

**OPINION NO. 82-026****Syllabus:**

Pursuant to R.C. 135.351, interest earned on the deposit of money belonging to a county park district but included within the county treasury must be credited to the general fund of the county.

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**To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio**  
**By: William J. Brown, Attorney General, May 4, 1982**

I have before me your request for my opinion concerning the allocation of interest earned on money belonging to a county park district and deposited by the county treasurer. Your specific question is as follows:

Is a County entitled under Ohio Revised Code sections 135.21 and 135.351(A) and (B) to credit to the County Treasury the interest earned on money belonging to a County Park District where the Commissioners of said Park District have adopted a resolution pursuant to the second paragraph of Ohio Revised Code section 1545.22 so as to permit said Park District Commissioners to become the governing board in respect to determining the depository of Park District funds?

Provisions concerning the apportionment of interest earned on a public deposit were recently altered by Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). R.C. 135.21 which deals generally with the apportionment of interest among funds was amended to provide:

All interest earned on money included within a public deposit and belonging to undivided tax funds shall, except as otherwise expressly 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 moneys 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, except as provided in section 135.351 of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong.

All other interest earned shall, except as provided in section 135.351 of the Revised Code, 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. (Emphasis added.)

The county treasurer of the county in which a park district is located is the custodian of the funds of the board of park commissioners. R.C. 1545.22.

The emphasized language of R.C. 135.21, which generally governs the allocation of interest earned from the deposit of custodial funds, applies only to "moneys deposited by a treasurer." R.C. 135.01(M) provides that: "[e]xcept as otherwise provided in section 135.181 of the Revised Code, as used in sections 135.01 to 135.21 of the Revised Code. . .[t]reasurer" means, in the case of the state, the treasurer of state and in the case of any subdivision, the treasurer or officer exercising the functions of a treasurer, of such subdivision."<sup>1</sup> "Subdivision" as defined by R.C. 135.01(L) includes a number of different entities, but specifically excepts a county. Therefore, according to the definitions set forth in R.C. 135.01 the treasurer of a county is not a treasurer for purposes of R.C. 135.21. Thus, the provisions of R.C. 135.21 do not control the disposition of interest earned on the deposit of custodial funds by a county treasurer.

R.C. 135.351, enacted by Am. Sub. H.B. 230, concerns, specifically, the disposition of moneys held by a county and states in part: "All interest earned on money included within the county treasury shall be credited to the general fund of the county." R.C. 135.351(A). The only exception to the interest provision in R.C. 135.351(A) is in subsection (C) with regard to interest earned on moneys which are collected by a county on behalf of another political subdivision, taxing district, or special district and which are required under subsection (B) to be distributed to such subdivision or district rather than deposited or invested by the county. Since, as I stated above, R.C. 1545.22 makes the county treasurer the custodian of the park district's funds, such funds are deposited and invested by the county and need not be distributed pursuant to R.C. 135.351(B). Thus, provided that the park district funds are considered to be "within the county treasury," interest derived from their deposit must be credited to the county's general fund.

It is not clear from R.C. 135.351 whether the term "county treasury" includes all moneys held by a county treasurer or only those which are available for use by the county itself.<sup>2</sup> R.C. 1545.22, however, specifically provides that funds of the board of park commissioners are in the county treasury. In that regard it states: "[N]o contract of the board involving the expenditure of money shall become effective until the auditor certifies that there are funds of the board in the county treasury and otherwise unappropriated sufficient to provide therefor" (emphasis added).

Additionally, when R.C. 135.351 is read together with the portion of R.C. 135.21 emphasized above it becomes clear that R.C. 135.351 was intended to apply to

<sup>1</sup>I note that R.C. 135.01 states that the definitions contained therein should be used "except as otherwise provided in R.C. 135.181." R.C. 135.181, however, defines "subdivision" for purposes of that section only and, therefore, is not pertinent to the situation at hand.

<sup>2</sup>I note that the language of R.C. 135.31(E) which defines "public moneys" as "all moneys in the treasury of a county or moneys coming lawfully into the possession or custody of the treasurer" suggests that not all moneys held by a county treasurer are in the county treasury. R.C. 321.05, however, states that, "[e]xcept as otherwise provided by law, all public moneys and property in [the treasurer's] possession shall at all times be kept in the county treasury". Therefore, any money or property held by a treasurer is held in the county treasury unless expressly excluded by statute.

funds which are held by the county treasurer in a custodial capacity. See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (statutes relating to the same subject should be construed together). As I stated above, R.C. 135.21, by its very terms, does not apply to interest earned on the deposit of custodial funds by a county treasurer. That section, however, specifically refers to R.C. 135.351 stating that "Interest earned [on custodial funds] . . . shall, except as provided in section 135.351 of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong." Since R.C. 135.21 does not apply to the disposition of interest earned on custodial funds deposited by a county treasurer, the emphasized exception is not necessary to achieve that result. In enacting a statute, however, it is presumed that, "[t]he entire statute is intended to be effective." R.C. 1.47(B). In order to give effect to the above emphasized language of R.C. 135.21, I must assume that the exception was intended to clarify the fact that the disposition of interest earned on custodial funds held by a county treasurer is controlled by R.C. 135.351.

You have implied in your question that the resolution of your concerns might be affected by the fact that the board of park commissioners has adopted a resolution pursuant to R.C. 1545.22 making it the governing board with respect to the deposit of park funds. Pursuant to R.C. Chapter 135 the powers of a governing board are limited to estimating and awarding inactive deposits (R.C. 135.05; 135.07), investing or depositing interim funds (R.C. 135.14), and transferring deposits from one classification to another (R.C. 135.15). R.C. Chapter 135 does not empower a governing board to control the disposition of interest. Additionally, neither the provisions of R.C. 1545.22 nor those of any other statute of which I am aware specifically provide for a disposition of interest derived from the deposit of county park district funds that is different from that set forth in R.C. 135.21 and 135.351 where the park commissioners have elected to become the governing board with respect to such funds.

Therefore, it is my opinion, and you are hereby advised, that, pursuant to R.C. 135.351, interest earned on the deposit of money belonging to a county park district but included within the county treasury must be credited to the general fund of the county.