

**OPINION NO. 87-107****Syllabus:**

Money derived from a tax levied by the county pursuant to R.C. 5705.19(K) for "the maintenance and operation of a county home" may be used to pay for prescription medicines for residents of the county home.

**To: Dennis E. Barr, Hardin County Prosecuting Attorney, Kenton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987**

I have before me your opinion request concerning the use of money derived from a tax levied by the county under R.C. 5705.19(K). You ask whether money derived from a tax levied under R.C. 5705.19(K) may be used to pay prescription drug charges on behalf of the county home residents.

In order to answer your question it is first necessary to examine R.C. 5705.19, which states in pertinent part:

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:

....  
(K) For the maintenance and operation of a county home;

....  
The resolution shall be confined to the purpose or purposes described in one division of this section, for which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all

of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted. (Emphasis added.)

Further, R.C. 5705.10 states in part:

All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code, all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose....

....  
Money paid into any fund shall be used only for the purposes for which such fund is established.

Thus, since the money about which you ask was raised for "the maintenance and operation of a county home," it may be used to pay the prescription charges you describe only if the payment of such charges may be considered part of the maintenance and operation of the county home.

As stated in 1986 Op. Att'y Gen. No. 86-100 at 2-559, "the purposes for which the county home fund may be used are prescribed by R.C. Chapter 5155." Upon examination of R.C. Chapter 5155, it is apparent that the specific services which may be provided by the county home to its residents as part of their maintenance are not prescribed by statute. Rather, R.C. 5155.01 imposes upon the board of county commissioners the duty to "prescribe rules for the management and good government of such home and to promote sobriety, morality, and industry among residents." The superintendent or administrator of the home, who is appointed by the board of county commissioners, is then under a duty to "perform such duties as the board imposes upon him, and [he] shall be governed in all respects by its rules." R.C. 5155.03.

I note, however, that several prior Attorney General opinions have discussed the scope of authority of a county home to provide medical care for its residents, finding such authority to include the provision of necessary medical and surgical services for the residents of the home, 1960 Op. Att'y Gen. No. 1230, p. 201, and the provision of hospital facilities for the home's residents, 1956 Op. Att'y Gen. No. 6274, p. 121. 1960 Op. No. 1230 discusses the provisions of R.C. 5155.27 which authorizes the board of county commissioners to contract with one or more physicians "to furnish medical relief and medicines necessary for the residents of the county home." The term "medical relief," as used in R.C. 5155.27, was interpreted in 1960 Op. No. 1230 at 203, to include "medical and surgical services which would be furnished by a hospital." Additionally, the opinion reasons that since many persons reside in the county home because of their advanced age or due to mental or physical disabilities which make it impossible to care for them in their own homes, the provision of medical and surgical services such as would be provided in a hospital is a necessary part of caring for such residents. For the same reason, 1956 Op. No. 6274 at 123 concludes that, although there is no specific statutory authorization for a county home to erect a hospital, "it is clearly implied that such institution

may be a necessary part of the home." See R.C. 5155.22 (when a person is determined to be eligible for admission to the county home, the superintendent or administrator "shall admit such person as a resident and shall receive and provide for him in such facility forthwith" (emphasis added)). Similarly, in the situation about which you ask, the provision of prescription medicines for county home residents appears to be a necessary part of caring for the residents of the county home.<sup>1</sup> See 1986 Op. Att'y Gen. No. 86-053 at 2-285 ("it appears that the county may admit to the county home persons who, by reason of their physical disabilities, are unable to care for themselves in their own homes, and provide such persons with any necessary medical care and supervision"). Since the provision of medicines to the residents of the county home is part of the operation of the county home, the money derived from a tax levied under R.C. 5705.19(K) may be used for the provision of medicines for residents of the home.

Based on the foregoing, it is my opinion, and you are hereby advised, that money derived from a tax levied by the county pursuant to R.C. 5705.19(K) for "the maintenance and operation of a county home" may be used to pay for prescription medicines for residents of the county home.

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<sup>1</sup> I am aware, however, that two prior Attorneys General have issued opinions which suggest that the county home may provide medicine to its residents only through a doctor with whom it has contracted to provide "medical relief and medicines necessary for the residents of the county home," pursuant to R.C. 5155.27. 1933 Op. Att'y Gen. No. 1174, vol. II, p. 1140, concludes in the syllabus: "[G.C. 2546 (now at R.C. 5155.27)] requires the county commissioners in their contracts with physicians as therein provided, to include both medical relief and medicine." 1913 Op. Att'y Gen. No. 13, vol. I, p. 186, similarly concludes that: "The provisions of [G.C. 2546 (now at R.C. 5155.27)] disclose the intention that the county commissioners in their contracts with physicians as therein provided, should include both medical relief and medicines necessary within the jurisdiction of their work." It is unclear whether 1913 Op. No. 13 intends to limit the provision of necessary medicines to county home residents only through a contract entered into with a physician pursuant to G.C. 2546 (now R.C. 5155.27). To the extent that 1913 Op. No. 13 suggests such a limitation, I must question the conclusion. I note, however, whether or not a county home may provide medicines for its residents only through a contract entered into pursuant to R.C. 5155.27 is a matter which I need not decide at this time. Irrespective of the manner in which such prescription medicines are provided, either under a contract as provided for in R.C. 5155.27 or as part of the duty to "provide for" the residents of the home under R.C. 5155.22, the provision of such medicines is part of the operation of the county home.