

**OPINION NO. 81-035****Syllabus:**

1. County general fund moneys may be used for the construction of bridges in the county provided that the use of the particular funds for such purpose is not proscribed by law, and provided that the particular moneys have not been commingled with general fund moneys which may not be used for the construction of bridges.
2. Revenues derived from county sales and use taxes pursuant to R.C. 5739.211 and 5741.031 and deposited in the general fund may be used for bridge construction, provided that such revenues have not been commingled with general fund moneys which may not be used for such purposes.

---

**To: Lee E. Fry, Darke County Pros. Atty., Greenville, Ohio**

**By: William J. Brown, Attorney General, July 10, 1981**

Your request for my opinion poses the following questions:

1. May a board of county commissioners expend county general fund moneys for the construction of bridges in the county?
2. If the answer to the first question is in the negative, may the board of county commissioners expend the moneys received from the additional county sales and use taxes (R.C. 5739.211 and R.C. 5741.031) for such purposes?

Because I find these questions to be of general application, I am providing my response by means of a formal opinion.

R.C. 5705.10 specifies the moneys which are to be paid into the general fund and provides in part as follows:

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

R.C. 5705.10 also states that "[m]oney paid into any fund shall be used only for the purposes for which such fund is established." I am not aware of any Ohio statute which sets forth the purposes for which the general fund of a subdivision is established.

Certain moneys in the general fund, however, are collected for certain purposes. Money derived from the general levy for current expenses are, for example, restricted by the terms provided in R.C. 5705.05. R.C. 5705.05 sets forth the purpose and intent of the general levy for current expenses and provides in part as follows:

The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but excluding the construction, reconstruction, resurfacing, or repair of roads and bridges in counties and townships and the payment of debt charges. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. . . . (Emphasis added.)

At first glance the general levy for current expenses appears to be just that, i.e., a levy to provide revenue for the payment of the current expenses of the county. The statement of purpose in R.C. 5705.05 provides that "the purpose and intent of the general levy is to provide one general operating fund derived from taxation from which expenditures for current expenses of any kind may be made" (emphasis added). R.C. 5705.01(F) defines current expenses as "the lawful expenditures of a subdivision, except those for permanent improvements. . . ." R.C. 5705.01(E) describes a permanent improvement as "any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more." Therefore, if the statement of purpose and intent in R.C. 5705.05 were read by itself, money collected from the general levy could not be used for the construction of any permanent improvements.

Such a conclusion, however, would create an unreasonable result when read in conjunction with the second clause of the first sentence of R.C. 5705.05. See R.C. 1.47 ("[i]n enacting a statute it is presumed that: . . . [a] just and reasonable result is intended"). By permitting the taxing authority of a subdivision to include in the general levy for current expenses an amount required for the acquisition or construction of permanent improvements, the General Assembly appears to have created an exception to the clause of R.C. 5705.05 which limits the expenditure of general levy money to current expenses. See 1956 Op. Att'y Gen. No. 6609, p. 416 (expenditure for fire alarm telegraph which has estimated life of ten years or more may be made directly from the general fund); 1951 Op. Att'y Gen. No. 1036, p. 886 (payments for county ditch improvement may be made from county general fund). The legislature has made it clear, however, by the express language of R.C. 5705.05, that this exception does not include the construction, reconstruction, resurfacing or repair of roads and bridges in counties and townships and the payment of debt charges.

Aside from moneys collected pursuant to R.C. 5705.05, other moneys placed in the general fund are also restricted as to use. For example, R.C. 5747.51 provides that, "[a]ll money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision." See also R.C. 5747.53 (providing identical statement with regard to deposit and use of revenues allocated pursuant to an alternative method of apportionment of the local government fund). Thus, moneys from the allocation of the local government fund which are deposited into the general fund of a subdivision may be spent only for "current operating expenses," while moneys from the general levy so deposited may be spent for the acquisition or construction of permanent improvements other than

roads and bridges in addition to current operating expenses. Neither revenue derived from a general levy for current expenses nor moneys allocated to a subdivision from the local government fund, both of which are accounted for in the general fund, may be used for the construction of bridges in the county.

Once revenue is collected and placed in the general fund, it is not clear whether the expenditure of all such revenue is limited by the statement of purpose and intent in R.C. 5705.05, R.C. 5747.51, or any other statute. I am not aware of any Ohio statute or case law which requires the inclusion of all revenues within such restrictions, regardless of their source. Certain moneys paid into the general fund which are not derived from a general levy for current expenses are placed in the general fund precisely because their use is not restricted. R.C. 5705.10 (unless its use for a particular purpose is prescribed by law, money from sources other than the general property tax shall be paid into the general fund). I am not aware of any authority for the proposition that the use of such moneys becomes restricted to the purposes for which other moneys in the general fund may be used by the mere fact that they are accounted for in the general fund. To the contrary, a "fund" is conceptualized as a convenient business device which "amounts to no more than assigning a name to a segregated portion of an agency's monies [and a]ttaching words to a fund does not authorize its expenditure for purposes for which the constituent monies could not be spent." 1957 Op. Att'y Gen. No. 772, p. 287, 289. Therefore, it appears that the use of money paid into the general fund does not thereby become legally restricted in any manner; rather such moneys retain their original character and may be used for any proper county purpose. One of my predecessors in 1956 Op. Att'y Gen. No. 6183, p. 14 at 21 stated: "Section 5705.05, Revised Code, outlines the broad field of purposes for which a general tax levy may be levied, and I take it that the 'general fund' is at least as broad" (emphasis added). By making that statement my predecessor expressed the view, which I also believe to be true, that money in the general fund may be used for purposes apart from those set forth for general levy or other similarly restricted revenues. Another of my predecessors addressed the issue of the expenditure from a township general fund of the proceeds of an inheritance tax for township road and bridge purposes. At 1957 Op. Att'y Gen. No. 1122, p. 504, 507, he opined as follows:

It will be noted that [R.C.] Section 5731.53, which I first quoted does not require the proceeds of the inheritance tax or any portion thereof to be used for any particular purpose, whereas the gasoline taxes which were the subject of the 1934 opinion, were, by law and later by constitutional provision, to be devoted to highway purposes only.

Accordingly, it is my opinion that the township trustees have the right to use the proceeds of the inheritance tax for any township purpose, without the necessity of putting them into a special fund or going through the proceedings for transfer referred to in that opinion. One lawful purpose under the control of township trustees is the building and repair of roads and bridges. See Sections 505.26 and 5549.09, Revised Code.

If the funds in question were derived from a general tax levy for current expenses I might agree that such funds should be put into such a fund as would properly reflect its unavailability for use for road purposes. There is a limitation in the tax law which would forbid the direct use of the general levy for road purposes. This is found in Section 5705.05, Revised Code. (Emphasis added.)

Thus, where the use of money paid into the general fund is not restricted to a specific use, the use is limited only to a proper county purpose. The construction and repair of bridges is not only a proper county purpose, but is required in certain situations. See R.C. 5591.02. Therefore, I conclude that county general fund money may be used for the construction of bridges in the county where the use of the particular revenue for such purpose is not proscribed by law.

In reaching the conclusion that not all moneys in the general fund are restricted by the limitations set forth for particular moneys deposited therein, I have also been guided by the Ohio statutes pertaining to road and bridge funding. R.C. 5543.02 requires that the county engineer make an annual estimate of the "probable amount of funds required to maintain and repair or to construct new roads, bridges or culverts required within the county." R.C. 5555.91 provides for the board of county commissioners to levy a tax for road and bridge purposes, based upon that estimate. R.C. 5555.91 states, in part:

[T]he board shall then make its levy, for the purposes set forth in the estimate, upon all taxable property of the county, not exceeding in the aggregate two mills upon each dollar of the taxable property of said county. Such levy shall be in addition to all other levies authorized for said purposes, but subject to the limitation upon the combined maximum rate for all taxes. This section does not prevent the board from using any surplus in the general funds of the county for the purposes set forth in said estimate. (Emphasis added.)

I recognize the fact that the last sentence of R.C. 5555.91 does not in itself authorize a board of county commissioners to use surplus in the general funds of the county for the purposes set forth in the engineer's estimate; rather, it assumes that such power does exist and merely states that R.C. 5555.91 does not affect such power. Implicit in the statement that R.C. 5555.91 does not prevent a board of county commissioners from using any surplus in the general funds of the county for the purposes set forth in the engineer's estimate, is the assumption that if there are unencumbered funds in the county treasury, the use of which is not restricted, such funds may be used for the purposes set forth in the engineer's estimate. This construction is required in order to give the last sentence of R.C. 5555.91 effect. R.C. 1.47(B) states that, "[i]n enacting a statute it is presumed that the entire statute is intended to be effective." Obviously, if no power exists to expend surplus in the general funds of the county for road and bridge purposes, a statement to the effect that the power is not destroyed by subsequent legislation has no effect. Based on the foregoing, I conclude that revenue which is paid into the general fund of a county from a source other than the general property tax levies for current expenses or the allocation of the local government fund, and which by its very nature is not restricted from such use, may legally be used for the purpose of bridge construction. In reaching this conclusion, I am aware of several court decisions which seem to suggest a contrary result.<sup>1</sup> The statements made in those cases, however, are in the form of dicta and are apparently directed at factual situations in which the moneys involved are commingled with R.C. 5705.05 revenues (general levy for current expenses).

Your second question asks whether moneys received from additional county sales and use taxes may be used for the construction of bridges in the county. The disposition of revenue received from the additional county sales tax is specified in R.C. 5739.211, which states, in pertinent part:

The moneys received by a county levying an additional sales tax pursuant to section 5739.021 of the Revised Code shall be deposited in the county general fund to be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements or in the bond retirement fund for the payment of debt service charges on notes or bonds of the county issued for the acquisition or construction of permanent improvements. The amounts to be deposited in each of

---

<sup>1</sup>See Madden v. Bower, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969); Board of County Comm'rs v. Willoughby Hills, 12 Ohio St. 2d 1, 230 N.E.2d 344 (1969); City of Lancaster v. Fairfield County Budget Comm'n, 174 Ohio St. 163, 187 N.E.2d 42 (1962); In the Matter of the Transfer of Funds, No. 2-80-27 (Ct. App. Auglaize County Feb. 24, 1981).

such funds shall be determined by the board of county commissioners.  
(Emphasis added.)

Likewise, revenue raised by the county additional use tax may, according to R.C. 5741.031, be disposed of as follows:

The funds received by a county levying an additional use tax pursuant to section 5741.021 of the Revised Code shall be deposited in the county general fund to be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements, or in the bond retirement fund for the payment of debt service charges on notes or bonds of the county issued for the acquisition or construction of permanent improvements. The amount to be deposited in each of such funds shall be determined by the board of county commissioners.  
(Emphasis added.)

The statements of purpose for which revenues derived from taxes levied pursuant to R.C. 5739.211 and 5741.031 may be used are identical and I will, therefore, discuss them together. R.C. 5739.211 and R.C. 5741.031 clearly state that money derived from county sales and use taxes, when deposited in the general fund, may be used for any general fund purpose including the construction of permanent improvements. As I stated above, moneys in the general fund may be used for any proper county purpose unless the use of money from a particular source has been restricted. The plain language of R.C. 5739.211 and R.C. 5741.031 clearly includes all permanent improvements, without restriction, within the proper purposes for which money collected pursuant to such sections may be used. While the language of R.C. 5739.211 and 5741.031 parallels the language of R.C. 5705.05 to some extent, it does not appear that the legislature intended to limit the expenditure of funds derived from sales and use taxes to those expenditures which may properly be made from general levy revenues; rather, the plain language of the statute refers to proper expenditures of general fund revenues. Neither R.C. 5739.211 nor R.C. 5741.031 specifically excludes roads and bridges from the statement that revenues from these particular taxes may be used for the acquisition or construction of permanent improvements; R.C. 5705.05 does specifically exclude such purposes. Similarly, the legislature has indicated that revenues from sales and use taxes may be deposited in the bond retirement fund and used to pay debt service charges, an expenditure which may not be made from general levy revenues. Thus, it appears that the legislature intended that revenues derived from sales and use taxes may be expended for any purpose consistent with the purposes of the general fund which, as discussed above, includes bridge construction. Therefore, I conclude that a county may use revenue derived from county sales and use taxes pursuant to R.C. 5739.211 and R.C. 5741.031 for the construction of bridges.

Although, as discussed above, the use of some of the revenue deposited in the general fund of a subdivision is not restricted by law (except, of course, by the public purpose requirement), it may, in fact, be restricted by practical considerations. Where moneys from various sources are deposited in the general fund and thereafter become commingled, it may be difficult or impossible from a practical standpoint to insure that general levy revenues or any other similarly restricted revenues would not be included within a proposed expenditure for bridge construction, repair, etc. Any doubt with regard to the legality of a proposed expenditure would necessarily be resolved against the expenditure. The Supreme Court of Ohio, in *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916), held as follows: "The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county." Therefore, a county wishing to spend moneys in its general fund directly for the purpose of bridge construction must be able to establish that no restricted funds are being so used.

To avoid the difficult task of making a showing that general fund moneys sought to be used for bridge construction are not restricted funds, there are at

least two procedures of which I am aware which may be useful. These procedures would permit certain moneys which are ordinarily accounted for in the general fund to be used for road and bridge purposes while avoiding the difficulties entailed with segregating moneys within the general fund or attempting to establish the origin of particular moneys once they have been commingled with other general fund moneys. R.C. 5705.12 provides that, with the approval of the Bureau of Inspection and Supervision of Public Offices, the taxing authority of a subdivision may set up special funds directly into which moneys from sources other than the general property tax may be paid. See 1956 Op. No. 6183. Such a procedure would prevent such moneys, for example, those derived from sales and use taxes, from becoming commingled with other restricted moneys within the general fund, and would thus alleviate the potential problem with distinguishing sources.

Where moneys have been paid into the general fund of a county, and have been commingled to the extent that the board of county commissioners can no longer distinguish the particular source from which the moneys originated, such moneys may be used for road and bridge purposes only after they have been transferred to an appropriate fund pursuant to R.C. 5705.15 and 5705.16. A transfer from a county general fund to a road or bridge fund may not be made by mere resolution of the board of county commissioners, but, rather, must be effected pursuant to R.C. 5705.16 by petition to a court of common pleas and the board of tax appeals. See 1940 Op. Att'y Gen. No. 1949, p. 235; 1939 Op. Att'y Gen. No. 791, p. 996. If there is any doubt as to the nature of the particular moneys in a county's general fund which are to be used for bridge construction, a board of county commissioners may not expend such moneys directly from the general fund; rather, transfer must be made pursuant to R.C. 5705.15 and 5705.16. As stated above, however, moneys in a county's general fund which are not restricted as to use for bridge construction may be used directly from the general fund for such purposes. Such moneys may be used only where the board of county commissioners can establish that they do not include any revenues derived from a general levy for current expenses, the local government fund, or any other similarly restricted revenues.

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

1. County general fund moneys may be used for the construction of bridges in the county provided that the use of the particular funds for such purpose is not proscribed by law, and provided that the particular moneys have not been commingled with general fund moneys which may not be used for the construction of bridges.
2. Revenues derived from county sales and use taxes pursuant to R.C. 5739.21 and 5741.031 and deposited in the general fund may be used for bridge construction, provided that such revenues have not been commingled with general fund moneys which may not be used for such purpose.