

OPINION NO. 86-082**Syllabus:**

1. Pursuant to R.C. 5705.14(E) and (F), the taxing authority of a subdivision may, by resolution, transfer moneys in the subdivision's general fund to its sinking fund or bond retirement fund to meet a deficiency in either of the latter funds, to a fund authorized by R.C. 5705.12 or R.C. 5705.13, or to the proper fund of a district authority.
2. Pursuant to R.C. 5705.15, the taxing authority of a political subdivision may transfer moneys in the subdivision's general fund to another fund. In making such a transfer, however, the taxing authority must follow the procedure set forth in R.C. 5705.15, and obtain the approval of the Tax Commissioner and the court of common pleas of the county in which the funds are held.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 13, 1986

I have before me your request for my opinion concerning the transfer of moneys in the general fund of a political subdivision to other funds of the subdivision under the provisions of R.C. 5705.14, 5705.15, and 5705.16. Specifically, you ask whether R.C. 5705.14-.16 "require that any transfer of monies from the general fund of the subdivision to any other fund of the subdivision, other than as set out in Section 5705.14(E) and (F), Revised Code, be made only after compliance with the requirements of Section 5705.16, Revised Code."

R.C. 5705.14 provides for certain transfers of moneys from one fund of a subdivision to another fund. See generally R.C. 5705.09 (setting forth the funds which a subdivision must establish). With regard to the transfer of moneys from the general fund, R.C. 5705.14 reads:¹

No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

....
(E) Money may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds.

(F) Money appropriated for the general fund may be transferred from such fund to a fund authorized by section 5705.12 or 5705.13 of the Revised Code or to the proper fund of a district authority.

....
Except in the case of transfer pursuant to divisions (E) and (F) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two thirds of the members.

Transfers effected pursuant to R.C. 5705.14(E) and (F) may be made pursuant to resolution of the taxing authority passed with the affirmative vote of a majority of the members. See R.C. 5705.14; 1985 Op. Att'y Gen. No. 85-085 at 2-347, n. 4. No other authority's approval is required. Political subdivisions are limited by R.C. 5705.14(E) and (F), however, in transferring moneys from the general fund and may only transfer such moneys to the sinking fund or bond retirement fund to meet a deficiency in either of such funds, to a fund authorized by R.C. 5705.12 or R.C. 5705.13, or to a proper fund of a district authority.² See note 3, infra.

¹ Divisions (A)-(D) and (G) of R.C. 5705.14 permit subdivisions to make transfers from funds other than the general fund. Because you have specifically asked about transfers from the general fund, these divisions are not pertinent to a discussion of your question.

² R.C. 5705.13 provides that a municipal corporation may establish "a sanitary police pension fund, an urban redevelopment tax increment equivalent fund, or a cemetery fund," and permits a township to establish a cemetery fund.

R.C. 5705.12 provides:

In addition to the funds provided for by sections 5705.09 and 5705.13 of the Revised Code, the taxing authority of a subdivision may

In addition to that authority granted subdivisions by R.C. 5705.14 to make transfers, subdivisions are also empowered by R.C. 5705.15 to make certain other transfers. R.C. 5705.15 reads as follows:

In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose. (Emphasis added.)

While the authority granted subdivisions under R.C. 5705.15 is broader than that granted under R.C. 5705.14, it must be exercised in accordance with the requirements of R.C. 5705.16. See generally 1964 Op. Att'y Gen. No. 64-960; 1963 Op. Att'y Gen. No. 195, p. 286.

R.C. 5705.16 provides as follows:

A resolution of the taxing authority of any political subdivision shall be passed by a majority of all the members thereof, declaring the necessity for the transfer of funds authorized by section 5705.15 of the Revised Code, and such taxing authority shall prepare a petition addressed to the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer. A duplicate copy of said petition shall be forwarded to the tax commissioner for his examination and approval.

If the petition is disapproved by the commissioner, it shall be returned within ten days of its receipt to the officers who submitted it, with a memorandum of the commissioner's objections. This disapproval shall not prejudice a later application for approval. If the petition is approved by the commissioner, it shall be forwarded within ten days of its receipt to the clerk of the court of common pleas of the county to whose court of common pleas the petition is addressed, marked with the approval of the commissioner. If the commissioner approves the petition, he shall notify immediately the officers who

establish, with the approval of the auditor of state, such other funds as are desirable, and may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into such funds. The auditor of state shall consult with the tax commissioner before giving his approval.

submitted the petition, who then may file the petition in the court to which it is addressed.

The petitioner shall give notice of the filing, object and prayer of the petition, and of the time when it will be heard. The notice shall be given by one publication in two newspapers having a general circulation in the territory to be affected by such transfer of funds, preference being given to newspapers published within the territory. If there are no such newspapers, the notice shall be posted in ten conspicuous places within the territory for the period of four weeks.

The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court. Any person who objects to the prayer of such petition shall file his objections in such cause on or before the time fixed in the notice for hearing, and he shall be entitled to be heard.

If, upon hearing, the court finds that the notice has been given as required by this section, that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer.

A copy of the findings, orders, and judgments of the court shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed by the court. All costs of such proceedings shall be paid by the petitioners, except that if objections are filed the court may order such objectors to pay all or a portion of the costs.

Thus, a subdivision may transfer moneys in its general fund to any other fund under R.C. 5705.15. In order to do so, however, the subdivision must follow R.C. 5705.16 and obtain the approval of the Tax Commissioner and the court of common pleas.

I am unaware of any other statutory provision which, as a general matter, grants subdivisions the power to make transfers among its various funds. Thus, I conclude that if a subdivision transfers moneys from its general fund to another fund, in a manner other than as provided in R.C. 5705.14(E) and (F), the subdivision must comply with R.C. 5705.15 and R.C. 5705.16.

As was stated in 1939 Op. Att'y Gen. No. 791, vol. II, p. 996, at 1000:

It must be conceded that if the legislature meant to give the taxing authority of a political subdivision the power to transfer from the general fund any unencumbered balance therein to any other fund simply by passing a resolution to that effect, it certainly did not say so in Section 5625-13, paragraph (f) [R.C. 5705.14(F)]. It is a fundamental rule of statutory construction that the intention of the legislature must be gathered from what it says and not from what it intended to say. Had it been the intention to give taxing authorities free rein in transferring from its general fund without application to the Tax Commissioner and the courts as provided by Sections 5625-13a et seq., General Code [R.C. 5705.15, 5705.16], the authority extended by the said paragraph

(f) would not have been limited as it was. It appears to me that the very purpose of the enactment in part at least, was to preserve the general fund for possible necessary needs in the future.

Applying the above analysis, 1939 Op. No. 791 concluded that, "[a] board of township trustees is not authorized to transfer funds from the general fund of the township to the road and bridge fund by mere resolution of the Board," and that, "[a] transfer of funds from the general fund of a township to its road and bridge fund can be effected only by application to the Tax Commission of Ohio and the Common Pleas Court, in accordance with the provisions of Sections 5625-13a et seq. of the General Code of Ohio [R.C. 5705.15 and R.C. 5705.16]." (Syllabus, paragraphs one and two.)³ See also 1981 Op. Att'y Gen. No. 81-035 at 2-138 ("[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"); 1947 Op. Att'y Gen. No. 1464, p. 1; 1940 Op. Att'y Gen. No. 1949, vol. I, p. 235; 1934 Op. Att'y Gen. No. 3285, vol. II, p. 1438.

In conclusion, it is my opinion, and you are so advised, that:

1. Pursuant to R.C. 5705.14(E) and (F), the taxing authority of a subdivision may, by resolution, transfer moneys in the subdivision's general fund to its sinking fund or bond retirement fund to meet a deficiency in either of the latter funds, to a fund authorized by R.C. 5705.12 or R.C. 5705.13, or to the proper fund of a district authority.

³ 1939 Op. Att'y Gen. No. 791, vol. II, p. 996 also addressed the issue whether the language of what is now R.C. 5705.14(F), which provides that a subdivision may transfer moneys from its general fund to "the proper fund of a district authority," authorizes a board of township trustees to transfer moneys in the general fund to any fund of the township. 1939 Op. No. 791 states at 1001 that, "[t]he legislature must necessarily be regarded as having used the term 'district authority' in the last sentence of paragraph (f) of [R.C. 5705.14], with full knowledge of its meaning as fixed by [R.C. 5705.01]. Upon consideration of the definition of a 'district authority' as there stated...it seems clear that a board of township trustees could not have been meant."

R.C. 5705.01(I) defines "district authority" for purposes of R.C. Chapter 5705, and provides in part, that a "district authority" means "any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions." A "district authority" must be distinguished from a "subdivision," which is defined to include, inter alia, counties, townships, and municipal corporations. R.C. 5705.01(A). Thus, R.C. 5705.14(F) authorizes a subdivision to transfer moneys in its general fund only to the funds specified therein, and not to all other funds of the subdivision.

2. Pursuant to R.C. 5705.15, the taxing authority of a political subdivision may transfer moneys in the subdivision's general fund to another fund. In making such a transfer, however, the taxing authority must follow the procedure set forth in R.C. 5705.16, and obtain the approval of the Tax Commissioner and the court of common pleas of the county in which the funds are held.