

OPINION NO. 84-052**Syllabus:**

1. R.C. 2151.3412 and R.C. 2151.77 require that the costs of operating and maintaining district juvenile detention and rehabilitation facilities be apportioned among the counties participating in the district on the basis of the counties' actual use of such facilities where no levy has been approved pursuant to R.C. 5705.19(A). Neither a joint board of county commissioners formed pursuant to R.C. 2151.34 and R.C. 2151.65 nor a district board of trustees appointed pursuant R.C. 2151.343 and R.C. 2151.68 has the authority to direct or permit the apportionment of such costs in any other manner.
2. A board of county commissioners has the authority pursuant to R.C. 305.26 to compound or release, in whole or in part, or otherwise settle payments due the county as a result of an erroneous apportionment of the costs of operating and

maintaining district juvenile detention or rehabilitation facilities.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 17, 1984

I have before me your request for my opinion concerning a fiscal matter involving a multi-county juvenile detention rehabilitation system district. It is my understanding from the information provided in your request that the pertinent facts are as follows.

Six counties entered into an agreement to establish a multi-county juvenile detention and rehabilitation district, pursuant to R.C. 2151.34 and R.C. 2151.65. That agreement provides that each county is to pay its proportionate share of the actual annual costs of the operation and maintenance of these facilities based upon its use of the district's facilities during the year. The allocation of costs is accomplished by an annual payment by each county based upon its population percentage of the district with an adjustment made at year's end based upon actual use during the year.

You state that it was recently discovered that a series of inadvertent errors has occurred in the calculation of the annual adjustments required under the agreement. An unaudited investigation indicates a cumulative error since 1977 of approximately \$305,000.00. The investigation indicates that two member counties have paid approximately \$205,000.00 and \$100,000.00, respectively, less than their proportionate shares based upon actual use and that the other four counties have paid, respectively, approximately \$149,000.00, \$115,000.00, \$26,000.00 and \$15,000.00 more than their proportionate shares.

Based upon these facts, you have asked the following questions.

1. Do R.C. 2151.3412 and 2151.77 mandate adjustment of the accounts of the member-counties to reflect payment for actual use of the facilities by each member-county, or can the cumulative error be left to stand?
2. If the accounts must be adjusted to correct the errors, can the additional payment required of the two member-counties which have paid too little be spread over a number of years to alleviate the budgetary hardship immediate payment would cause?
3. If the joint board of commissioners has the authority to let the cumulative error stand uncorrected, is the consent of a majority of the members of the six boards of commissioners of the counties in the District required such as with an amendment to the contract by which the District was formed or may such action be taken by a majority of a quorum of the joint board of commissioners?

As you note in your request, R.C. 2151.34 expressly empowers the boards of county commissioners of two or more adjoining counties, upon the joint advice of the juvenile judges in their respective counties, to form themselves into a joint board to organize a district for the establishment and support of a detention home. Such district is to be governed by a board of trustees appointed by the joint board of county commissioners. R.C. 2151.343. The allocation of the costs associated with the operation and maintenance of a district detention home is set forth in R.C. 2151.3412, which provides in pertinent part:

The current expenses of maintaining the home not paid from funds made available under section 5139.281 [5139.28.1] of the Revised Code, and the cost of ordinary repairs thereto shall be paid by each such county in proportion to the number of children from such county who are maintained in the home during the year, or by a levy submitted by the joint board of county commissioners under division (A) of section

5705.19 of the Revised Code and approved by the electors of the district.

Similarly, R.C. 2151.65 expressly empowers the boards of county commissioners of two or more adjoining counties, upon the joint recommendation of the juvenile judges in such counties, to form themselves into a joint board to organize a district for the establishment and support of facilities for the treatment, training and rehabilitation of delinquent, dependent, abused, unruly or neglected children or juvenile traffic offenders. Such district is to be governed by a board of trustees appointed by the joint board of county commissioners. R.C. 2151.68. The allocation of the costs associated with the operation and maintenance of district facilities is set forth in R.C. 2151.77, which provides in pertinent part:

The current expenses of maintaining the school, forestry camp, or other facility or facilities and the cost of ordinary repairs thereto shall be paid by each such county in proportion to the number of children from such county who are maintained in the school, forestry camp, or other facility or facilities during the year, or by a levy submitted by the joint board of county commissioners under division (A) of section 5705.19 of the Revised Code and approved by the electors of the district.

By the enactment of R.C. 2151.3412 and R.C. 2151.77, the General Assembly has clearly prescribed the manner in which the costs of operating and maintaining multi-county juvenile detention and rehabilitation facilities must be allocated among the participating counties; such costs must be apportioned among the counties on the basis of actual use where no levy has been approved pursuant to R.C. 5705.19(A). Compare R.C. 2151.3412 and R.C. 2151.77 with R.C. 167.06 (members of a regional council of governments may by agreement establish schedule of dues to be paid by members) and R.C. 308.03(G) (resolution creating regional airport authority may provide the manner and extent to which its expenses are to be apportioned). Since the General Assembly has mandated the manner in which these costs are to be apportioned, neither the joint board of county commissioners nor the district board of trustees has the authority to direct or permit the apportionment of costs in any other manner. See generally Frisbie Co. v. City of East Cleveland, 98 Ohio St. 266, 120 N.E. 309 (1918); State v. Glidden, 31 Ohio St. 309 (1877). Accordingly, in the situation about which you have inquired neither board has the authority to allow the cumulative error to stand; rather the district's accounts must be adjusted to reflect the statutorily mandated apportionment of costs. See 1982 Op. Att'y Gen. No. 82-073 (where a state employee has not received vacation benefits as prescribed by former R.C. 121.161, the appointing authority must credit him with such benefits). Further, neither board has the authority to permit the additional payment required of the member-counties who underpaid to be spread over a period of time.

The conclusion that the district's accounts must be adjusted to reflect the statutorily mandated apportionment of costs does not, however, fully dispose of the issues raised by your request. In adjusting its accounts, the district must, of course, credit the accounts of those counties which have paid more than required, as well as debit the accounts of those counties which have underpaid. It would appear, therefore, that the underpayments in question are properly viewed as payments owed to the remaining counties. The issue, therefore, is whether each individual board of county commissioners has the authority to forgive or compromise the claim of that county.

R.C. 305.26 expressly empowers a board of county commissioners to release certain claims in favor of the county. It provides:

The board of county commissioners may compound or release, in whole or in part, a debt, judgment, fine, or amercement due the county and for the use thereof, except where it or any of its members is personally interested. In such case the board shall enter upon its journal a statement of the facts in the case and the reasons for such release or composition.

Thus, if the underpayments in question can be viewed as debts due those counties which paid more than required, such debts may be released, in whole or in part, pursuant to R.C. 305.26.

The courts have not had occasion to define the full import of the term "debt" as used in R.C. 305.26. In Peter v. Parkinson, 83 Ohio St. 36, 93 N.E. 197 (1910), the Ohio Supreme Court held that personal taxes were not a debt within the contemplation of R.C. 305.26. The court's exclusion of taxes from the meaning of "debt" as used in R.C. 305.26 was premised primarily on its acceptance of the view that a tax "operates in invitum" while "[a] debt is a sum of money due by certain and express agreement. It originates in, and is founded upon contract express or implied." 83 Ohio St. at 47, 93 N.E. at 199. A county's obligation to pay for its use of joint detention or rehabilitation facilities does not, like the taxes in Parkinson, operate in invitum. A county's obligation to make such payments arises only in the event that the board of county commissioners willingly agrees to participate in a district created for the purpose of operating such facilities. Accordingly, a county's obligation to pay for its use of detention or rehabilitation facilities in accordance with R.C. 2151.3412 and R.C. 2151.77 constitutes a "debt" within the meaning of R.C. 305.26.

I conclude, therefore, that in the event that the costs of operating and maintaining multi-county juvenile detention or rehabilitation facilities have not been properly apportioned in the manner prescribed in R.C. 2151.3412 and R.C. 2151.77, a board of county commissioners may compound or release, in whole or in part, any sum owed to the county as the result of the erroneous apportionment of costs. The authority to compound or release such debts includes the authority to extend the time for payment of the debt due the county.

It is, therefore, my opinion, and you are advised, that:

1. R.C. 2151.3412 and R.C. 2151.77 require that the costs of operating and maintaining district juvenile detention and rehabilitation facilities be apportioned among the counties participating in the district on the basis of the counties' actual use of such facilities where no levy has been approved pursuant to R.C. 5705.19(A). Neither a joint board of county commissioners formed pursuant to R.C. 2151.34 and R.C. 2151.65 nor a district board of trustees appointed pursuant to R.C. 2151.343 and R.C. 2151.68 has the authority to direct or permit the apportionment of such costs in any other manner.
2. A board of county commissioners has the authority pursuant to R.C. 305.26 to compound or release, in whole or in part, or otherwise settle payments due the county as a result of an erroneous apportionment of the costs of operating and maintaining district juvenile detention or rehabilitation facilities.