that the law is constitutional. See 1981 Op. Att'y Gen. No. 81-100.