

**OPINION NO. 82-058****Syllabus:**

In the event that money in the state treasury is attached pursuant to a federal court order and there is no specific appropriation that may be used for the purpose set forth in the court order, the seizure of such money should be reflected on the books and records maintained to show the condition of the state treasury but should not be posted to any specific appropriation item.

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**To: Gertrude Donahey, Treasurer of State, Columbus, Ohio; Thomas E. Ferguson, Auditor of State, Columbus, Ohio; Howard L. Collier, Director, Office of Budget and Management, Columbus, Ohio**  
**By: William J. Brown, Attorney General, August 6, 1982**

I have before me your request for my opinion as to your duties to account for state funds attached to satisfy a judgment lien against the State. The judgment lien in question was precipitated by the following events. On February 17, 1982, the United States District Court, Northern District of Ohio, Eastern Division, issued an order in the case of *Reed v. Rhodes*, Case No. C-73-1300, directing the state defendants to pay the Cleveland Board of Education the sum of \$4,234,209.56 forthwith. This sum was intended to reimburse the Cleveland Board of Education, in part, for costs it had incurred with respect to the purchase of additional school buses necessary to implement a court-ordered plan of racial desegregation. The federal district court had previously determined that the state defendants were jointly liable with the Cleveland Board of Education for the segregated conditions found to exist in the Cleveland school district. The determination of the state's liability had been previously affirmed by the Sixth Circuit Court of Appeals, and in March 1982 the United States Supreme Court denied a petition for a writ of certiorari. The state defendants failed to comply with the court's order forthwith, and, as a result, the Cleveland Board of Education obtained a judgment lien and sought execution of that lien in the Cuyahoga County Common Pleas Court. Following a hearing held on July 9, 1982, certain accounts maintained by the Treasurer of State in the National City Bank were attached to satisfy the judgment lien.

Your specific questions with respect to these events are as follows:

- 1) May the Office of Budget and Management, Auditor of State and Treasurer account for the withdrawal of funds pursuant to attachment by posting against a specific appropriation item absent action by the General Assembly or the Controlling Board?
- 2) If the answer to Question No. 1 is yes, how are the Office of Budget and Management, Auditor of State and Treasurer to determine the specific line item appropriation against which the attachment is to be posted?

It is apparent that your perceived dilemma arises from Ohio Const. art. II, §22, which provides that "[n]o money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years." In order to guarantee compliance with this constitutional mandate, the General Assembly has enacted certain statutory requirements that must be met before money is withdrawn from the state treasury. See, e.g., R.C. 131.17 (Director of Budget and Management must certify the availability of appropriated funds); R.C. 115.35 (duty of Auditor of State to examine vouchers); R.C. 131.33 (prohibition against incurring obligations in excess of current appropriation authority). In this instance, of course, there has not been compliance with these various requirements. Indeed, there could be no compliance in this instance since there is no appropriation item that could encompass this particular

use of state funds.<sup>1</sup> However, no state law requirement, constitutional or statutory, can impede compliance with a federal district court order, which takes precedence as a matter of law by virtue of the Supremacy Clause of the United States Constitution. U.S. Const. art. VI, cl. 2; State of Washington v. Washington State Commercial Passenger Fishing Vessel Assoc., 443 U.S. 658 (1979).

Accordingly, the withdrawal of state funds pursuant to the judgment lien should be recognized for what it is, a reduction in state revenue, and accounted for as such. The books or records maintained in your respective offices to show the condition of the state treasury should be debited with an appropriate entry and a notation of the reason for the reduction in revenue. There is, however, no authority for you to make an entry decreasing any specific appropriation item. Of course, if execution of the judgment lien causes, or exacerbates, a situation in which the available revenue receipts and balances for the current fiscal year will in all probability be less than the appropriations for the year, the Director of Budget and Management should so inform the Governor so that he may take appropriate action in accordance with R.C. 126.08.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that in the event that money in the state treasury is attached pursuant to a federal court order and there is no specific appropriation that may be used for the purpose set forth in the court order, the seizure of such money should be reflected on the books and records maintained to show the condition of the state treasury but should not be posted to any specific appropriation item.

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<sup>1</sup>I have noted that the current biennial appropriation act does contain a line item appropriation to the State Department of Education to be used for state reimbursement for purchases of school buses. See Section 25 (uncodified), Am. Sub. H.B. No. 694, 114th Gen. A. (eff. Nov. 15, 1981). It appears, however, that this particular appropriation was intended to satisfy the routine transportation needs of all Ohio school districts and was never intended to accommodate the extraordinary costs of court-ordered desegregation. See R.C. 3317.07; 2Ohio Admin. Code 3301-85-03. In any event, applications for school bus subsidy payments must be approved by the Controlling Board. 2 Ohio Admin. Code 3301-85-05(D).