

OPINION NO. 87-032**Syllabus:**

1. For the purpose of receiving the original amended official certificate of estimated resources, the fiscal officer of a subdivision or other taxing unit may certify to the county auditor amounts which, although not yet collected, are reasonably certain to be collected during the fiscal year.
2. For the purpose of receiving an amended official certificate of estimated resources subsequent to the issuance of the original amended official certificate of estimated resources, a fiscal officer, other than a treasurer of a board of education, may certify to the county budget

commission only those amounts which have been actually collected or received.

3. For the purpose of receiving an amended official certificate of estimated resources subsequent to the issuance of the original amended official certificate of estimated resources, the treasurer of a board of education may certify to the county budget commission amounts which, although not yet collected, are reasonably certain to be collected during the fiscal year.

To: Alan W. Foster, Adams County Prosecuting Attorney, West Union, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, May 29, 1987

I have before me your request for my opinion regarding the authority of a fiscal officer of a subdivision or other taxing unit of the county to certify funds for the purpose of receiving an amended official certificate of estimated resources. In your correspondence and in subsequent conversations with my staff you have stated that funds are reasonably certain to become available to Adams County, and several subdivisions within the county, from federal grants and other sources. However, because the funds have not yet been collected, the actual balances in the treasury of the county and subdivision do not exceed the amount in the county budget commission's official certificate. Given this situation, you ask whether after a county budget commission has issued an official certificate of estimated resources, a fiscal officer may certify to the county budget commission excess balances and receipts where moneys are anticipated but not yet received in order to receive an amended official certificate of anticipated resources.

R.C. Chapter 5705. mandates a uniform budget and appropriations process in order to assure that a governmental entity expends no more than it expects to receive in revenue. At a specified time before the beginning of the new fiscal year, the taxing authority of each subdivision or other taxing unit within the county must submit its tax budget for the following fiscal year to the county auditor. R.C. 5705.28(A); 1947 Op. Att'y Gen. No. 1915, p. 260. See also R.C. 5705.01 (defining several terms as used in R.C. Chapter 5705).¹ Pursuant to R.C. 5705.31, the county auditor must then present

¹ Pursuant to R.C. 5705.01:

As used in Chapter 5705. of the Revised Code:

(A) "Subdivision" means any county, municipal corporation, township, township police district, township fire district, joint fire district, joint ambulance district, joint recreation district, township waste disposal district, township road district, community college district, technical college district, detention home district, a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, a joint-county mental health service district, a drainage improvement district created under

section 6131.52 of the Revised Code, or school district, except the county school district.

...
(C) "Taxing authority" or "bond issuing authority" means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention home district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county community mental health service district, the district's mental health board; in the case of a joint ambulance district, the board of trustees of the district; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located.

(D) "Fiscal officer" in the case of a county, means the county auditor; in the case of a municipal corporation, the city auditor or village clerk, or such officer as, by virtue of the charter, has the duties and functions of the city auditor or village clerk, except that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, the custody and control of the funds of the university, the chief accounting officer of the university shall perform, with respect to the funds, the duties vested in the fiscal officer of the subdivision by sections 5705.41 and 5705.44 of the Revised Code; in the case of a school district, the treasurer of the board of education; in the case of a township, the township clerk; in the case of a joint fire district, the clerk of the board of fire district trustees; in the case of a joint ambulance district, the clerk of the board of trustees of the district; in the case of a joint recreation district, the person designated pursuant to section 755.15 of the Revised Code; in the case of a children's home district, tuberculosis hospital district, county school district, general health district, joint-county community mental health service district, metropolitan park

these annual tax budgets to the county budget commission.² Once certain adjustments have been made and the county budget commission has approved the proposed budget, the commission must issue, inter alia, an official certificate of estimated resources to the taxing authority. See R.C. 5705.35(A); Columbus v. Budget Commission, 144 Ohio St. 437, 59 N.E.2d 367 (1945). The taxing authority then uses this estimate to make appropriations for the upcoming fiscal year and to determine the amount of taxes to levy. Id. As you indicate in your letter of request, pursuant to R.C. 5705.36 the official certificate of estimated resources remains subject to amendment after its issuance.

In order to fully answer your question, I must discuss the authority of the fiscal officer within two separate time frames: first, when the fiscal officer certifies an amount for the purpose of receiving the first or "original" amended official certificate of estimated resources; and second, when the fiscal officer certifies an amount for the purpose of receiving all subsequent amended official certificates of estimated resources.

With respect to the authority of a fiscal officer to certify an amount for the purpose of receiving the original amended official certificate of estimated resources, R.C. 5705.36(A) provides:

(A) On or about the first day of each fiscal year, the fiscal officer of each subdivision and other taxing unit shall certify to the county auditor the total amount from all sources available for expenditures from each fund set up in the tax budget, with any balances that existed at the end of the preceding year. The budget commission, taking into consideration the balances and revenues to be derived from taxation and other sources, shall revise its

district, county library district, detention home district, district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, the county auditor of the county designated by law to act as the auditor of the district; in the case of a drainage improvement district, the auditor of the county in which the drainage improvement district is located; and in all other cases, the officer responsible for keeping the appropriation accounts and drawing warrants for the expenditures of the moneys of the district or taxing unit.

...

(H) "Taxing unit" means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

² The creation, membership, and duties of the county budget commission are provided for by R.C. 5705.27.

estimate of the amounts that will be credited to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certificate of estimated resources.

This portion of R.C. 5705.36(A) provides that at the beginning of each fiscal year, the fiscal officers of each subdivision or taxing unit within the county must certify to the county auditor any balances in funds carried forward to the new fiscal year. Each fiscal officer must also certify any other amounts which are "available for expenditures from each fund" during the following fiscal year.

It is a well-established rule of statutory construction that words and phrases are to be read in context and construed according to the rules of grammar and common usage. R.C. 1.42; Southwestern Portland Cement Co. v. Lindley, 67 Ohio St. 2d 417, 424 N.E.2d 304 (1981). Here, the statutory language not only requires the certification of currently available amounts in existence at the end of the preceding year, but also "other" amounts which will become "available for expenditure" during the following fiscal year. Thus, it is apparent that the General Assembly intended that currently uncollected amounts which will be available for expenditure during the fiscal year may be certified by a fiscal officer for the purpose of receiving the first amended official certificate of estimated resources. This conclusion recognizes that, as a practical matter, if such amounts were not certified it would probably be necessary to levy additional taxes in order to maintain the balance between appropriations and estimated resources as is required by R.C. 5705.39. In the likely event that the anticipated amounts become available, however, the tax levies would not be needed. Thus, the inclusion of amounts which are reasonably certain to become available during the fiscal year is a preferable alternative to the levy of an unnecessary tax.

This conclusion is further supported by the opinion of one of my predecessors in 1935 Op. Att'y Gen. No. 4043, vol. I, p. 285. That opinion addressed whether funds that will become available during a fiscal year from a contractual obligation may be certified by a fiscal officer under the closely analogous provisions of G.C. 5627-27. In concluding that such amounts may be properly certified, my predecessor wrote:

All the law requires as a basis for an estimate of available resources is that it is reasonably certain in the natural course of events that the resources as estimated will be available. This is true of taxes that are levied as well as other estimated resources. It is not necessary that the actual cash be on hand. (Emphasis added.)

1935 Op. No. 4043 at 292. I concur with my predecessor and therefore conclude that the fiscal officer of a subdivision or taxing unit may certify an amount which is reasonably certain to become available during the fiscal year for the purpose of receiving the first amended official certificate of estimated resources.

The provisions of R.C. 5705.36(A) as discussed above do not apply, however, after the issuance of the original amended official certificate of estimated resources including the balances carried forward from the preceding year. Instead, the relevant portion of R.C. 5705.36(A) provides:

If the subdivision collects revenue available for the purposes of such fiscal year from a new source that is not included in an official certificate, or if the actual balances and receipts in any fund exceed the certified estimate, then upon the certification by its fiscal officer of the amount of said excess balances and receipts, the commission shall certify an amended official certificate including the same. Upon a determination by the treasurer of a board of education that the revenue to be collected by a school district will be greater or less than the amount included in an official certificate, the treasurer shall certify the amount of the deficiency or excess to the commission, and the commission shall certify an amended official certificate reflecting the same.

As I recently discussed in 1987 Op. Att'y Gen. No. 87-009, the first sentence of the above quoted portion of R.C. 5705.36(A) is a general provision, concerning the authority of fiscal officers of county subdivisions and taxing units other than the treasurer of a board of education. In 1934, one of my predecessors considered an issue similar to that presented here. See 1934 Op. Att'y Gen. No. 2693, vol. I, p. 714. Although the decision in 1934 Op. No. 2693 was based upon the interpretation of G.C. 5625-27, the provisions of R.C. 5705.36 are substantively similar. In that opinion my predecessor concluded:

A county budget commission is not required to issue an amended certificate of estimated resources for a subdivision or taxing unit during a fiscal year and after the original amended certificate of estimated resources issued by it at the beginning of the fiscal year has been made, and may refuse to do so upon receipt by the auditor of a certificate of the fiscal officer of a subdivision or taxing unit based upon anticipated collections or revenue from new sources or anticipated excess balances and receipts in certain funds, regardless of how sure the fiscal officer or other officers of the taxing unit may be that such collections will be made or that such excess balances will exist. Such a certificate by a fiscal officer is unauthorized unless actual collections of revenue from new sources have ever been made or actual balances and receipts in certain of its funds exist. (Syllabus, paragraph 4).

The opinion also concluded that:

Such a certificate of the fiscal officer of a subdivision or taxing unit during a fiscal year, based upon anticipated collections or balances or receipts is not authorized and may be regarded as void. (Syllabus, paragraph 3).

In reaching these conclusions my predecessor determined that the plain language of the statute compelled the conclusion that once the original amended official certificate of estimated resources has been issued, the fiscal officer of a subdivision or taxing unit may not certify to the county budget commission the presence of balances and receipts which have not actually been collected. R.C. 5705.36 specifically provides that "[i]f the subdivision collects revenue ... from a new source ... or if the actual balances and receipts in any fund exceed the

certified estimate," then the fiscal officer of the subdivision or taxing unit may certify the presence of excess funds for purposes of procuring an amended official certificate from the county budget commission.³ (Emphasis added.) Through the use of the term "collects" and the phrase "actual balances and receipts," the General Assembly has indicated its intention that such moneys should actually be present in the funds of the subdivision or taxing unit, rather than merely anticipated, before a fiscal officer may certify the balances and receipts to the county budget commission.

There is, however, one exception to this general rule. In 1980, the General Assembly amended R.C. 5705.36(A), adding the fourth sentence which provides that "[u]pon a determination by the treasurer of a board of education that the revenue to be collected by a school district will be greater or less than the amount included in an official certificate," the treasurer may certify the excess or deficiency to the county budget commission.⁴ (Emphasis added.) See 138 Ohio Laws p. 1498 (Am. Sub. H.B. No. 44, eff. Jan. 16, 1980); 140 Ohio Laws p. 4668 (Sub. H.B. No. 747, eff. Jan. 1, 1986). As I noted in 1987 Op. No. 87-009, through this amendment the General Assembly intended to create an exception for school districts. Unlike the language employed in the provisions concerning other fiscal officers of the county, this portion of the statute clearly indicates, through the use of the phrase "to be collected," that the amounts which may be certified by the treasurer of a board of education need not be actually in the treasury at the time of certification. Therefore, it is apparent that pursuant R.C. 5705.36(A), after the original amended certificate of estimated resources has been issued, the treasurer of a board of education may certify an amount which is reasonably certain to be collected during the fiscal year.

In summary, I conclude that for the purpose of receiving an amended official certificate of estimated resources subsequent to the issuance of the original amended official certificate of estimated resources, a fiscal officer, other than a treasurer of a board of education, may certify only those amounts which have actually been collected. The treasurer of a board of

³ As discussed in 1987 Op. No. 87-009, pursuant to this portion of R.C. 5705.36(A) where the fiscal officer of a subdivision or other taxing unit, other than the treasurer of a board of education, makes a certification to the county budget commission, the commission is only authorized to issue an amended official certificate which recognizes "excess" funds. Therefore, a fiscal officer of a subdivision or other taxing unit, other than the treasurer of a board of education, may not certify a decrease in its estimate of available resources to the county budget commission for the purpose of receiving a subsequent amended official certificate of estimated resources.

⁴ Pursuant to the final sentence of R.C. 5705.36(A), the treasurer of a board of education may certify to the county budget commission, a "deficiency" or "excess" in available funds. Therefore, the treasurer of a board of education may certify an increase or decrease in his estimate of available resources for the purpose of receiving a subsequent amended official certificate of estimated resources. 1987 Op. No. 87-009.

education may, however, certify amounts which are reasonably certain to be collected during the fiscal year for the purpose of receiving a subsequent amended official certificate of estimated resources.

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

1. For the purpose of receiving the original amended official certificate of estimated resources, the fiscal officer of a subdivision or other taxing unit may certify to the county auditor amounts which, although not yet collected, are reasonably certain to be collected during the fiscal year.
2. For the purpose of receiving an amended official certificate of estimated resources subsequent to the issuance of the original amended official certificate of estimated resources, a fiscal officer, other than a treasurer of a board of education, may certify to the county budget commission only those amounts which have been actually collected or received.
3. For the purpose of receiving an amended official certificate of estimated resources subsequent to the issuance of the original amended official certificate of estimated resources, the treasurer of a board of education may certify to the county budget commission amounts which, although not yet collected, are reasonably certain to be collected during the fiscal year.