

OPINION NO. 92-054**Syllabus:**

1. A county transit board is authorized to deposit or invest the moneys of the county transit system in the types of deposits or instruments generally authorized for public moneys by R.C. 135.31-.40.
2. Interest earned and paid on moneys invested or deposited by a county transit board may be retained by the county transit board as part of its funds.

To: James J. Mayer, Jr., Richland County Prosecuting Attorney, Mansfield, Ohio

By: Lee Fisher, Attorney General, December 29, 1992

You have asked whether R.C. 306.11 permits a county transit board to invest its inactive funds and to retain the interest earned and paid thereon.

A County Transit Board Is Authorized to Deposit or Invest the Moneys of the County Transit System

R.C. 306.11 provides, in part:

The county transit board shall have exclusive control over the county transit system's budgets, appropriations, collections, custody, and application of its revenues or other funds received by it and shall have jurisdiction of all purchases and contracts entered into in connection with the county transit system pursuant to sections 307.86 to 307.92, inclusive, of the Revised Code. (Emphasis added.)

Thus, R.C. 306.11 vests the county transit board with exclusive control over the custody and application of the funds of the county transit system.

R.C. 306.11 does not explicitly empower a county transit board to invest or deposit the moneys of the county transit system. However, 1992 Op. Att'y Gen. No. 92-025 determined that, except as may be otherwise provided by statute or charter provision, where the General Assembly has statutorily authorized a county board to hold public moneys independently of the county treasury, such statutory authority impliedly empowers the board to deposit or invest those moneys in a manner which is reasonably calculated to safeguard such moneys while maintaining or enhancing the principal. The opinion reasoned as follows:

As a general rule in Ohio, absent specific statutory authorization, public moneys cannot be loaned or invested by the officers in charge thereof. *See, e.g., Fidelity & Casualty Co. v. Union Sav. Bank Co.*, 119 Ohio St. 124, 162 N.E. 420 (1928); *State v. Buttles*, 3 Ohio St. 309 (1854); 1979 Op. Att'y Gen. No. 79-048. Rather, public moneys must generally be dealt with strictly in accordance with the statutory provisions governing their use. *See generally State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916) (authority of county commissioners to act in financial transactions must be clearly and distinctly granted).

However, as noted in a prior Attorney General opinion, "where public moneys come into the custody of a public official and there is no specific statute as to what is to be done with them, the official may deposit such moneys in accordance with prevailing custom in the business community." 1989 Op. Att'y Gen. No. 89-051 at 2-217;

accord *Busher v. Fulton*, 128 Ohio St. 485, 496, 191 N.E. 752, 757 (1934) ("[w]here there is no express denial of the right, the practice of public officials in making general deposits of public or other trust funds coming into their official custody and control is customary and in accord with modern business usages"); 1984 Op. Att'y Gen. No. 84-075; 1982 Op. Att'y Gen. No. 82-054; 1961 Op. Att'y Gen. No. 2720, p. 748 (overruled, in part, on other grounds by Op. No. 82-054). The *Busher* court and these prior Attorney General opinions, thus, looked at then-current business practices in determining that, even without express statutory authorization, various governmental entities could deposit public funds in banks and other financial institutions. See, e.g., Op. No. 89-051; Op. No. 84-075.

It is clear that it is customary in the business community not only to deposit funds in banks and other financial institutions, but also to purchase (either directly or indirectly through banks, financial institutions and/or other financial agents) investment instruments such as treasury bills and similar obligations backed by the full faith and credit of the United States, in order to safeguard the principal of, and earn interest on, such funds. Accordingly, in light of such current customary business practices and the economic reality that the principal of a fund should be invested in order to maintain its economic value, it is reasonable to conclude that in those instances where the General Assembly has granted statutory authority to a department, official or board of a county to hold public funds independently of the county treasury, such authority also impliedly includes the authority to deposit and/or invest those funds in a manner which is reasonably calculated to safeguard such funds while maintaining and/or enhancing the principal, pending use of such funds in accordance with the statutes governing their application. See, e.g., *Busher v. Fulton*, 128 Ohio St. at 496, 191 N.E. at 757; 1961 Op. No. 2720. In the absence of a specific statute specifying the types of deposits or instruments which may be made with such funds, it is also reasonable to conclude that any such investment of public funds should be limited to those generally authorized for public funds by R.C. 135.31-40. See 1961 Op. Att'y Gen. No. 2648, p. 671.

Op. No. 92-025 at 2-89.

The reasoning and conclusions of Op. No. 92-025 are of general applicability to the investment of public moneys that are authorized to be held by a county board independently of the county treasury. See also 1992 Op. Att'y Gen. No. 92-030 (county sheriffs and county prosecuting attorneys are empowered to deposit into interest-bearing accounts mandatory drug fine moneys received pursuant to R.C. 2925.03(J)(1) and proceeds from the sale of contraband and forfeited moneys that constitute a law enforcement trust fund created under R.C. 2933.43(D)(1)(c)). Therefore, since a county transit board is expressly authorized by R.C. 306.11 to hold public moneys independently of the county treasury, the board is empowered to deposit or invest such moneys in the types of deposits or instruments generally authorized for public moneys by R.C. 135.31-40.

Interest Earned and Paid on the Deposit or Investment of Moneys of a County Transit Board May Be Retained by the Board as Part of Its Funds

You have also asked whether a county transit board may retain the interest earned and paid on money invested by the board. The general rule set forth in R.C. 9.38 is that "[a] public official other than a state officer, employee, or agent shall deposit all public moneys received by him with the treasurer of the public office or properly designated depository once every twenty-four consecutive hours." See also R.C. 5705.10. Because interest earned and paid on moneys deposited or

invested by a county transit board is "public money," *see* Op. No. 92-025 at 2-90 n.6; 1989 Op. Att'y Gen. No. 89-002 at 2-11; *see also* R.C. 117.01(C), if R.C. 9.38 were applicable to such interest, it would require that such interest be deposited with the county treasurer for deposit by him into the county treasury, *see* R.C. 135.40; R.C. 321.05.

However, Op. No. 92-025 concluded that, where the General Assembly has set forth specific provisions authorizing a county board to hold public moneys independently of the county treasury and does not otherwise provide specifically for the deposit or investment of such moneys, the board may deposit or invest such moneys, and the interest earned and paid on those moneys is added to the principal sum that earned the interest. Op. No. 92-025 at 2-90 n.6; *see* Op. No. 92-030; 1983 Op. Att'y Gen. No. 83-055 at 2-222. In reaching this conclusion, Op. No. 92-025 stated that the specific provisions authorizing a county board to hold public moneys independently of the county treasury create an exception to the general provisions of R.C. 9.38:

It is a codified rule of statutory interpretation that a "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." R.C. 1.51. Inasmuch as R.C. 9.38 is a general provision and there is no manifest intent that R.C. 9.38 prevail over the specific statutes authorizing a county department, official, or board to hold public funds independently of the county treasury, it may be concluded that these specific statutes create an exception to R.C. 9.38. *See* 1983 Op. Att'y Gen. No. 83-055 (interest earned on moneys invested directly by a county children services board or a county department of welfare (now the county children services board and the county department of human services) is added to the principal sum for investment or expenditure pursuant to R.C. 5153.33 and related provisions).

Op. No. 92-025 at 2-90 n.6; *see, e.g.*, Op. No. 92-030 at 2-117 n.9.

With respect to your specific question, R.C. 306.11 is a special provision in that it specifically vests the county transit board with exclusive control over the custody and application of the moneys of the county transit system. Additionally, R.C. 306.11 was enacted after R.C. 9.38 and there is no manifest intent that the general provisions of R.C. 9.38 prevail over the specific provisions of R.C. 306.11. *See* Op. No. 92-025 at 2-90 n.6. *See generally* 1969-1970 Ohio Laws, Part II, 1350 (Am. S.B. 476, eff. Aug. 31, 1970) (enacting the language that currently appears in R.C. 306.11); 1902 Ohio Laws 511, 513 (H.B. 1050, passed May 10, 1902) (setting forth in section six substantially the same language as currently appears in R.C. 9.38). Therefore, since a county transit board is statutorily authorized under R.C. 306.11 to hold and disburse the moneys of a county transit system independently of the county treasury, R.C. 306.11 creates an exception to R.C. 9.38. *See* Op. No. 92-025 at 2-90 n.6; *see, e.g.*, Op. No. 92-030 at 2-118 n.9 ("since a county prosecuting attorney and county sheriff are statutorily authorized under R.C. 2925.03(J)(1) and R.C. 2933.43(D)(1)(c) to hold and disburse mandatory drug fine moneys, and proceeds from the sale of contraband and forfeited moneys that constitute a law enforcement trust fund, it may be concluded that both R.C. 2925.03(J)(1) and R.C. 2933.43(D)(1)(c) create an exception to R.C. 9.38").

It is, thus, clear that neither R.C. 9.38 nor any other provision of law controls the disposition of interest earned and paid on moneys invested or deposited by a county transit board.¹ In the absence of a statute or other provision of law to

¹ Although a county which has adopted a charter pursuant to Ohio Const. art. X, §3 could adopt a provision that controls the disposition of interest

the contrary, interest is allocated to the fund to which the principal belongs. Op. No. 92-030 at 2-116; Op. No. 83-055 at 2-222; *see also* R.C. 135.21 ("[a]ll investment earnings from other moneys deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment, or other district of which he is acting as ex officio treasurer, or for any reason, do not belong in the treasury of the state or subdivision shall, except as provided in section 135.351 of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong"). *But cf.* R.C. 135.351(A) (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").² Since no statute or other provision of law controls the disposition of interest earned and paid on moneys invested or deposited by a county transit board, the interest earned and paid on such moneys follows the fund which has earned it. Accordingly, interest earned and paid on moneys invested or deposited by a county transit board may be retained by the county transit board as part of its funds.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. A county transit board is authorized to deposit or invest the moneys of the county transit system in the types of deposits or instruments generally authorized for public moneys by R.C. 135.31-.40.
2. Interest earned and paid on moneys invested or deposited by a county transit board may be retained by the county transit board as part of its funds.

earned and paid on moneys invested or deposited by a county transit board, it is assumed, for purposes of this opinion, that no such provision has been adopted.

² Because moneys of a county transit system are held and controlled by a county transit board, R.C. 306.11, and thus not otherwise included within the county treasury, R.C. 135.351(A) does not control the disposition of interest earned and paid on such moneys. *See* 1992 Op. Att'y Gen. No. 92-030 at 2-117 n.8; 1983 Op. Att'y Gen. No. 83-055 at 2-222.