

OPINION NO. 86-001

Syllabus:

Pursuant to R.C. 5705.32(B), the entire amount of the county library and local government support fund must be paid to qualifying libraries within a county, to the exclusion of other entities, where libraries received one hundred percent of the classified taxes of the county that were distributed in 1982, 1983, and 1984.

To: John F. Holcomb, Butler County Prosecuting Attorney, Hamilton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, January 9, 1986

I have before me your request for my opinion concerning the construction of R.C. 133.30 and R.C. 5705.32, as amended in Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985). In your request letter you state:

1. O.R.C. §133.30 refers to a "township park district." In Butler County, we do not have a township park district; rather we have a county-wide Butler County Park District. Is the power conferred by §133.30 vested in the Board of Park Commissioners of The Butler County Park District?
2. O.R.C. §5705.32 states that the amount paid to all libraries shall never be a smaller percent of the fund than the average of the percent of the County's classified taxes that were distributed in 1982, 1983 and 1984. During 1982, 1983 and 1984, the libraries in Butler County received 100% of the classified taxes. Does this section, therefore, require that the libraries continue to receive 100% of the County Library and Local Government Support Fund to the exclusion of the park boards and municipal corporations within the County?

For ease of discussion, I shall first consider the construction of R.C. 5705.32. In order to respond to your second question, I must briefly examine various statutory provisions which govern distributions from the county library and local government support fund, as such provisions were amended in Am. Sub. H.B. 146. R.C. 5747.03 provides that all money collected under R.C. Chapter 5747 arising from the state income tax, see R.C. 5747.02, shall be deposited in the state general revenue fund, see R.C. 131.32(A), with certain exceptions. One of the exceptions states that, on or before the tenth day of each month, the Treasurer of State shall "[c]redit an amount equal to six and three-tenths per cent of the taxes collected under [R.C. Chapter 5747] during the preceding month to the library and local government support fund for distribution in accordance with section 5747.47 of the Revised Code." R.C. 5747.03(A)(2). See R.C. 131.32(G)(12) (including the library and local government support fund as one of the funds of the state). R.C. 5747.47 requires the Auditor of State to distribute monthly to each county a portion of the amount credited to the state library and local government support fund from taxes collected under R.C. Chapter 5747

during the preceding month and establishes a procedure for such distribution. See also R.C. 5747.46. R.C. 5705.32 provides for the distribution of moneys in a county library and local government support fund to qualifying public libraries within the county, boards of township park commissioners, municipal corporations, and the county, according to a statutory formula. See R.C. 5747.48.

Your second question concerns the amount which public libraries are entitled to receive from the county library and local government support fund according to the statutory distribution formula set forth in R.C. 5705.32. Specifically, you ask whether R.C. 5705.32 requires a county to distribute the entire amount of the county library and local government support fund to libraries, thereby excluding all other entities from the receipt of any portion of such fund, where libraries received one hundred percent of the classified taxes of the county that were distributed in 1982, 1983, and 1984.¹ I believe that R.C. 5705.32(B) is dispositive of this question.

R.C. 5705.32(B) provides in pertinent part as follows:

The [county budget] commission shall fix the amount of the county library and local government support fund to be distributed to each board of public library trustees that has qualified under section 5705.28 of the Revised Code for participation in the proceeds of such fund. The amount paid to all libraries in the county from such fund shall never be a smaller per cent of the fund than the average of the percentages of the county's classified taxes that were distributed to libraries in 1982, 1983, and 1984, as determined by the county auditor. The commission shall base the amount for distribution on the needs of such library for the construction of new library buildings, parts of buildings, improvements, operation, maintenance, or other expenses. In determining the needs of each library board of trustees, and in calculating the amount to be distributed to any library board of trustees on the basis of its needs, the commission shall make no reduction in its allocation from the fund on account of additional revenues realized by a library from increased taxes or service charges voted by its electorate, from revenues received through federal or state grants, projects, or programs, or from grants from private sources. (Emphasis added.)

Under R.C. 5705.32(B), the county budget commission, see R.C. 5705.27, must fix the amount of the county library and local government support fund to be distributed to each qualifying board of public library trustees.² R.C. 5705.32 clearly provides that the amount paid to public libraries within the

¹ In 1983-1984 Ohio Laws, Part II, 3175 (Am. Sub. H.B. 291, eff. July 1, 1983), the General Assembly amended R.C. 5707.04 to repeal county intangible property taxes, also known as classified property taxes, for years subsequent to the 1985 return year.

² In order to qualify for funds from the county library and local government support fund, the board of trustees of a public library must "adopt appropriate rules extending the benefits of the library service of such library to all

county from the county library and local government support fund shall never be a smaller percentage of the fund than the average of the percentages of the county's classified taxes that were distributed to libraries in 1982, 1983, and 1984. You pose a situation in which libraries received one hundred percent of the classified taxes of the county that were distributed in 1982, 1983, and 1984. On the basis of simple calculation, that amounts to an average of one hundred percent of such taxes distributed in those three years. Where an average of one hundred percent of the county's classified taxes was distributed to libraries in 1982, 1983, and 1984, then under the plain terms of R.C. 5705.32(B), libraries must be paid no less than the entire amount, or one hundred percent, of the county library and local government support fund. It necessarily follows that, where libraries must be paid no less than one hundred percent of the county library and local government fund pursuant to R.C. 5705.32(B), distribution must be made to libraries to the exclusion of other entities.

In support of my conclusion, I cite R.C. 5705.32(C), which provides in pertinent part that, "after fixing the amount to be distributed to libraries, the [county budget] commission shall fix the amount, if any, of the county library and local government support fund to be distributed to each board of township park commissioners, the county, and each municipal corporation" (emphasis added), according to a statutory formula. The language contained in R.C. 5705.32(C) manifests the clear intention of the General Assembly that the county budget commission shall first fix the amount of the county library and local government support fund to be distributed to public libraries, see R.C. 5705.32(B), and only then, if any amount remains, shall fix the amount to be distributed to each board of township park commissioners, the county, and each municipal corporation. Clearly, if no amount remains after the amount for libraries has been fixed, no funds may be distributed to the county, boards of township park commissioners, or municipal corporations.

Your first question concerns R.C. 133.30, which authorizes the taxing authority of any subdivision to borrow money and issue notes in anticipation of the collection of current revenues for any fiscal year. R.C. 133.30 states, in part: "The power conferred by this section is vested in any board of library trustees or board of park commissioners of a township park district to which the budget commission has allotted a share of the county library and local government support fund...." It is clear from the analysis set forth above that, in Butler County, no portion of the county library and local government support fund will be available for any entity other than a qualifying library. Thus, no board of park commissioners within the county will be eligible to exercise any power under R.C. 133.30, and it is unnecessary for me to

the inhabitants of the county on equal terms, unless such library service is by law available to all such inhabitants, and shall certify a copy of such rules to the taxing authority with its estimate of contemplated revenue and expenditures." R.C. 5705.28. See R.C. 5705.32(F). R.C. 5705.28 also provides that, "[n]o library association, incorporated or unincorporated, is entitled to participate in the proceeds of the county library and local government support fund or other public funds unless such association was organized and operating prior to January 1, 1968."

address the question whether such power is vested in the board of park commissioners of a county-wide park district.

In conclusion, it is my opinion and you are so advised, that, pursuant to R.C. 5705.32(B), the entire amount of the county library and local government support fund must be paid to qualifying libraries within a county, to the exclusion of other entities, where libraries received one hundred percent of the classified taxes of the county that were distributed in 1982, 1983, and 1984.