

Note from the Attorney General's Office:

1980 Op. Att'y Gen. No. 80-003 was overruled in part by
1985 Op. Att'y Gen. No. 85-072.

OPINION NO. 80-003**Syllabus:**

1. Ohio Const. art. XII, §5 requires that interest earned from the deposit or investment of money in the bond retirement fund of a non-charter municipality be allocated to the bond retirement fund; such interest may not be used for any purpose other than that for which the bond retirement fund exists. (1958 Op. Att'y Gen. No. 2190, p. 347 overruled in part; 1956 Op. Att'y Gen. No. 6183, p. 14 modified; 1942 Op. Att'y Gen. No. 4897, p. 168 overruled in part; 1935 Op. Att'y Gen. No. 4759, p. 1292 overruled in part.)
2. Interest earned on the proceeds of a special levy for debt charges imposed by a non-charter municipality in accordance with R.C. 133.09 or on the proceeds of a special assessment levied by a non-charter municipality under R.C. 727.25 may be applied only to the purpose for which such levy was made.
3. Interest earned on the proceeds of a general levy for debt charges imposed by a non-charter municipality under R.C. 5705.03 may be applied to extinguish any indebtedness of the municipality.
4. A noncharter municipality may not apply a temporary surplus of proceeds of a special levy for debt charges or a special assessment levy to a purpose other than that for which the levy was made. Surplus proceeds of a general levy for debt charges may be applied, however, to any indebtedness of the municipality.

To: **John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio**
 By: **William J. Brown, Attorney General, February 5, 1980**

I have before me your request for my opinion with respect to the following three questions:

1. In a non-charter municipality which establishes various accounts within the bond retirement fund, can interest or surpluses within the fund be lawfully transferred from one account to another as needed?
2. Is a non-charter municipality required by virtue of R.C. 135.21 and 1956 Op. Atty Gen. No. 6183, p. 14 to allocate accrued interest to the bond retirement fund which earned it?
3. Is it permissible for a non-charter municipality to allocate interest earned in the bond retirement fund to other purposes, such as capital improvements, in view of 1956 No. 6183, R.C. 5705.14(C), and Leavers v. City of Canton, 1 Ohio St. 2d 33, 37, 203 N.E. 2d 354, 356 (1964)?

The bond retirement fund is comprised of moneys derived from taxation. R.C. 5705.10. Ohio Const. art. XII, §5 establishes the general principle for all laws relating to the levy and distribution of tax revenues. That section provides that "[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." Pursuant to this constitutional provision, all tax revenues must be applied in strict compliance with their intended purpose. See, e.g., Cuyahoga Heights v. Zangerle, 103 Ohio St. 566, 134 N.E. 686 (1921) (it is the duty of the county auditor in retaining the pro rata amount of taxes apportioned pursuant to R.C. 3709.01 to townships and municipalities for health purposes to do so only from funds that are legally applicable to such purposes); Walton v. Edmundson, 89 Ohio St. 351, 106 N.E. 41 (1914), aff'g State ex rel. Brennan v. Benham, 1 Ohio App. 472, 17 Ohio C.C. (n.s.) (Franklin County 1913) (statute requiring county treasurers to pay state treasurer the funds raised under existing levies for relief of the blind is unconstitutional since the fund raised by the levy is to be applied to a different, although similar, purpose from that for which it was levied); Board of Education v. Auditor, 26 N.P. (n.s.) 33 (C.P. Williams County 1925) (a county board of education cannot take funds raised in one taxing district for a particular purpose to pay an indebtedness of another district); 1964 Op. Atty Gen. No. 1499, p. 2-388 (township trustees may not use proceeds of license tax for purpose of acquiring real estate even though real estate is to be used to store road machinery and equipment); 1958 Op. Atty Gen. No. 1504, p. 7 (funds derived from a tax levied to support county hospitals may not be used to pay operating expenses of county commissioners); 1933 Op. Atty Gen. No. 1815, p. 1595 (when a taxing district levies a tax for its general fund, and also a tax for its bond retirement fund, and the taxes levied are not collected in full, the county auditor has no authority to allocate to the latter fund the whole amount which should have been realized had all taxes been paid in full).

No Ohio court has considered the issue of whether Ohio Const. art. XII, §5 limits the application of interest earned from the deposit or investment of the proceeds of a tax levy. At least one Ohio court has, however, held that Ohio Const. art. XII, §5a, which imposes a similar restriction on the use of motor vehicle license and fuel taxes, limits the use of interest earned from the investment of such taxes. In Armstrong v. Donahey, Case No. 74CV-09-3570 (C.P. Franklin County Apr. 22, 1977) the court held at 4:

Section 5a, Article XII of the Ohio Constitution requires that the interest derived from the foregoing [state highway] funds, being from monies derived from fees, excises and license taxes relating to the registration, operation or use of vehicles on public highways or relating to fuels used for propelling such vehicles, be credited back to the fund in the ratio of the amount in the fund to the total amount in

interest bearing accounts. Contrary to Section 5a, Article XII of the Ohio Constitution, the defendant Treasurer has improperly distributed, paid or credited such funds, and the defendant Auditor has improperly approved such distribution, payment or crediting into the General Revenue Fund.

The courts of other states have reached the same conclusion when interpreting similar constitutional provisions. In State Highway Commission v. Spainhower, 504 S.W. 2d 121 (Mo. 1973), the court construed the following provision in the Missouri Constitution as restricting the use of any interest earned on moneys belonging to the state road fund:

For the purpose of construction and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state. . . shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other. . . . [All the enumerated purposes are road purposes.]

The reasoning of the court is set forth at 125 as follows:

This problem has not been considered in Missouri. It is clear, however, that the people of Missouri, by Article IV, Section 30(b). . . intended that no money be diverted from the state road fund and no other use be permitted of the fund except for the enumerated state highway purposes. . . . With the state road fund so restricted against transfer or use for any other purpose, interest or income from such fund must be credited to that fund under Article IV, Section 15, and held against withdrawal or use for any purpose other than state highway purposes, including diversion to the general revenue fund.

In State ex rel. Sprague v. Straub, 240 Or. 272, 400 P. 2d 229 (1965), the Oregon Supreme Court considered the problem of interest earned on moneys in a constitutionally restricted fund and reached the same result. The court was called upon to construe Oregon Const. art. IX, §3, which requires that the proceeds from motor vehicle and fuel taxes be used exclusively for the construction and maintenance of public highways and streets. The court held that this constitutional provision applied as well to any interest earned on such proceeds, notwithstanding the fact that interest was not expressly mentioned. The court stated its reasoning at 280-81, 400 P. 2d 232, as follows:

It is recognized that the people's approval of the amendment to Article IX Section 3 provides no actual expression of a will and intent that interest that may be earned by the accumulated revenues controlled by the amendment should accrue to the highway fund. There is a strong inference, however, that the clear intent of the people to compel the specific revenues to be used for one purpose

¹Ohio Const. art XII, §5a provides as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

implies that it would include all of the interest that would accrue during the State Treasurer's holding of the revenues for their eventual use.

While the constitutional provisions construed in these cases are not identical to Ohio Const. art. XII, §5, they are not dissimilar. Moreover, there is no readily apparent basis upon which to conclude that the reasoning in these cases would be inappropriate if applied to art. XII, §5. Thus, in the absence of any authority to the contrary, I must conclude that Ohio Const. art. XII, §5 restricts the allocation of interest earned from the deposit or investment of the proceeds of tax levies.

It should also be noted that the General Assembly has enacted a series of statutes that regulate the levy, collection and distribution of tax revenues raised by political subdivisions. Of particular significance to your questions are the provisions of R.C. Chapter 5705, which are applicable to municipalities by virtue of R.C. 5705.01(A).²

R.C. 5705.09 provides:

Each subdivision shall establish the following funds:

- (A) General fund;
- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or other certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) 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. . . .

R.C. 5705.10 governs the manner in which revenue must be credited to these various funds, and provides that "[m]oneys paid into any fund shall be used only for the purposes for which such fund is established." R.C. 5705.10 states, in pertinent part:

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.

²In 1958 Op. Att'y Gen. No. 2190, p. 347 one of my predecessors opined that the provisions of R.C. 5705.10 are not applicable to municipalities because of their authority, under Ohio Const. art. XVIII, §3, to exercise all powers of local self-government. My predecessor concluded, therefore, that a municipality could distribute the interest received from investment of municipal funds in whatever manner is required by its charter, or, in the absence of a charter, as provided by ordinance. Op. No. 2190 has, however, been rendered ineffective by Leavers v. City of Canton, 1 Ohio St. 2d 33, 203 N.E. 2d 354 (1964) to the extent that it suggests that a non-charter municipality may enact an ordinance on a matter of local self-government that is at variance with state statutes. The Court expressly held in that case that an ordinance passed by a non-charter city on a matter of local self-government is invalid if such ordinance is at variance with a state statute. I express no opinion at this time, however, as to the conclusions reached in Op. No. 2190 as applied to charter municipalities.

All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

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

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 proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision.

R.C. 5705.10 expressly requires that "[a]ll revenue derived from general or special levies for debt charges. . . shall be paid into the bond retirement fund." The issue is, therefore, whether the phrase "all revenue derived from" should be construed as including any interest earned on the proceeds of general or special levies for debt charges.

A similar issue of statutory construction was decided in Glass v. Donahey, Case No. 75CV-05-1966 (C.P. Franklin County Aug. 17, 1978). The issue presented therein was whether interest earned by the state's wildlife fund should be credited to that fund or the state's general revenue fund. The applicable statutes were R.C. 1533.15, which provides that "[n]o funds derived from hunting and trapping licenses shall be spent for other than hunting and trapping purposes. . . ," and R.C. 1533.33, which provides that "[n]o funds derived from fishing licenses shall be spent for other than fishing purposes. . . ." The court concluded that any interest earned by the wildlife fund should be credited to that fund, and set forth the following reasoning at 2:

It is the judgment of this Court that the word "derived" found in Ohio Revised Code Sections 1533.15 and 1533.33 were [sic] intended to include both funds received from the sale of licenses and interest funds generated from the monies received. Had the legislature intended to make a distinction between the funds received from the sale of the licenses and the interest funds generated, it could easily have done so. Yet, the legislature did not make such a distinction, but rather chose to use the more inclusive term "derived". Thus, this Court concludes that both the funds received from the license sales and the interest generated from those funds should only be spent for hunting, trapping, and fishing purposes.

Accord, State Highway Commission v. Spainhower, supra; Armstrong v. Donahey, supra.

The foregoing analysis is, in my opinion, equally applicable to that portion of R.C. 5705.10 that addresses all revenue "derived" from a general or special levy for debt charges, and the interest earned on those funds should be paid into the bond retirement fund and used only for the purposes for which such fund exists. Had the General Assembly intended to distinguish between the proceeds of a levy and the interest earned on such proceeds, it could easily have done so. In fact, the General Assembly draws such a distinction later on in R.C. 5705.10 with respect to the proceeds from bond sales and the interest earned in the fund to which such proceeds belong. While this distinction between proceeds and interest has little practical significance under the current version of R.C. 5705.10, as amended in

1957, the distinction was significant at the time the statute was originally enacted. As originally enacted in 1928, G.C. 5625-10 (now R.C. 5705.10) provided that the proceeds of a bond sale should be paid into a special fund but that the interest earned on bond proceeds should be paid into the sinking fund or the bond retirement fund. The distinction between where the proceeds and interest were to be deposited was at that time necessary, since under the common law rule the interest would have been allocated to the fund to which the principal belonged. See generally Eshelby v. Cincinnati Board of Education, 66 Ohio St. 71, 63 N.E. 586 (1902); 1911 Op. Att'y Gen. No. A284, p. 281. Thus, since the General Assembly has expressly distinguished between the principal of the fund and interest with respect to the allocation of bond proceeds under R.C. 5705.10, but has made no distinction with respect to revenues derived from levies for debt charges, I must conclude that no such distinction was intended.

Thus, Ohio Const. art. XII, §5 and the foregoing statutes place a broad prohibition on the use or diversion of tax revenues for purposes other than that for which the tax was levied, and this prohibition in my opinion must be considered in responding to your questions regarding the allocation of interest earned on moneys in the bond retirement fund.

I shall take up your second question first, since it is concerned with the initial allocation of interest to the bond retirement fund. You ask whether R.C. 135.21 and 1956 Op. Att'y Gen. No. 6183, p. 14 require that a non-charter municipality allocate accrued interest to the bond retirement fund which earned it.

R.C. Chapter 135 sets forth the manner in which public funds may be deposited or otherwise invested for the purpose of earning income from moneys not needed for immediate use. R.C. 135.21 governs the manner in which any interest earned on money deposited in accordance with R.C. Chapter 135 must be credited. It provides:

All interest earned on money included within a public deposit and belonging to undivided tax funds shall, except as otherwise provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportions in which they are entitled to receive distribution of such undivided tax funds, due allowance being made for sums transferred in advance of settlements. All interest earned from other monies deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment, or other district of which he is acting as ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision, shall be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong.

All other interest earned shall be credited to the general fund of the state or the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs. The auditor shall inform the treasurer in writing of the amount apportioned by him to each fund, district, or account.

In 1956 Op. Att'y Gen. No. 6183, p. 14, one of my predecessors had occasion to consider the application of the interest allocation rules set forth in R.C. 135.21 to the special funds established under R.C. 5705.09. My predecessor opined that the funds established in R.C. 5705.09 were governed by the first rule set forth in R.C. 135.21 regarding undivided tax funds, and set forth the following general rule at 19:

Accordingly, we reach the general conclusion that interest earned on public funds of a municipality in a public depository is to be apportioned to the several funds from which such interest accrued, and that only the interest arising from funds representing taxes belonging to the general fund, and from sources other than taxes is to be paid into the general fund.

Contra, 1935 Op. Att'y Gen. No. 4759, p. 1292 (interest earned on deposits of funds of the subdivisions of Ohio should be credited to the general fund of such subdivisions except where statutory provisions prescribe the use of such interest for a particular purpose). Op. No. 4759 was implicitly overruled by Op. No. 6183 to the extent that it would require the allocation to the general fund of interest earned from the deposit of tax revenues other than those belonging to the general fund.

Under the rule announced in Op. No. 6183, interest earned on moneys in the bond retirement fund and deposited in accordance with R.C. Chapter 135 must be allocated to the bond retirement fund. While I concur in this general rule for the allocation of interest earned on public deposits, I find I am unable to concur in total with my predecessor's analysis. The opinion concludes that the interest earned on moneys belonging to the funds established by R.C. 5705.09 must be apportioned among these funds because of that portion of R.C. 135.21 that governs the allocation of interest earned on money belonging to undivided tax funds. In reaching this conclusion my predecessor appears to have given the term "undivided tax funds" a much broader meaning than that generally intended in the Revised Code. The term "undivided tax funds" is generally used to refer to the aggregate of the tax proceeds collected by a county treasurer but not yet distributed to the taxing subdivisions which levied the taxes. See generally R.C. 321.08; R.C. 321.09; 1941 Op. Att'y Gen. No. 3819, p. 407. Once a municipality or other taxing subdivision has received its tax proceeds from the county treasurer and has paid such proceeds into the various funds established by R.C. 5705.09, such funds are not properly viewed as "undivided tax funds."

Since money received by a municipality and paid into the various funds established by R.C. 5705.09 is neither money belonging to undivided tax funds nor custodial funds, if R.C. 135.21 is applicable at all, the interest earned on such money should be credited to the general fund pursuant to that portion of R.C. 135.21 which purports to govern the allocation of "[a]ll other interest." I am, however, unable to conclude that the General Assembly intended the term "[a]ll other interest" as used in R.C. 135.21 to include interest earned on tax revenues belonging to a fund other than the general fund, since such an interpretation of that term would place R.C. 135.21 in conflict with Ohio Const. art. XII, §5. See R.C. 1.47(A) (in enacting a statute, it is presumed that compliance with the constitution is intended); 1975 Op. Att'y Gen. No. 75-087 (statute permitting transfer of money to the state's general fund, whenever there is a deficit in that fund, from any other fund available for state purposes may not constitutionally be construed so as to permit a transfer from the Vietnam conflict compensation fund); 1969 Op. Att'y Gen. No. 69-121 (statute permitting county official to deduct from any revenues or funds credited to the state the amount necessary to pay tax delinquencies must be construed as including only those revenues or funds that are not limited to a purpose or use by the Ohio Constitution). It is, therefore, my opinion that the provisions of R.C. 135.21 are not applicable to interest earned on tax revenues, other than those belonging to the general fund, deposited after such revenues have been received by a taxing subdivision. (1956 Op. Att'y Gen. No. 6183, p. 14 modified.) Rather, the interest earned on the deposit of such revenues must, pursuant to Ohio Const. art. XII, §5 and R.C. 5705.10, be paid into the fund to which the principal belongs. Cf. 1957 Op. Att'y Gen. No. 1365, p. 701 (interest earned on the consolidated deposit or investment of bond proceed funds in accordance with R.C. Chapter 135 and 5705 should be divided among such funds in the ratio which the several funds bear to the entire amount deposited or invested).

In addition to depository investments under R.C. Chapter 135, municipal corporations are permitted to make treasury investments under R.C. 731.56. That section provides, in pertinent part, as follows:

The legislative authority of a municipal corporation may, by ordinance, provide that whenever there are moneys in the treasury of such municipal corporation which will not be required to be used by such municipal corporation for a period of six months or more, such moneys may, in lieu of being deposited in a bank, be invested in

obligations of such municipal corporation, in bonds or other obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, . . . bonds of this state, and bonds of . . . any political subdivision of this state. . . .

R.C. 731.56 does not provide for the distribution of the interest earned on the investments made pursuant thereto. That issue was considered, however, in 1942 Op. Att'y Gen. No. 4897, p. 168. That opinion reached the following conclusion at 171:

Interest . . . earned by treasury investments should be paid into the bond retirement fund or the sinking fund if the money used to make such treasury investments was derived from the special fund into which the proceeds from the sale of bonds, notes or certificates of indebtedness were paid. If the money used to make such investment is derived from any other fund, the interest earned on such investment should be paid into the general fund.

This conclusion was premised upon my predecessor's interpretation of that portion of G.C. 5625-10 (now R.C. 5705.10) which provided as follows:

All revenue derived . . . 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.

. . . .

All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision. . . .

My predecessor's reasoning appears to be that interest is a form of revenue derived from a source other than the general property tax, and must, therefore, under G.C. 5625-10 (now R.C. 5705.10) be paid into the general fund.

Under the rule announced in Op. No. 4897 interest earned on the investment of money in the bond retirement fund under R.C. 731.56 would be credited to the municipality's general fund. It is my opinion, however, that the allocation of interest earned from the investment of money in the bond retirement fund to the general fund is a constitutionally impermissible diversion of revenue derived from a general or special levy for debt charges. Moreover, as indicated in my earlier discussion of R.C. 5705.10, I do not concur in my predecessor's conclusion that interest earned on the investment of tax revenues is revenue derived from a source other than the general property tax. It is my opinion that the interest earned from the investment of tax revenues is revenue derived from the tax levy. I am, therefore, compelled to overrule that portion of my predecessor's opinion that suggests that interest earned on the investment of tax revenues in a fund other than the general fund is to be allocated to the general fund and to place in its stead the general rule that interest earned from the investment or deposit of tax revenues must be allocated to the fund to which the principal belongs.

In summary and in response to your second and third questions, it is, therefore, my opinion that a non-charter municipality is required by virtue of Ohio Const. art. XII, §5 and R.C. 5705.10 to allocate accrued interest to the bond retirement fund which earned it. A non-charter municipality may not allocate interest earned in the bond retirement fund to other purposes, such as capital improvements.

I shall now address your first question which asks whether a non-charter municipality that has established various accounts within its bond retirement fund may transfer interest or surpluses from one account to another.

You did not indicate in your request how you intended the term "surplus" to be interpreted. The word "surplus" may mean anything that is not currently needed for a particular purpose, although it may be needed at some time in the future, i.e. a "temporary surplus." 1975 Op. Att'y Gen. No. 75-087. "Surplus" is also generally understood to mean a fund or amount which is no longer needed for a particular purpose. See generally Smith v. Cotting, 231 Mass. 42, 120 N.E. 177 (1928). When referring to an amount in a fund that is no longer needed for a particular purpose, the General Assembly uses the term "unexpended balance." See R.C. 5705.14. Since you did not use the standard statutory term "unexpended balance," I shall assume that you intended to use the word "surplus" in accordance with the former definition.

In your request you ask me to assume that the city in question has established the following three accounts within the bond retirement fund: a voted bond retirement account, an unvoted bond retirement account, and a special assessment bond retirement account. Since you do not define these various accounts in your request, I shall assume that the designation of these accounts relates to the statutory methods for imposing general or special levies for debt charges.

R.C. Chapter 133 regulates the manner in which a municipality may submit to its electors the question of issuing bonds. R.C. 133.09 provides in pertinent part as follows:

The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution declaring the necessity of such bond issue, fixing the date the issue shall be submitted to the electors, and fixing the amount, purpose, and approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire said bonds. . . .

R.C. 133.10 then provides that "[t]he resolution provided for in section 133.09 of the Revised Code shall relate to only one purpose." The statement of purpose in the resolution of necessity limits the purpose to which the tax may be applied. Ohio Const. art. XII, §5. Accordingly, since money placed in a voted bond retirement account is money that is required by law to be used only for the purpose for which the levy was imposed, it is my opinion that Ohio Const. art. XII, §5 requires that any interest earned from the use of such money must also be applied to the purpose for which the levy was passed. Therefore, the interest may not be transferred to any other account within the bond retirement fund. Ohio Const. art. XII, §5 also prohibits the transfer of a temporary surplus in a voted bond retirement, since if such surplus is transferred a portion of the tax will be applied to a purpose other than that for which the levy was passed.

A similar result is evident with respect to the allocation of interest earned on money held in a special assessment bond retirement account. Municipal assessment collections are controlled by R.C. 727.30, which states as follows:

When any special assessment is levied under section 727.25 of the Revised Code, and bonds or notes of the municipal corporation are issued in anticipation of the collection thereof, the clerk of the legislative authority, on or before the second Monday in September of each year, shall certify such assessment to the county auditor. . . . The auditor shall place the assessment upon the tax list in accordance therewith. The county treasurer shall collect the assessment in the

same manner and at the time as other taxes are collected, and shall pay the amounts collected, together with interest and penalty, to the treasurer of the municipal corporation, to be applied by him to the payment of such bonds or notes and interest thereon, and for no other purpose. . . . (Emphasis added.)

The statute quite clearly limits the use of revenue derived from a special assessment levy; such revenue may be applied only to the purpose for which the levy was made. Since interest will be earned only if the money in a special assessment account is used or applied in some manner, i.e., by deposit or investment, any interest earned must under R.C. 727.30 be allocated to that account. The statute also prohibits the transfer of a temporary surplus in a special assessment bond retirement account, since a transfer would necessarily cause the surplus to be applied to a purpose other than that authorized by the voters.

The third type of account mentioned in your letter is an unvoted bond retirement account. R.C. 5705.03 requires a municipality to levy annually such taxes as are necessary to pay the interest and sinking fund on, and retire at maturity, the bonds, notes and certificates of indebtedness of the municipality. The municipality's authority to impose a general levy for debt charges under this section is not dependent upon a vote of the electors. Nor does the municipality have to enumerate with particularity the purposes for which the general levy for debt charges is made. Since the proceeds of the general levy for debt charges may be applied to any outstanding indebtedness of the municipality, any interest earned from the investment of such proceeds or any surplus of such proceeds may be similarly applied. Thus, interest or surplus in an unvoted bond retirement account may be transferred to another account within the bond retirement fund.

I recognize that my interpretation that Ohio Const. art. XII, §5 limits the use not only of the direct proceeds of a tax levy but also of any interest earned from the investment of such proceeds is a broad application of that constitutional mandate and one not previously recognized by my predecessors. The fact that a constitutional mandate has been previously overlooked is, however, no reason to read such mandate narrowly. See 1975 Op. Att'y Gen. No. 75-087. A constitutional mandate must always be given as broad and liberal a reading as is necessary to effectuate its purpose. County of Miami v. City of Dayton, 92 Ohio St. 215, 110 N.E. 726 (1915). By adopting Ohio Const. art. XII, §5 the people of this state exacted a pledge from those upon whom the taxing power is conferred. The pledge is that all money derived from a tax levy will be used only for the purpose for which the levy is made. Since money must be used in some manner in order to gain interest, I can find no basis for concluding that Ohio Const. art. XII, §5 is inapplicable to the interest earned on tax revenues.

Moreover, in responding to your questions I am not unimpressed by the fact that they focus upon the use of tax revenues raised for the purpose of discharging indebtedness. A taxing authority has a clear legal duty under the constitution and laws of this state to provide for its indebtedness in preference to general operating expenses. See State ex rel. National City Bank v. Bd. of Education, 52 Ohio St. 2d 81, 369 N.E. 2d 1200 (1977); Ohio Const. art. XII, §11; R.C. 5705.03; R.C. 5705.10.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that:

1. Ohio Const. art. XII, §5 requires that interest earned from the deposit or investment of money in the bond retirement fund of a non-charter municipality be allocated to the bond retirement fund; such interest may not be used for any purpose other than that for which the bond retirement fund exists. (1958 Op. Att'y Gen. No. 2190, p. 347 overruled in part; 1956 Op. Att'y Gen. No. 6183, p. 14 modified; 1942 Op. Att'y Gen. No. 4897, p. 168 overruled in part; 1935 Op. Att'y Gen. No. 4759, p. 1292 overruled in part.)

2. Interest earned on the proceeds of a special levy for debt charges imposed by a non-charter municipality in accordance with R.C. 133.09 or on the proceeds of a special assessment levied by a non-charter municipality under R.C. 727.25 may be applied only to the purpose for which such levy was made.
3. Interest earned on the proceeds of a general levy for debt charges imposed by a non-charter municipality under R.C. 5705.03 may be applied to extinguish any indebtedness of the municipality.
4. A non-charter municipality may not apply a temporary surplus of proceeds of a special levy for debt charges or a special assessment levy to a purpose other than that for which the levy was made. Surplus proceeds of a general levy for debt charges may be applied, however, to any indebtedness of the municipality.