

OPINION NO. 84-085

Syllabus:

Interest earned on funds collected pursuant to R.C. 6117.02 must be paid into the county general fund.

To: Gregory W. Happ, Medina County Prosecuting Attorney, Medina, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 19, 1984

I have before me your request for my opinion on the following question: "Is the interest earned from the funds collected pursuant to Section 6117.02 of the Ohio Revised Code to be kept as part of the special fund set up pursuant to O.R.C. Section 5705.09 or is the interest to be paid into the County General Fund?"

Pursuant to R.C. 6117.01, "[f]or the purpose of preserving and promoting the public health and welfare, boards of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations." R.C. 6117.02 provides for the fixing and collection of charges to be paid by those who use the sewer system established pursuant to R.C. 6117.01, and reads in part as follows:

The board of county commissioners shall fix reasonable rates to be charged for the use of the sewers or sewerage treatment or disposal works referred to in section 6117.01 of the Revised Code by every person, firm, or corporation whose premises are served by a connection to such sewers or sewerage treatment or disposal works when such sewers or sewerage treatment or disposal works are owned or operated by the county, and may change such rates as it deems advisable. Such rates shall be at least sufficient to pay all the cost of operation and maintenance of improvements for which the resolution declaring the necessity thereof shall be passed after, July 1, 1958 and may include, upon billing, additional amounts attributable to connection charges being paid in installments. . . . The board shall also establish reasonable charges to be collected for the privilege of connecting to the sewers or sewerage treatment or disposal works of the district with the requirement that, prior to such connection, such charges shall either be paid in full, or, if determined to be equitable by the board in its resolution providing for the payment of such charges, provision deemed adequate by the board shall be made for payment in installments at such times and in such amounts and with such security, carrying charges, or penalties as may be found by the board in such resolution to be fair and appropriate, and no person shall be permitted to connect to the sewers or sewerage treatment or disposal works of the district until such charges have been paid in full, or until such provision for payment in installments has been made. . . . When any rents or charges are not paid when due, the board shall certify the same together with any penalties to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes. All moneys collected as rents for use of such sewers or sewerage treatment or disposal works or as connection charges in any sewer district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Except as otherwise provided in any resolution authorizing or providing for the security and payment of any bonds outstanding on the effective date of this act or thereafter issued, or in any indenture or trust agreement securing such bonds, such funds shall be used first for the payment of the cost of the management, maintenance, and operation of the sewers of the district and sewerage treatment or disposal works used by the district and second for the payment of interest or principal of any outstanding debt incurred for the construction of such sewers or sewerage treatment or disposal works or for the creation of a sinking fund for the payment of such debt. Any surplus thereafter remaining in such fund may be used for the enlargement, extension or replacement of such sewers and sewerage treatment or disposal works. Money so collected shall not be expended otherwise than for the use and benefit of such district. No provision of this section shall limit or restrict the power and discretion of the board to determine how much of the cost of such improvements shall be borne by the county at large and how much shall be specially assessed upon benefited properties, nor the power to issue notes and bonds for the share to be borne by the county and in anticipation of the levy or collection of special assessments for the share to be specially assessed, nor the power of the board to levy special assessments upon benefited properties for operation and maintenance whenever the rents and other funds available are not sufficient to pay all the cost thereof. (Emphasis added.)

Resolution of your question depends upon an examination of R.C. 135.351, concerning the crediting of interest earned on moneys within the county treasury, R.C. 5705.09, concerning the establishment of certain funds by each subdivision within the state, and R.C. 5705.10, which concerns the distribution of revenue derived from various sources by a subdivision.

R.C. 5705.09 requires each subdivision, including each county, R.C. 5705.01(A), to establish certain funds. Pursuant to R.C. 5705.09(F), a county must establish a "special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose." Charges collected as rents for the use of sewers or sewerage treatment or disposal works or as connection charges are derived from a source other than the general property tax and are required by law to be used for a particular purpose, as set forth in R.C. 6117.02, and thus must be paid into a special fund pursuant to R.C. 5705.09(F). This conclusion comports with R.C. 6117.02, which provides that: "[a]ll moneys collected as rents for use of such sewers or sewerage treatment or disposal works or as connection charges in any sewer district shall be paid to the county treasury and kept in a separate and distinct fund to the credit of such district."

R.C. 5705.10 governs the distribution of revenue derived from various moneys, and reads in pertinent part:

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. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund. (Emphasis added.)

Interest earned on the deposit or investment of the principal in a fund is considered to be revenue derived from that source. See 1982 Op. Att'y Gen. No. 82-031; 1980 Op. Att'y Gen. No. 80-003. Interest earned on the moneys charged and collected pursuant to R.C. 6117.02 is revenue derived from a source other than the general property tax. While R.C. 6117.02 prescribes the purposes for which the rents collected pursuant to that provision must be used, the law does not address the use of the interest earned on the rents. Thus, R.C. 5705.10 clearly provides that the interest earned on the rents must be credited to the general fund of the county.

R.C. 135.351 governs the disposition of interest earned on moneys held by a county and provides in part:

(A) 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 fund of the county.

(B) Unless otherwise provided by law, with respect to moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county, the county shall, on or before the tenth day of the month following the month in which the county receives such moneys or on or before such later date authorized by the legislative authority or other governing body of the other political subdivision or district, pay and distribute all such moneys to the treasurer or other appropriate officer of the other political subdivision or district. A county shall pay and distribute any advance authorized by section 321.34 or 321.341 of the Revised Code within five business days after the request for the advance is delivered to the county auditor. (Emphasis added.)

Pursuant to R.C. 6117.02, moneys collected as rents under the authority of that section, "shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of" the sewer district. R.C. 321.05 provides:

The county treasurer shall keep his office at the county seat, in rooms provided for that purpose by the board of county

commissioners, which shall constitute the county treasury. Except as otherwise specifically provided by law, all public moneys and property in his possession shall be at all times kept in the county treasury.

Thus, moneys collected pursuant to R.C. 6117.02 must be kept in the county treasury. Pursuant to R.C. 135.351(A), interest earned on the moneys must be credited to the general fund of the county.

You question whether the funds collected pursuant to R.C. 6117.02 are funds belonging to a special district, and which are being kept by the county treasurer as custodial funds. See generally 1982 Op. Att'y Gen. No. 82-082; 1974 Op. Att'y Gen. No. 74-102. If the moneys collected pursuant to R.C. 6117.02 are kept in the county treasury as custodial funds, then arguably, the interest earned on such funds would, under some circumstances, be credited to the special district rather than to the county general fund. See R.C. 135.351(B). See also section 32 (uncodified) of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982); 1983 Op. Att'y Gen. No. 83-025. From an examination of R.C. Chapter 6117, however, it is apparent that the funds charged and collected pursuant to R.C. 6117.02 are not held in the county treasury as custodial funds.

Moneys held in a custodial account are held by a treasurer as custodian, but are not considered to be part of the treasury. See Op. No. 82-082. See also R.C. 135.31(E) (defining "public moneys" for purposes of the county depository provisions as "all moneys in the treasury of a county or moneys coming lawfully into the possession or custody of the treasurer"). Moneys held by a county treasurer in a custodial capacity are not available for use by the county itself.

It is apparent that a sewer district established pursuant to R.C. Chapter 6117 is not an entity or district independent of a county. A board of county commissioners has the authority to establish and operate one or more sewer districts in the unincorporated area of the county. R.C. 6117.01. There is no other governing board for the district. The board may create and maintain a sanitary engineering department to help the board perform the duties imposed by R.C. Chapter 6117 and hire a professional engineer. R.C. 6117.01. The board must provide rooms for the department and fix and pay the compensation of the professional engineer and his employees. R.C. 6117.01. The board "may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sewers and sewer improvements in its county outside of municipal corporations." R.C. 6117.01. The board fixes the rates to be charged for the use of the sewers, and collects the charges therefor. R.C. 6117.02. The board of county commissioners must cause to be prepared and approve a general plan of sewerage and sewage disposal for a district. R.C. 6117.06. The board may issue bonds for the purposes of the district, R.C. 6117.08, R.C. 6117.25, R.C. 6117.31, levy taxes, R.C. 6117.31, R.C. 6117.31, and make contracts for the district, R.C. 6117.27. Thus, while the unincorporated areas of a county may be divided geographically into sewer districts, these districts are not operated independently of the county, but are governed by the board of county commissioners as part of the board's duties as the governing authority of the county. Cf. R.C. Chapter 6115 (sanitary districts). The moneys collected pursuant to R.C. 6117.02 are not held by the county treasurer in a custodial capacity, but are held for use by the county in operating the sewer district. Thus, R.C. 135.351(A), as well as R.C. 5705.10, requires interest earned on these moneys to be credited to the county's general fund.

In conclusion, it is my opinion, and you are advised, that interest earned on funds collected pursuant to R.C. 6117.02 must be paid into the county general fund.