

**OPINION NO. 98-023****Syllabus:**

1. Mandatory fines paid to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if township law enforcement officials determine that such use is for a purpose consistent with the agency's activities that pertain to drug offenses. Any expenditure of mandatory fine moneys by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such fine moneys. (1989 Op. Att'y Gen. No. 89-090, syllabus, paragraph one, approved and followed).
2. Moneys deposited in a township's law enforcement trust fund established pursuant to R.C. 2933.43(D)(1)(c)(ii) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if the board of township trustees determines that such use is an appropriate law enforcement purpose. Any expenditure of moneys in a township law enforcement trust fund by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such moneys. (1989 Op. Att'y Gen. No. 89-078, syllabus, paragraph one, modified by statutory amendment).
3. A board of township trustees may not appropriate proceeds of a tax levy passed pursuant to R.C. 5705.19(J) for police protection services to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations.
4. A board of township trustees may appropriate moneys in the township's general fund to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations.

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**To: Neal Fitzgerald, Jackson Township Law Director, Jackson Township, Ohio**  
**By: Betty D. Montgomery, Attorney General, July 21, 1998**

You have requested an opinion concerning the use of public moneys in undercover criminal investigations. In particular, you wish to know the following:

1. May mandatory fines paid to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) and moneys deposited in a township's law enforcement trust fund pursuant to R.C. 2923.35(D)(2)(c) and R.C.

2933.43(D)(1)(c) be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations?

2. May a board of township trustees appropriate proceeds of a tax levy for police protection services or moneys in the township's general fund to the township's law enforcement agency for the purchase of controlled substances by township law enforcement officers during undercover criminal investigations?

As a preliminary matter, a law enforcement official is authorized by R.C. 3719.14(B) to "purchase, collect, or possess any controlled substance ... when the purchase, collection, possession ... is necessary to do so in the performance of the official's official duties." *See also* R.C. 3719.14(C) (any individual "whose possession of a controlled substance is for the purpose of aiding any law enforcement official in the official's official duties temporarily may possess any controlled substance"). Because a township law enforcement officer is a law enforcement official for purposes of R.C. 3719.14, *see* R.C. 2901.01(A)(11)(a), a township law enforcement officer may purchase controlled substances during undercover criminal investigations when the purchase is necessary to do so in the performance of the officer's official duties.

Your first question asks whether mandatory fines paid to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) and moneys deposited in a township's law enforcement trust fund pursuant to R.C. 2923.35(D)(2)(c) and R.C. 2933.43(D)(1)(c) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations. Pursuant to R.C. 2925.03(D)(1), a court that sentences an offender who is convicted of or pleads guilty to a violation of R.C. 2925.03(A) that is a felony of the first, second, or third degree must impose upon the offender the mandatory fine specified for the offense under R.C. 2929.18(B)(1) unless the court determines that the offender is indigent. Mandatory fines imposed and collected by a court pursuant to R.C. 2925.03(D)(1) must be disbursed and used in accordance with R.C. 2925.03(F)(1), which provides as follows:

Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section ... to the ... township ... law enforcement [agency] in this state that primarily [was] responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives.<sup>1</sup> Each agency shall use

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<sup>1</sup> R.C. 2925.03(F)(2)(a) states in part:

Prior to receiving any fine moneys under division (F)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall

the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section. (Footnote added.)

Mandatory fines disbursed to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) must be used to "subsidize the agency's law enforcement efforts that pertain to drug offenses." R.C. 2925.03(F)(1); *see* 1989 Op. Att'y Gen. No. 89-090 at 2-429. In addition, any disbursement of mandatory fine moneys by a township law enforcement agency must be made in accordance with the agency's written internal control policy that addresses the agency's use of such fine moneys. R.C. 2925.03(F)(1).

1989 Op. Att'y Gen. No. 89-090, which examined a county prosecuting attorney's authority to expend mandatory fine moneys under R.C. 2925.03(J) (now R.C. 2925.03(F)(1)), concluded that, if a county prosecuting attorney determines that an expenditure is for a purpose consistent with the activities of his office that pertain to drug offenses, the prosecuting attorney may expend mandatory fine moneys for such purpose. As stated in 1989 Op. Att'y Gen. No. 89-090 at 2-429:

[T]he broad language of [R.C. 2925.03(J)] makes it clear that the county prosecutor is to use his discretion with regard to the expenditure of mandatory drug fines. Such fines are paid to his office and used to subsidize his office's "efforts that pertain to drug offenses." R.C. 2925.03(J). Where discretion has been delegated to another governmental officer, I have no authority to exercise such discretion on behalf of that governmental officer. *See generally* 1988 Op. Att'y Gen. No. 88-100; 1988 Op. Att'y Gen. No. 88-007; 1985 Op. Att'y Gen. No. 85-007. Thus, the exercise of any judgment which is necessary in determining whether a specific expenditure is for a purpose consistent with the activities of a prosecutor's office that pertain to drug offenses remains with the appropriate county prosecuting attorney. Any exercise of discretion must, however, be reasonable and within the limitations set by statute. *See generally* Op. No. 88-100; 1985 Op. Att'y Gen. No. 85-003; 1969 Op. Att'y Gen. No. 69-159. I conclude, accordingly, that a county prosecuting attorney may expend mandatory drug fines, distributed pursuant to R.C. 2925.03(J), for those expenses determined by him to be consistent with the activities of his office that pertain to drug offenses. This determination must be reasonable and within the limitations set by statute.

Our review of R.C. 2925.03 and 1989 Op. Att'y Gen. No. 89-090 indicates that 1989 Op. Att'y Gen. No. 89-090 provides a correct interpretation of the provisions of R.C. 2925.03 governing the expenditure of mandatory fine moneys by law enforcement agencies that receive such moneys. R.C. 2925.03(F)(1), as currently written, vests township law enforcement officials with the authority to determine whether an expenditure of mandatory fines paid to the township law enforcement agency is for a purpose consistent with the activities of the agency that pertain to drug offenses. Accordingly, mandatory fines paid to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if township law enforcement officials determine that such use is for a purpose

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not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

consistent with the agency's activities that pertain to drug offenses. Any expenditure of mandatory fine moneys by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such fine moneys.

Let us now review the use of moneys in a township law enforcement trust fund. R.C. 2933.43(D)(1)(c)(ii) authorizes a township to establish a law enforcement trust fund.<sup>2</sup> Under R.C. 2923.35(D)(2)(c) and R.C. 2933.43(D)(1)(c), proceeds of property ordered forfeited, penalties, fines and forfeited moneys may be deposited into a township law enforcement trust fund. With respect to the use of moneys in a township law enforcement trust fund, R.C. 2933.43(D)(1)(c)(ii) provides, in part:

Proceeds or forfeited moneys distributed to any ... township ... law enforcement trust fund shall be allocated from the fund ... by the board of township trustees only to the township police department, township police district police force, or office of the constable....

Additionally, no proceeds or forfeited moneys shall be allocated to or used by the ... township police department, township police district police force, office of the constable ... unless the ... township police department, township police district police force, office of the constable ... has adopted a written internal control policy under division (D)(3) of this section<sup>3</sup> that addresses the use of moneys received from ... the appropriate law enforcement trust fund.... [A] law enforcement trust fund shall be expended only in accordance with the written internal control policy so adopted by the recipient, and, subject to the requirements specified in division (D)(3)(a)(ii) of this section,<sup>4</sup> only to pay the costs of protracted or complex investigations or

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<sup>2</sup> 1989 Op. Att'y Gen. No. 89-026 determined that a township is prohibited from establishing a law enforcement trust fund under R.C. 2933.43. In 1990, the General Assembly amended R.C. 2933.43, however, to grant a board of township trustees the authority to establish a law enforcement trust fund. See 1989-1990 Ohio Laws, vol. III, 3946, 3963 (Sub. H.B. 261, eff. July 18, 1990).

<sup>3</sup> R.C. 2933.43(D)(3)(a)(i), which requires a law enforcement agency to adopt a written internal control policy, provides, in part:

Prior to being allocated or using any proceeds or forfeited moneys out of ... a law enforcement trust fund under division (D)(1)(c) of this section ... [a] township police department, township police district police force, office of the constable ... shall adopt a written internal control policy that addresses the ... police department's, police force's, office of the constable's, or law enforcement department's use and disposition of all the proceeds and forfeited moneys received and that provides for the keeping of detailed financial records of the receipts of the proceeds and forfeited moneys, the general types of expenditures made out of the proceeds and forfeited moneys, the specific amount of each general type of expenditure, and the amounts, portions, and programs described in division (D)(3)(a)(ii) of this section. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation.

<sup>4</sup> R.C. 2933.43(D)(3)(a)(ii) requires that the written internal control policy of a township police department, township police district police force, or office of the constable

prosecutions, to provide reasonable technical training or expertise, to provide matching funds to obtain federal grants to aid law enforcement, in the support of DARE programs or other programs designed to educate adults or children with respect to the dangers associated with the use of drugs of abuse, or for other law enforcement purposes that the ... board of township trustees ... determines to be appropriate.... [A] law enforcement trust fund shall not be used to meet the operating costs of ... any political subdivision ... that are unrelated to law enforcement. (Footnotes added.)

Thus, subject to the requirements specified in R.C. 2933.43(D)(3)(a)(ii), moneys in a township law enforcement trust fund may be used for those law enforcement purposes expressly provided for in R.C. 2933.43(D)(1)(c)(ii) or for other law enforcement purposes that the board of township trustees determines to be appropriate. See 1989 Op. Att'y Gen. No. 89-078 at 2-362. However, any expenditure of moneys from a township law enforcement trust fund must be made in accordance with the township law enforcement agency's written internal control policy that addresses the agency's use of such moneys. R.C. 2933.43(D)(1)(c)(ii).

The use of moneys in a law enforcement trust fund established by a county prosecuting attorney pursuant to R.C. 2933.43(D) was discussed in 1989 Op. Att'y Gen. No. 89-078. In that opinion, it was determined that R.C. 2933.43(D) grants a board of county commissioners the discretion to determine whether a proposed expenditure is for an appropriate law enforcement purpose. 1989 Op. Att'y Gen. No. 89-078 at 2-362. Moreover, since the Attorney General has no authority to exercise discretion bestowed upon another governmental official, the exercise of any judgment which is necessary in determining whether a proposed expenditure is for an appropriate law enforcement purpose remains with the board of county commissioners. *Id.* at 2-363. Thus, it was concluded in 1989 Op. Att'y Gen. No. 89-078 that "proceeds in a law enforcement trust fund may be expended at the discretion of the board of county commissioners for any law enforcement purpose enumerated in R.C. 2933.43(D) or for law enforcement purposes similar to those provided for in R.C. 2933.43(D)." *Id.*

1989 Op. Att'y Gen. No. 89-078 interprets correctly the language of R.C. 2933.43(D). R.C. 2933.43(D)(1)(c)(ii), as currently written, grants a board of township trustees the discretion to determine whether a proposed expenditure is for an appropriate law enforcement purpose. However, R.C. 2933.43(D)(1)(c)(ii) no longer requires that the law enforcement purpose be similar to one of the law enforcement purposes enumerated in R.C. 2933.43(D). See 1989 Op. Att'y Gen. No. 89-078 at 2-362 n.1. Instead, the language of R.C. 2933.43(D)(1)(c)(ii), as amended by Am. H.B. 107, 121st Gen. A. (1995) (eff. June 30, 1995), currently provides that the moneys in a township law enforcement trust fund may be used "for other law enforcement purposes that the ... board of township trustees ... determines to be appropriate."<sup>5</sup> Thus, R.C. 2933.43(D)(1)(c)(ii), as currently written, vests a board of

provide that at least ten percent of the first one hundred thousand dollars of proceeds and forfeited moneys deposited during each calendar year in the township's law enforcement trust fund pursuant to R.C. 2925.44(B)(8)(c), and at least twenty percent of the proceeds and forfeited moneys exceeding one hundred thousand dollars that are so deposited, be used in connection with community preventive education programs.

<sup>5</sup> Based on R.C. 2933.43(D)(1)(c)(ii), as amended by Am. H.B. 107, 121st Gen. A. (1995) (eff. June 30, 1995), the conclusion reached in 1989 Op. Att'y Gen. No. 89-078 (syllabus, paragraph one) that "[p]roceeds in a law enforcement trust fund may be expended

township trustees with the authority to determine whether an expenditure of moneys from the township's law enforcement trust fund is for an appropriate law enforcement purpose.

It is, therefore, our opinion that moneys deposited in a township's law enforcement trust fund established pursuant to R.C. 2933.43(D)(1)(c)(ii) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if the board of township trustees determines that such use is an appropriate law enforcement purpose. Any expenditure of moneys in a township law enforcement trust fund by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such moneys.

Your second question asks whether a board of township trustees may appropriate proceeds of a tax levy for police protection services or moneys in the township's general fund to a township law enforcement agency for the purchase of controlled substances by township law enforcement officers during undercover criminal investigations. Let us first address appropriating the proceeds of a tax levy for police protection services to a township law enforcement agency for this purpose.

R.C. 5705.19 authorizes a board of township trustees to levy a tax for police protection services, providing, in part, as follows:

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than seventy-five days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

....

(J) For the purpose of providing and maintaining motor vehicles, communications, and other equipment used directly in the operation of a police department, or the payment of salaries of permanent police personnel, including the payment of the police employer's contribution required under section 742.33 of the Revised Code, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or to provide ambulance or emergency medical services operated by a police department[.]

*See also* R.C. 505.51 (a board of township trustees may levy a tax pursuant to R.C. 5705.19 and R.C. 5705.25 (submission of proposed levy to board of elections) to defray all or a portion of expenses of a township police district in providing police protection). *See generally* R.C. 5705.01(A), (C) (for purposes of R.C. Chapter 5705, a township is a subdivision and the taxing authority of a township is the board of township trustees).

A tax levied by a board of township trustees for police protection services pursuant to R.C. 5705.19(J) is a special levy. *See* R.C. 5705.19 (a resolution to levy a tax in excess of the ten-mill limitation "shall be confined to the purpose or purposes described in one division of

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at the discretion of the board of county commissioners for any ... law enforcement purposes similar to those provided for in R.C. 2933.43(D)" is modified by statutory amendment.

[R.C. 5705.19], to which the revenue derived therefrom shall be applied"). Proceeds derived from a special levy must, in accordance with R.C. 5705.10, "be credited to a special fund for the purpose for which the levy was made" and "be used only for the purposes for which such fund is established." See 1988 Op. Att'y Gen. No. 88-101 at 2-500; 1986 Op. Att'y Gen. No. 86-103; see also Ohio Const. art. XII, § 5 ("[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"). Thus, the proceeds from a tax levied under R.C. 5705.19(J) for police protection services may be expended only for the purposes authorized by R.C. 5705.19(J). See 1977 Op. Att'y Gen. No. 77-097. See generally 1988 Op. Att'y Gen. No. 88-101 at 2-498 n.2 ("I am aware of no theory that would permit a board of county commissioners, by the inclusion of particular language in a resolution of necessity for a tax levy, to expand the purposes of the levy beyond those authorized by statute").

As stated above, R.C. 5705.19(J) permits a tax levy for the purpose of providing and maintaining motor vehicles, communications, and other equipment used directly in the operation of a township police department, or the payment of salaries of permanent police personnel, including the payment of the police employer's contribution required under R.C. 742.33, or the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, or to provide ambulance or emergency medical services operated by a police department. R.C. 5705.19(J) does not authorize the use of proceeds of a tax levy for the purchase of controlled substances by township law enforcement officers during an undercover criminal investigation. Therefore, a board of township trustees may not appropriate proceeds of a tax levy passed pursuant to R.C. 5705.19(J) for police protection services to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations. See *Clark Restaurant Co. v. Evatt*, 146 Ohio St. 86, 64 N.E.2d 113 (1945) (syllabus, paragraph three) ("[i]n the construction and application of taxing statutes, their provisions cannot be extended by implication beyond the clear import of the language used; nor can their operation be so enlarged as to embrace subjects not specifically enumerated"); 1977 Op. Att'y Gen. No. 77-097 at 2-323 ("the purpose set forth in the levy resolution, as in the case of any taxing statute, must be strictly construed, and may not be enlarged to embrace subjects not specifically enumerated therein").

Finally, we turn to whether a board of township trustees may appropriate moneys in the township's general fund to a township law enforcement agency for the purchase of controlled substances by township law enforcement officers during undercover criminal investigations. It is well-settled that a board of township trustees may establish a general fund for general purposes since it is "impracticable to specifically name in the different budgets the amount to be raised for each specific item." *Porter v. Hopkins*, 91 Ohio St. 74, 84, 109 N.E. 629, 632 (1914). See R.C. 5705.09(A). However, moneys in a township's general fund may not be expended unless the board of township trustees is authorized to make the expenditure. See *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916).

As stated above, R.C. 3719.14(B) authorizes township law enforcement officers to purchase controlled substances during undercover criminal investigations when the purchase is necessary to do so in the performance of the officers' official duties. In order for township law enforcement officers to purchase controlled substances, the officers need to have sufficient moneys made available to them. Because a board of township trustees is responsible for providing funding to its law enforcement agency, see R.C. 505.50, R.C. 509.01(B), a board of township trustees is authorized to appropriate moneys to its law enforcement agency for the purchase of controlled substances by the agency's law enforce-

ment officers. Accordingly, a board of township trustees may appropriate moneys in the township's general fund to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations.

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

1. Mandatory fines paid to a township law enforcement agency pursuant to R.C. 2925.03(F)(1) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if township law enforcement officials determine that such use is for a purpose consistent with the agency's activities that pertain to drug offenses. Any expenditure of mandatory fine moneys by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such fine moneys. (1989 Op. Att'y Gen. No. 89-090, syllabus, paragraph one, approved and followed).
2. Moneys deposited in a township's law enforcement trust fund established pursuant to R.C. 2933.43(D)(1)(c)(ii) may be used by township law enforcement officers to purchase controlled substances during undercover criminal investigations if the board of township trustees determines that such use is an appropriate law enforcement purpose. Any expenditure of moneys in a township law enforcement trust fund by a township law enforcement agency, however, must be made in accordance with the agency's written internal control policy that addresses the agency's use of such moneys. (1989 Op. Att'y Gen. No. 89-078, syllabus, paragraph one, modified by statutory amendment).
3. A board of township trustees may not appropriate proceeds of a tax levy passed pursuant to R.C. 5705.19(J) for police protection services to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations.
4. A board of township trustees may appropriate moneys in the township's general fund to a township law enforcement agency for the purchase of controlled substances by the agency's law enforcement officers during undercover criminal investigations.