

OPINION NO. 79-113**Syllabus:**

1. R.C. 3770.02, 3770.06 and Chapter 131 all relate to how moneys received by the state are to be handled and are, therefore, in pari materia. Hence, these sections must be construed together in determining where receipts from the sale of daily numbers lottery tickets may be deposited.
2. Receipts from the sale of daily numbers tickets received by the Lottery Commission are contingent receipts as those words are used in R.C. 131.04, 131.05 and 131.06, because those receipts are subject to return to lottery agents who have paid out more in prizes than they have received in revenues. Until there is a certainty that none of those receipts will be returned to the agents, the moneys from the sale of daily numbers tickets have not accrued to the state.
3. "Revenues" as that word is used in R.C. 3770.06 does not include contingent receipts from the sale of daily numbers tickets. Hence, contingent receipts from the sale of daily numbers lottery tickets must be deposited into the depository trust fund in accordance with R.C. 131.04, 131.05 and 131.06. R.C. 3770.06 does not require that all moneys received from the sale of daily numbers tickets be deposited into the lottery fund.
4. Pursuant to R.C. 127.14 the Controlling Board had authority to temporarily transfer appropriated funds of the Lottery Commission to the Lottery Commission's account in the depository trust fund. (1957 Op. Att'y Gen. No. 1230, p. 631 distinguished.)

To: Gertrude W. Donahey, Treasurer of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 28, 1979

I have before me your request for my opinion concerning an account in the depository trust fund opened by the Lottery Commission. The questions you raise were precipitated by a letter to you from the Auditor of State in which the Auditor

suggested the transfer of these moneys to the state lottery fund. In his letter, the Auditor indicated that termination and transfer were required by R.C. 3770.06 and R.C. 131.04 and 131.05.

Your letter indicates that the Lottery Commission established this account to enable the Lottery Commission to have a mechanism whereby it could collect receipts from the daily numbers game and reimburse agents who have paid out more in prizes than they received from the sale of daily numbers tickets. In order to establish an initial reserve in this account, the Controlling Board, at the request of the Lottery Commission, temporarily transferred \$2,000,000.00 into the Lottery Commission's account from the state lottery operating account (601).

Based upon the Auditor's letter, you have raised the following questions:

1. Does the establishment of an account in the Depository Trust Fund as described above violate Section 3770.06 of the Revised Code;
2. If not, may such an account be established in the Depository Trust Fund pursuant to Chapter 131 of the Revised Code; and
3. Even if such an account may be established, may appropriated funds be transferred to such an account as was described above?

R.C. 3770.06 provides, in pertinent part:

There is hereby created the state lottery fund into which shall be deposited all revenues received from sales of lottery tickets and license fees. The fund shall be in the custody of the treasurer of state for the use of the state lottery commission, and moneys shall be disbursed from it on the order of the auditor of state, pursuant to vouchers or invoices signed by the director of the commission and certified by the chairman of the commission. . . .

At first blush, it would appear that all receipts from the sale of tickets must be deposited in the lottery fund. However, the statute does not speak in terms of receipts. Rather, the term "revenues" is used. Hence, what must be deposited into the lottery fund depends upon what the word "revenues" means. "Revenues" is not defined for purposes of R.C. Chapter 3770. Therefore, it will be necessary to look to other statutes in R.C. Chapter 3770 for an indication of what the General Assembly meant by the word "revenues."

R.C. 3770.02 states that lottery agents may retain portions of the moneys received from the sale of lottery tickets:

The director may require any lottery sales agents to deposit to the credit of the state lottery fund, in banking institutions designated by the treasurer of state, all moneys received by such agents from the sale of lottery tickets, less an amount retained as compensation for such sale of tickets and an amount retained equal to the payments of prize awards made by such agents to holders of winning lottery tickets pursuant to the rules of the commission. . . . (Emphasis added.)

Therefore, in reading R.C. 3770.02 with R.C. 3770.06, it is clear that the General Assembly did not intend that all "moneys" or "receipts" from the sale of lottery tickets be deposited into the lottery fund. However, in determining where receipts from the sales of daily numbers lottery tickets are to be deposited, it is necessary to also review R.C. Chapter 131 since that chapter applies to moneys collected or received by any state department or commission. Moreover, the Ohio Supreme Court has noted that unless expressly exempted, R.C. Chapter 131 applies to any money received by any state department or commission. State ex rel. Tracy v. State Board of Accountancy, 129 Ohio St. 66 (1934).

Also, it is a fundamental rule of statutory construction that sections that relate to the same subject matter, that is, those in pari materia, must be construed together and reconciled to give effect to each of their contents, if possible. State ex rel. Adsmond v. Board of Education of Williams County, 135 Ohio St. 383 (1939). Since R.C. Chapter 131 governs the deposition of all moneys received by the state, R.C. Chapter 131 and R.C. 3770.06 are in pari materia. Therefore, R.C. 3770.06 and R.C. Chapter 131, as well as R.C. 3770.02, must be read together to determine where receipts from the sale of lottery tickets are properly deposited.

The sections of R.C. Chapter 131 pertaining to your questions are R.C. 131.01, 131.04, 131.05 and 131.06. R.C. 131.01 provides in pertinent part:

On or before Monday of each week, every state officer, state institution, department, board, and commission shall pay to the treasurer of state all moneys, checks, and drafts received for the state, or for the use of any such state officer, state institution, department, board or commission, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals, or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. (Emphasis added.)

Hence, whenever a state commission receives "moneys" from the public, the moneys must be turned over to the Treasurer. R.C. 131.04 and 131.05 then go on to provide that moneys or receipts received by the state that are contingent shall be deposited into the depository trust fund.

R.C. 131.04 provides:

For the purpose of providing a method to properly collect, deposit, and audit contingent receipts received by various state departments, there is hereby created the "state depository trust fund" of which the treasurer of state shall be the custodian. (Emphasis added.)

R.C. 131.05 provides in pertinent part:

Every state officer, state institution, department, board, commission, receiving fees or advances of money, or which under section 131.01 of the Revised Code, collects or receives fees, advances, or money, shall deposit all such receipts to the credit of the state depository trust fund, when such receipts may be subject to refund or return to the sender, or when such receipts have not yet accrued to the state. (Emphasis added.)

R.C. 131.06 then describes how such an account is established and how moneys in such an account are disbursed:

The financial officer or chief of each state office, institution, department, board or commission receiving contingent money shall open a separate or individual account with the state depository trust fund in the state treasury in the name of his division. Withdrawals of money from the fund shall be made by requisition on the treasurer of state as custodian of the fund by the authorized official of the office or department where the receipt originated. The requisition shall show the purpose of the withdrawal and other information as the treasurer of state requires. The authorized official of the office or department where the receipt originated shall draw a requisition or revenue voucher on his balance in the fund for amount accruing to the state and pay it in to the state treasury through the auditor of state, in compliance with section 115.25 of the Revised Code. . . . (Emphasis added.)

Hence, if any of the moneys from the sale of lottery tickets are contingent, R.C. 131.05 would appear to require that such moneys be deposited into the depository trust fund. However, R.C. 3770.06 states that all "revenues" from the sale of lottery tickets be deposited into the lottery fund. Depending on how "revenues" is construed, there may be a conflict between R.C. Chapter 131 and R.C. 3770.06. If R.C. 3770.06 were read to apply to all moneys received from the sale of lottery tickets regardless of any contingency, R.C. 3770.06 would be difficult to reconcile with R.C. 131.05. However, statutes in pari materia must, if possible, be reconciled.

As noted above, R.C. 3770.02 makes clear that the word "revenues" in R.C. 3770.06 cannot be read to include all moneys received from the sale of lottery tickets. Hence, what must be deposited into the lottery fund is something less than all moneys received from the sale of lottery tickets. Once it is determined that the General Assembly did not intend that all moneys received from the sale of lottery tickets be deposited into the lottery fund, R.C. 3770.06 and R.C. 131.05 may be harmonized with one another by construing "revenues" to exclude contingent receipts. Under this scheme, moneys from the sale of lottery tickets that were in fact contingent would be deposited into the depository trust fund. Moneys that were not contingent would be deposited in the lottery fund. This would appear to be the proper construction of the word "revenues" because if so construed, effect is given to both sections.

In order to conclusively determine whether the word "revenues" may be so construed, it is necessary to re-examine R.C. Chapter 3770. Because the General Assembly did not define "revenues" for purposes of R.C. Chapter 3770, "revenues" must be given its ordinary meaning. The Youngstown Club v. Porterfield, 21 Ohio St. 2d 83, 86 (1970). Since the General Assembly has not indicated that the word "revenues" for purposes of R.C. Chapter 3770 should be construed in any other way, it is appropriate to use the ordinary definition of the word "revenues" to determine where the General Assembly intended lottery receipts to be deposited.

"Revenue" is defined in the Random House Dictionary of the English Language (unabridged ed. 1973) as:

1. the income of a government from taxation, excise duties, customs, or other sources, appropriated to the payment of the public expenses. (Emphasis added.)

This definition indicates that revenues, as generally defined, means moneys received by the state that are capable of being used to pay public expenses. Moneys that are contingent cannot be used for the payment of public expenses. Hence, "revenues" as used in R.C. 3770.06 should be construed to exclude contingent receipts and this construction would allow deposition of contingent moneys from the sale of lottery tickets into the depository trust fund until they have accrued to the state.

R.C. 131.07 indicates that the aforesaid dictionary definition is the proper construction to be given to the term "revenues":

- As often as is required, each collector or receiver of revenue of the state, except the treasurer of state and county treasurers, shall pay into the nearest convenient county treasury or into the state treasury, as the treasurer of state directs, all moneys collected or received by him since making the last payment. (Emphasis added.)

Under this section "revenue" is that which is deposited into the state treasury.¹

¹Although not relevant here, the General Assembly has defined the word "revenues" for certain other chapters of the Revised Code. See, e.g., R.C. 5537.01(E); 5538.22(E) and 5507.01(G).

Since R.C. 131.07 immediately follows R.C. 131.04, 131.05 and 131.06 there appears to be a clear distinction between where "contingent receipts" and "revenues" are to be deposited. In this context, "revenues" refers only to moneys that have accrued to the state and not to contingent receipts.

Therefore, if certain moneys received from the sale of lottery tickets are contingent, such moneys are not only properly deposited into the depository trust fund, but are required to be deposited there pursuant to R.C. 131.04, 131.05 and 131.06. In answer to your first question then, R.C. 3770.06 does not preclude establishing an account in the depository trust fund for receipts from the sale of lottery tickets, provided such receipts are contingent.

The next question that must be addressed then is: are certain moneys from the sale of lottery tickets contingent? Whether moneys are contingent as that concept is used in R.C. 131.04, 131.05 and 131.06, is a mixed question of fact and law. The legal portion of the question asks whether the receipts are "subject to refund or return to the sender, or when such receipts have not yet accrued to the state." R.C. 131.05. Hence, it is necessary to review the facts associated with the receipt of moneys from the sale of daily numbers game tickets to determine whether those receipts are contingent.

The following information concerning the operation of the daily numbers game has been provided me by the Lottery Commission and confirmed by you. Tickets are sold to customers by lottery sales agents by use of a computer terminal. The computer immediately makes a record of the sale. At 7:30 p.m. each day, the Lottery Commission announces that day's winning number. Because all sales have been recorded in the computer, the Lottery Commission can immediately determine how many winning tickets each agent has sold and the Commission's total liability for that day.

Once every week, on Tuesdays, all agents are required to make an accounting with the Lottery Commission. Each agent sends the Commission a settlement statement along with a certified check in the amount of the proceeds from the sale of daily numbers lottery tickets from the previous week minus the agent's commission and any prize payments made by the agent.

When the Commission receives the settlement statement and certified check, the statement is reviewed for accuracy and the check is sent by courier directly to the Treasurer for deposition into the Commission's account in the depository trust fund.

Because agents are required by rule² and agreement to make prize payments to ticket winners in amounts up to \$599.00, the Commission has by procedures obligated itself to reimburse any agent who pays out more in prizes than he has received in sales for any given day or week in order to assure that all winning ticket holders of \$599.00 or less can be immediately paid off.³ Hence, when moneys are received by the Commission from an agent, the moneys are subject to return to any agent who pays out more in prizes than he receives from the sale of lottery tickets. The nature of the daily numbers game is such that there will always be some agents who have paid out more in prizes than they received from the sale of lottery tickets in a given day or week. Therefore, any moneys received from an agent are subject to return to that agent or any other agent who subsequently pays out more in prizes than he has received in sales. Until this

²3 OAC 3770-4-08.

³The procedures established by the Lottery Commission do not, however, require the Lottery Commission to reimburse agents for insignificant amounts.

debiting and crediting has reached the point where there is a certainty that the moneys in the account are no longer subject to return to the agents,⁴ the moneys "have not yet accrued to the state." This appears to be an almost classic description of "contingent moneys" as those words are used in R.C. 131.04, 131.05 and 131.06. Hence, such moneys must be deposited into the depository trust fund.

My conclusion that receipts from the sale of daily numbers tickets must be deposited into the depository trust fund is further supported by a longstanding opinion of one of my predecessors. With respect to a similar situation, my predecessor, determined that moneys collected by special counsel appointed by this office had to be deposited into the depository trust fund. 1938 Op. Att'y Gen. No. 2155, p. 641. The applicable statute, R.C. 109.08, provided:

The attorney general may appoint special counsel to represent the state in connection with all claims of whatsoever nature which are certified to the attorney general for collection under any law or which the attorney general is authorized to collect.

Such special counsel shall be paid for their services from funds collected by them in an amount approved by the attorney general.

The provision for paying special counsel for their services from the funds they collected is like that of reimbursing agents from the moneys agents turn over to the Commission from the sale of lottery tickets.

My predecessor, at page 642, stated that:

It will be noted that such special counsel "shall be paid for their services from funds collected by them." It is evident that, in the absence of any other statutory provision, the attorney general would be justified in making disbursement of fees directly from the moneys so collected by special counsel. However, the General Assembly, in 1933, enacted Section 24-5, General Code, [131.06] whereby provision was made for the opening of "a separate or individual account" by the chief officer of each state office "with the depository trust fund in the state treasury."

In both the instant case and in the situation before my predecessor the moneys collected or some part therefore, were subject to return and had not fully accrued to the state. Therefore, when R.C. Chapter 131 is read with the applicable statute, R.C. 3770.06 (or 109.08), it is clear that the moneys collected should be deposited in the depository trust fund.

In summary, moneys received from the sale of daily numbers lottery tickets are contingent and must, therefore, be deposited into the depository trust fund pursuant to R.C. 131.04, 131.05 and 131.06. When it can be determined that those moneys are no longer contingent, the moneys are deposited into the lottery fund in accordance with R.C. 3770.06. Such a construction of these sections appears to be consistent with the intent of the General Assembly and gives effect to both sections as is required when statutes are in pari materia.

Your last question concerns the lawfulness of the temporary transfer of the \$2,000,000.00 from the lottery fund to the depository trust fund. R.C. 127.14 provides, in pertinent part:

⁴When the daily numbers game was first started, there was, of course, a possibility that there would be a large number of winners the first day or during the first week of operation. If this occurred, the Commission would have to reimburse agents more than the agents had actually paid over to the Commission. This was the reason why \$2,000,000.00 was temporarily transferred to the depository trust. This reserve was necessary in the event there were a large number of winners at the start of the daily numbers game.

The controlling board may, at the request of any state agency or the director of budget and management, authorize with respect to the provisions of any appropriation act:

(A) Transfers of all or part of an appropriation within but not between state agencies except such transfers as the director of budget and management is authorized by law to make; provided the transfer by the director of budget and management is not for the purpose of effecting new or changed levels of program service not authorized by the general assembly;

(B) Transfers of all or part of an appropriation from one fiscal year to another;

(C) Transfers of all or part of an appropriation within or between state agencies made necessary by administrative reorganization or by the abolition of an agency or part of an agency;

(D) Transfers of all or part of an appropriation in excess of needs from special accounts in the federal special revenue fund, the state special revenue fund, or the state intragovernmental service fund to the general revenue fund or to such other funds to which the money would have been credited in the absence of the special account;

(E) Transfers of all or part of those appropriations included in the emergency purposes appropriation account of the controlling board;

(F) Transfers of all or part of an appropriation or other moneys into and between existing funds, or new funds, as may be established by law;

(G) Transfer or release of all or part of an appropriation to a state agency requiring controlling board approval of such transfer or release as provided by law;

(H) Temporary transfer of appropriations included in the emergency purposes account of the controlling board. Such temporary transfers may be made subject to conditions specified by the controlling board at the time temporary transfers are authorized. No transfers shall be made under this division for the purpose of effecting new or changed levels of program service not authorized by the general assembly. (Emphasis added.).

It is obvious from the above that the Controlling Board has been granted very broad powers over the transfer of funds and pursuant to division (F), the Controlling Board had the authority to temporarily transfer the \$2,000,000.00 as was described above. There is no constitutional provision that would preclude the transfer of funds as was done in this case and in the absence of any indication that the Controlling Board abused its discretion in authorizing this temporary transfer of funds, I have no basis for concluding that the transfer was unlawful.⁵

Therefore, it is my opinion, and you are advised, that:

1. R.C. 3770.02, 3770.06 and Chapter 131 all relate to how moneys

⁵The Auditor, in his letter cites 1957 Op. Att'y Gen. No. 1230, p. 631 as support for his contention that the transfer made by the Controlling Board was unlawful. However, that opinion does not control the instant situation because, one: the proposed use of the moneys to be placed in the depository trust fund was for a purpose that was inconsistent with the statutory purpose of the depository trust fund, and two: the opinion does not discuss the authority of the Controlling Board to transfer funds under R.C. 127.14 or any of its predecessors.

received by the state are to be handled and are, therefore, in pari materia. Hence, these sections must be construed together in determining where receipts from the sale of daily numbers lottery tickets may be deposited.

2. Receipts from the sale of daily numbers tickets received by the Lottery Commission are contingent receipts as those words are used in R.C. 131.04, 131.05 and 131.06, because those receipts are subject to return to lottery agents who have paid out more in prizes than they have received in revenues. Until there is a certainty that none of those receipts will be returned to the agents, the moneys from the sale of daily numbers tickets have not accrued to the state.
3. "Revenues" as that word is used in R.C. 3770.06 does not include contingent receipts from the sale of daily numbers tickets. Hence, contingent receipts from the sale of daily numbers lottery tickets must be deposited into the depository trust fund in accordance with R.C. 131.04, 131.05 and 131.06. R.C. 3770.06 does not require that all moneys received from the sale of daily numbers tickets be deposited into the lottery fund.
4. Pursuant to R.C. 127.14 the Controlling Board had authority to temporarily transfer appropriated funds of the Lottery Commission to the Lottery Commission's account in the depository trust fund. (1957 Op. Att'y Gen. No. 1230, p. 631 distinguished.)