

OPINION NO. 85-055**Syllabus:**

Pursuant to R.C. 135.351(A), as amended by Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985), and R.C. 5126.05, interest earned on gifts, grants, or bequests made to a county board of mental retardation and developmental disabilities must be deposited in the county treasury to the credit of the board and must be made available for the use of the board for any purpose stated by the donor or grantor. (1982 Op. Att'y Gen. No. 82-035, overruled).

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 17, 1985

I have before me your request for my opinion concerning whether the interest earned on funds received as a gift by a county board of mental retardation

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and developmental disabilities must be credited to the general fund of the county where the donor has restricted the use of the principal and the interest earned on such funds.

I turn first to R.C. 5126.05, which states in relevant part:

Any county board of mental retardation and developmental disabilities may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the same according to the terms of the gift, grant, or bequest. All money received 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. Any interest or earnings accruing from such gift, grant, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant or bequest. (Emphasis added.)

As you have noted in your request, my predecessor, in 1982 Op. Att'y Gen. No. 82-035, addressed the question whether the interest earned on funds received as a gift by a county board of mental retardation and developmental disabilities should be credited to the general fund of the county where the donor had not restricted the use of the principal or interest. The opinion stated first that R.C. 5126.05 requires that any money received by a county board of mental retardation and developmental disabilities be placed in the county treasury and that any interest earned on such money be credited to the county board of mental retardation and developmental disabilities. Op. No. 82-035 went on to note, however, that R.C. 135.351(A) required all interest earned on money within the county treasury to be credited to the general fund of the county. Op. No. 82-035 resolved the conflict between R.C. 5126.05 and R.C. 135.351 as follows:

In 1982 Op. Att'y Gen. No. 82-027, I dealt with a similar conflict between R.C. 135.351 and R.C. 5705.29(F)(1). R.C. 5705.29(F)(1) states that the depository interest earned on money included within a township's reserve balance account shall be returned to the township with the principal of the account. As I stated in Op. No. 82-027, "it would appear that R.C. 135.351(A) was intended to encompass the interest on all funds included within the county treasury including custodial funds." Thus, I was constrained to conclude that "it was the manifest intent of the General Assembly that R.C. 135.351 prevail over R.C. 5705.29(F)(1) with regard to the allocation of interest earned on a reserve balance account."

The analysis contained in Op. No. 82-027 necessitates a similar conclusion with regard to the conflict between R.C. 135.351 and R.C. 5126.05. R.C. 135.351 was enacted subsequent to R.C. 5126.05. Moreover, R.C. 135.351 is part of a special system which alters 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."¹ Op. No. 82-027. See Op. No. 82-026. As a result, I must conclude that R.C. 135.351 prevails over R.C. 5126.05 with regard to the allocation of interest earned on a gift to a county board of mental retardation and developmental disabilities. See R.C. 1.51.

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¹R.C. 135.351 was recently enacted as part of Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). H.B. 230 also amended R.C. 135.01(L) and R.C. 135.21 to exclude counties from the general requirement that interest earned on funds belonging to another political subdivision shall be credited to the fund to which the principal belongs.

Op. No. 82-035 at 2-106.

Although Op. No. 82-035 dealt with the situation where no restrictions had been placed by the donor upon the expenditure of the principal or interest, 1983 Op. Att'y Gen. No. 83-055 concerned the question whether the disposition of interest earned upon moneys donated to a county children services board and transferred to the county treasurer pursuant to R.C. 117.17¹ was affected by conditions imposed by the donor prohibiting the expenditure of principal and providing that the interest earned on such principal be used for a specific purpose. Op. No. 83-055 concluded that regardless of the restrictions placed upon the donation, the broad language of R.C. 135.351(A) required that the interest be credited to the general fund of the county. The opinion went on to find, however, that the board was under an obligation to comply with any limitations placed on a gift accepted by the board, and thus if the interest had been restricted to use for a particular purpose by the terms of the donation, it could not be expended for another purpose. Op. No. 83-055 proposed that, "the county commissioners could make the interest from the funds donated to the county children services board. . .available to the board or department for the specified purposes by appropriating such funds under R.C. 5153.35." Id. at 2-224.

Thus, reading Op. No. 82-035 and Op. No. 83-055 together, it would appear that interest earned on a donation to a county board of mental retardation and developmental disabilities must be credited to the general fund of the county regardless of the restrictions placed by the donor on the use of the interest. R.C. 135.351(A) has been amended, however, since the issuance of these opinions, and, thus, it is necessary for me to consider the effect of this amendment on your question.

As noted above, at the time Op. No. 82-035 was rendered, R.C. 135.351(A) read, as enacted by Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982): "All interest earned on money included within the county treasury shall be credited to the general fund of the county." R.C. 135.351(A) was amended by Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982) to read: "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 fund₂ of the county." See 1983 Op. Att'y Gen. No. 83-025 (R.C. 135.351 and R.C. 1545.22, "as amended by Am. Sub. S.B. 550 require the interest earned on money belonging to a park district to be credited to the funds to which the principal belongs, rather than to the general fund of the county). Cf. 1982 Op. Att'y Gen. No. 82-026 (syllabus) ("[p]ursuant to R.C. 135.351 [as enacted in Am. Sub. H.B. 230], 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").

R.C. 135.351(A) was recently amended again to read: "Except as provided in sections 1545.22 and 5126.05 of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." (Emphasis added.) Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985).³ R.C. 5126.05 provides that money received as gifts, grants, or bequests by a

¹ Money donated to a county children services board may be retained and invested directly by the board pursuant to R.C. 5153.33 or the board may pay such money into the county treasury pursuant to what is now R.C. 9.38 (formerly R.C. 117.17). See Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985). R.C. 135.351(A) has no application to moneys retained and invested by the board itself. See 1983 Op. Att'y Gen. No. 83-055.

² Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982) amended R.C. 1545.22 to provide that, "[i]nterest earned on all funds under the control of the board of park commissioners shall be credited to such funds."

³ R.C. 135.351(A) has also been recently amended by Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985). Am. Sub. H.B. 146 amended R.C. 135.351(A) to read: "Except as provided in sections 135.352 and 1545.22 of the

county board of mental retardation and developmental disabilities must be deposited in the county treasury to the credit of the board and shall be available for the use of the board for those purposes specified by the donor, and further provides that the interest earned on such money is to be "treated in the same manner and subject to the same provisions as such gift, grant, or bequest." See Op. No. 82-035 (R.C. 5126.05 requires that money received by gift be placed in the county treasury and any interest earned on such money be credited to the county board). R.C. 135.351(A), as amended, indicates that R.C. 5126.05 is to prevail over the language of R.C. 135.351(A) directing that interest earned on funds within the county treasury be credited to the general fund of the county. Thus, pursuant to R.C. 5126.05, interest earned on gifts, grants, or bequests must be deposited in the county treasury to the credit of the county board of mental retardation and developmental disabilities and must be available for the use of the board for any purpose stated by the donor or grantor. See generally 1985 Op. Att'y Gen. No. 85-031 at 2-112 ("a board [of mental retardation and developmental disabilities] has authority to dispose of funds received by bequest in such manner as it deems appropriate, provided that the disposal benefits the purposes of the board and is consistent with the terms of the bequest"); Op. No. 83-055 at 2-224 ("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. . . 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") (citations and footnotes omitted).

In conclusion, it is my opinion, and you are advised, that pursuant to R.C. 135.351(A), as amended by Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985), and R.C. 5126.05, interest earned on gifts, grants, or bequests made to a county board of mental retardation and developmental disabilities must be deposited in the county treasury to the credit of the board and must be made available for the use of the board for any purpose stated by the donor or grantor. (1982 Op. Att'y Gen. No. 82-035, overruled).

Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county." R.C. 135.352, enacted by Am. Sub. H.B. 146, refers to the investment of moneys in the county library and local government support fund, and provides that, "[i]nterest earned on such investments shall be credited to the fund and distributed in accordance with section 5747.48 of the Revised Code."

Even though Am. Sub. H.B. 146, in amending R.C. 135.351(A), does not refer to the exception provided by Am. Sub. H.B. 238 for R.C. 5126.05, this exception will remain in effect after September 11, 1985, the effective date of Am. Sub. H.B. 146. R.C. 1.52(B) reads:

If amendments to the same statute are enacted at the same or different sessions of the legislature, one amendment without reference to another, the amendments are to be harmonized, if possible, so that effect may be given to each. If the amendments are substantively irreconcilable, the latest in date of enactment prevails. The fact that a later amendment restates language deleted by an earlier amendment, or fails to include language inserted by an earlier amendment, does not of itself make the amendments irreconcilable. Amendments are irreconcilable only when changes made by each cannot reasonably be put into simultaneous operation.

The two amendments to R.C. 135.351(A) may clearly be harmonized and put into simultaneous operation. Upon the effective date of Am. Sub. H.B. 146, R.C. 135.352, R.C. 1545.22, and R.C. 5126.05 will all stand as exceptions to the general rule of R.C. 135.351(A) that interest earned on moneys in the county treasury must be credited to the general fund of the county.