

March 6, 2015

The Honorable Owen Beetham
Harrison County Prosecuting Attorney
111 West Warren Street
P.O. Box 248
Cadiz, Ohio 43907

SYLLABUS:

2015-007

1. A board of county commissioners shall expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for county purposes. A board of county commissioners may expend revenues from a lease entered pursuant to R.C. 307.11 for a township or municipal corporation public improvement within the county so long as the board of county commissioners concludes, in the reasonable exercise of its discretion, that the expenditure constitutes a county purpose.
2. A board of county commissioners may not establish a special fund in the county treasury for the purpose of disbursing revenues from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 to a township or municipal corporation for the construction of a township or municipal corporation public improvement unless a statute authorizes the disbursement of county moneys to a township or municipal corporation for that purpose.
3. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for a public improvement that is lawfully part of a county renewal project undertaken pursuant to R.C. 303.26-.56.
4. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, to fund a public improvement lawfully constructed pursuant to an agreement under R.C. 307.15 between a board of county commissioners and a board of township trustees or the legislative authority of a municipal corporation located within the county, provided that the board of county commissioners determines that the public improvement constitutes a county purpose. (1995 Op. Att’y Gen.

No. 95-004, syllabus, paragraph 2, followed; 1963 Op. Att’y Gen. No. 270, p. 344, syllabus, paragraph 2, overruled.)

5. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, for a municipal corporation public improvement within the county lawfully constructed pursuant to an agreement under R.C. 153.61, provided that the board of county commissioners determines that the public improvement constitutes a county purpose. (1986 Op. Att’y Gen. No. 86-084, syllabus, paragraph 3, overruled, in part, due to statutory change.)



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OPINION NO. 2015-007

The Honorable Owen Beetham
Harrison County Prosecuting Attorney
111 West Warren Street
P.O. Box 248
Cadiz, Ohio 43907

Dear Prosecutor Beetham:

Your predecessor requested an opinion whether a board of county commissioners may use revenues received from a lease upon county property for the extraction of petroleum and gas (an “oil and gas lease”)¹ to fund public improvements.² As a result of a telephone conversation in which your predecessor provided additional information, we have clarified the inquiry as follows. First, the inquiry asks whether a board of county commissioners may expend oil and gas lease revenues for township or municipal corporation³ public improvements within the county.⁴ Regarding that

¹ Your predecessor’s letter does not identify the statute under which the oil and gas lease was entered. R.C. 307.11 authorizes a board of county commissioners to enter into an oil and gas lease upon real property owned by a county. 1963 Op. Att’y Gen. No. 720, p. 657, at 661 (“[a] board of county commissioners has express authority under [R.C. 307.11] to execute petroleum leases upon county owned lands”). Therefore, we will address the questions raised in the opinion request with respect to an oil and gas lease executed pursuant to R.C. 307.11.

² For the purpose of this opinion, we adopt the definition of “public improvement” that was used in 1980 Op. Att’y Gen. No. 80-051, at 2-208 n.1: “‘public improvement’ has been defined to include buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works and all other structures constructed by the state or a political subdivision of the state.”

³ A municipal corporation is a city or a village, the classification of which is determined by the magnitude of the municipal corporation’s population. Ohio Const. art. XVIII, § 1; 2005 Op. Att’y Gen. No. 2005-030, at 2-312. When “municipal corporation” is used within this opinion, we are referring to both cities and villages.

⁴ It is unclear from your predecessor’s opinion request what is meant by a township or municipal corporation public improvement. For the purpose of this opinion, we understand the term to refer to a public improvement that is located within a township or municipal corporation and that is

question, your predecessor also inquired whether a board of county commissioners may establish a separate fund in the county treasury for the purpose of distributing oil and gas lease revenues to a township or a municipal corporation within the county to be used on public improvements as determined by the township or municipal corporation.

Your predecessor next asked whether a board of county commissioners may expend oil and gas lease revenues to fund a township or municipal corporation public improvement within the county pursuant to R.C. 303.26-.56, or a township or municipal corporation public improvement that is constructed in accordance with agreements entered under R.C. 307.15 or R.C. 153.61. The final question asked whether a board of county commissioners may expend oil and gas lease revenues for municipal corporation public improvements within the county when the electors of the municipal corporation approve a property tax levy for the purpose of repaying the county for the oil and gas lease revenues the county expended for the public improvement.

Board of County Commissioners' Authority to Expend Oil and Gas Lease Revenues on Township or Municipal Corporation Public Improvements

When considering the authority of a board of county commissioners, we begin with the well-recognized principle that “a board of county commissioners is a creature of statute that may exercise only those powers conferred upon it expressly by statute or as may be implied by necessity in order to facilitate the exercise of another express power.” 2009 Op. Att’y Gen. No. 2009-040, at 2-296; *see also State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917) (“[s]uch grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective”).⁵ Furthermore, “the authority of the county commissioners to act in financial transactions must be clear and distinctly granted; any doubt must be resolved against the power to make the expenditure.” 1979 Op. Att’y Gen. No. 79-027, at 2-91; *accord State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916) (“[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county”). Thus, to determine whether a board of county commissioners is authorized to expend oil and gas lease revenues for a township or municipal corporation public improvement within the county and, further, whether a board of county commissioners may establish a special fund in the county treasury for the purpose of distributing oil and gas lease revenues to a township or municipal corporation to be used at

(1) a public improvement that a township or a municipal corporation is authorized to construct; or (2) a public improvement that benefits a township or municipal corporation.

⁵ This opinion does not consider the powers of a board of county commissioners of a county that has adopted an alternative form of government under Ohio Const. art. X, § 1 or a charter under Ohio Const. art. X, §§ 3, 4.

the discretion of the township or municipal corporation, we must examine the statutes governing the establishment of funds within the county treasury and the expenditure of oil and gas lease revenues.

A. Funds Established in the County Treasury

R.C. 5705.09 enumerates eight funds that a subdivision is required to establish.⁶ Among those funds are: a “[g]eneral fund[.]” R.C. 5705.09(A); “[a] special fund for each special levy[.]” R.C. 5705.09(D); and “[a] special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose[.]” R.C. 5705.09(F). A subdivision’s general fund is composed of “[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law[.]” R.C. 5705.10(A). Special funds consist of revenues generated by special levies or from sources “other than the general property tax and which the law prescribes shall be used for a particular purpose[.]” R.C. 5705.10(C),(D).

R.C. 5705.121, R.C. 5705.13, and R.C. 5705.131 provide authority for a subdivision to establish additional special funds for particular purposes. R.C. 5705.12 also authorizes a subdivision’s taxing authority to “establish, with the approval of and in the manner prescribed by the auditor of state, such other funds as are desirable[.]” The taxing authority “may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into [a special fund established pursuant to R.C. 5705.12].” *Id.*

B. Appropriation and Expenditure of Moneys in County Funds

A county may not make an appropriation or expend moneys in the county treasury unless the requirements of R.C. Chapter 5705 have been met and a proper warrant drawn against an appropriate fund has been issued by the county auditor to the county treasurer. R.C. 5705.41(A)-(C); *see also* R.C. 319.16 (“[t]he county auditor shall issue warrants ... on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys”); 1998 Op. Att’y Gen. No. 98-004, at 2-24 (“[a] subdivision or taxing unit may not spend money unless the money has been appropriated as provided in R.C. Chapter 5705 and may spend money only by a proper warrant drawn against an appropriate fund”); *see generally* R.C. 5705.01(A) (as used in R.C. Chapter 5705, “[s]ubdivision” includes any county).

R.C. 307.55(A) provides “[n]o claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant ... of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of

⁶ Counties, municipal corporations, and townships are separate “subdivisions” for purposes of R.C. Chapter 5705. R.C. 5705.01(A).

the person or tribunal allowing the claim.” See R.C. 319.16 (“[t]he county auditor shall issue warrants ... on the county treasurer for all moneys payable from the county treasury.... The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of developmental disabilities, so authorized by law”).

Moneys may be expended from the various funds in the county treasury only for the purpose for which the funds are created and in accordance with any restrictions on the use of the moneys imposed by law. R.C. 5705.10(I); 2013 Op. Att’y Gen. No. 2013-035, at 2-354 to 2-355 (“[m]oneys in the county’s general fund may be used for any proper county purpose, unless the law requires them to be used for a specific purpose”); 2010 Op. Att’y Gen. No. 2010-017, at 2-107 (“the proper expenditure of special fund monies depends, in part, upon the special fund involved and the statutory or constitutional restrictions on the use of that fund” (footnote omitted)); 1997 Op. Att’y Gen. No. 97-001, at 2-3 n.4 (“in making appropriations ..., the county commissioners, as the county’s taxing authority, must take into account various restrictions upon the appropriation and expenditure of funds” (citations omitted)). A public agency may have implied authority to expend public funds when the expenditure “is reasonably related to the duties of the public agency.” 2003 Op. Att’y Gen. No. 2003-019, at 2-152 (quoting *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981)).

C. Deposit and Expenditure of Moneys Received from an Oil and Gas Lease

R.C. 307.11 authorizes a board of county commissioners to enter into a lease upon property owned by the county for the extraction of oil and gas. R.C. 307.11 provides, in pertinent part:

When the county would be benefited, the board of county commissioners may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other minerals upon lands owned by such county, to any person complying with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes. All other matters of contract shall be such as the board deems most advantageous to the county.

Lease payments made pursuant to oil and gas lease contracts or leases shall be paid to the county treasurer, and “[t]he fund created by such payments shall be held and used for county purposes.” R.C. 307.11.

In light of the language of R.C. 307.11, it is evident that revenues generated by an oil and gas lease on county property are “revenues derived from a source other than the general property tax,

which the law requires to be used for a particular purpose[.]” R.C. 5705.09(F).⁷ Accordingly, oil and gas lease revenues shall be deposited in a special fund created in the county treasury pursuant to R.C. 5705.09(F). Oil and gas lease revenues deposited in that special fund shall be expended for “county purposes.” R.C. 307.11. A board of county commissioners’ authority to expend oil and gas lease revenues is, therefore, limited to “county purposes.”

Broadly, a “county purpose” is a public purpose that comes within the scope of county government. *See State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 323-24, 98 N.E.2d 835 (1951) (“the funds of a municipality can be expended only for public purposes. The object to be achieved or promoted by the expenditure must be reasonably related to the operation of the municipal government”); *Hubbard v. Fitzsimmons*, 57 Ohio St. 436, 448, 49 N.E. 477 (1898) (tax imposed for the purpose of building a National Guard armory served a state purpose rather than a county purpose because the tax was “to be used for the accomplishment of duties which the constitution charges upon the general assembly and officers of the state”).

Courts have refrained from establishing a universally applicable definition of “public purpose.” 1982 Op. Att’y Gen. No. 82-006, at 2-17. Rather, the circumstances of each expenditure may be considered in determining whether the expenditure is appropriate. *Id.* The discretion to determine whether a public purpose is served by an expenditure lies first with the legislative or administrative body that is authorized to make the expenditure. *See State ex rel. McClure v. Hagerman*, 155 Ohio St. at 325; *Siebert v. Columbus & Franklin Cnty. Metro. Park Dist.*, No. 00AP-583, 2000 WL 1877585, at *2 (Franklin County Dec. 28, 2000); 2003 Op. Att’y Gen. No. 2003-029, at 2-248. The legislative or administrative body’s discretion in this regard is broad and will not be reversed by a court unless it is determined that the exercise of that discretion was “manifestly arbitrary and incorrect.” *State ex rel. McClure v. Hagerman*, 155 Ohio St. at 325 (quoting 37 Am. Jur., 734, 735, § 120); *accord Siebert v. Columbus & Franklin Cnty. Metro. Park Dist.*, No. 00AP-583, 2000 WL 1877585, at *2 (Franklin County Dec. 28, 2000); *see* 1981 Op. Att’y Gen. No. 81-093, at 2-357.

“Generally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the [political subdivision], the sovereign powers of which are used to promote such public purpose.” *State ex rel. McClure v. Hagerman*, 155 Ohio St. at 325 (quoting 37 Am. Jur., 734, 735, § 120); *accord In re Annexation of 118.7 Acres in Miami Twp. to City of Moraine v. Caton*, 52 Ohio St. 3d 124, 130, 556 N.E.2d 1140 (1990); *Greene v. Cuyahoga Cnty.*, 195 Ohio App. 3d 768, 2011-Ohio-5493, 961 N.E.2d 1171, at ¶84; 1982 Op. Att’y Gen. No. 82-006, at 2-17 (“[f]irst, the test is whether the expenditure is required for the general good of all the inhabitants”). “The determination of a

⁷ R.C. 307.11’s language that “[t]he fund created by such payments shall be held and used for county purposes” indicates that the General Assembly intends that these revenues be deposited in a special fund rather than in the general fund. (Emphasis added.)

public purpose is made with a view to the needs of the public, and may change as the conditions and practices of society change.” 2003 Op. Att’y Gen. No. 2003-019, at 2-150.

A public purpose is typically found when a statute authorizes a public body to make an expenditure of public moneys or to receive public moneys from another entity for a particular purpose. *See, e.g.*, 2003 Op. Att’y Gen. No. 2003-039, at 2-327 (“the General Assembly has, by the enactment of R.C. 5739.09(A)(1), determined that conventions and tourism are valid public purposes for which public moneys distributed to a convention and visitors’ bureau must be used”); 2003 Op. Att’y Gen. No. 2003-019, at 2-151 (“[w]hen the General Assembly enacts a law authorizing a board of education to spend money for a stated purpose, the General Assembly is expressing its determination that the stated purpose is a public purpose and that an expenditure authorized by statute is a proper expenditure of public money”); 1991 Op. Att’y Gen. No. 91-071, at 2-338 (“[t]he existence of these provisions make it clear that, under Ohio law, it is reasonable for the legislative authority of a municipal corporation to determine that a contribution of public moneys to a [community improvement corporation] constitutes a public purpose”); 1982 Op. Att’y Gen. No. 82-017, at 2-57 (“[i]mplicit in these [statutory] authorizations to appropriate public funds to those nonprofit organizations is a legislative determination that such groups render services which constitute a public purpose”).

Additionally, an expenditure that directly benefits only a portion of the county or the county and another political subdivision may nevertheless constitute a county purpose for which county moneys may be expended. *See State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 180, 126 N.E.2d 449 (1955) (“[i]t is well established that county improvements may be authorized, constructed and maintained by the county although they may directly benefit only a part of the taxpayers of the county”); 1988 Op. Att’y Gen. No. 88-018, at 2-72 (“[t]he statutory provisions ... do permit the use of tax proceeds for various purposes that may result in benefits to townships and municipalities within the county”); 1983 Op. Att’y Gen. No. 83-081, at 2-326 (“[c]ounty improvements may be constructed and maintained by the county even though they may be used by a municipality or may directly benefit only a part of a county”).

In summary, pursuant to R.C. 307.11, oil and gas lease revenues shall be deposited in a special fund in the county treasury and expended for county purposes. A county purpose is a public purpose that benefits the general welfare of the residents of the county and that is within the duties of county government. It is beyond the scope of an Attorney General opinion to determine whether a particular expenditure constitutes a county purpose; rather, that determination must first be made by the board of county commissioners in the reasonable exercise of the board’s discretion. *See* 1982 Op. Att’y Gen. No. 82-017, at 2-57 (“whether these specific organizations perform a public purpose is a matter committed to legislative discretion, and is not, therefore, the type of question upon which I can properly opine”). Accordingly, a board of county commissioners may expend revenues from an oil and gas lease entered pursuant to R.C. 307.11 for township or municipal corporation public improvements within the county, provided the board of county commissioners concludes, in the reasonable exercise of its discretion, that the expenditure constitutes a county purpose.

D. Establishing a Special Fund for the Purpose of Disbursing Oil and Gas Lease Revenues Directly to Townships or Municipal Corporations

We now turn to the question of whether a board of county commissioners may establish a special fund for the purpose of disbursing oil and gas lease revenues to a township or municipal corporation within the county to be used for public improvements as the township or municipal corporation chooses.⁸ Your predecessor explained that this question involves a plan similar to the “Local Government Revenue Sharing Fund” examined in 1988 Op. Att’y Gen. No. 88-018. In that opinion, the Attorney General was asked whether a board of county commissioners had the authority to establish a “Local Government Revenue Sharing Fund” into which proceeds from county sales and use taxes would be deposited for the purpose of distributing the proceeds directly to townships and municipal corporations within the county to be used as the townships and municipal corporations determined. 1988 Op. Att’y Gen. No. 88-018, at 2-69. After examining the statutes governing the deposit and expenditure of revenues generated from the sales and use taxes, the Attorney General concluded that a board of county commissioners did not have the authority to distribute the tax proceeds directly to townships and municipal corporations to be used as the townships and municipal corporations chose. *Id.* at 2-70 to 2-73. Although the statutes governing the sales and use taxes authorized the expenditure of the tax revenues on improvements that may have benefited a township or municipal corporation, absent statutory authority, the revenues could not be distributed directly to the townships and municipal corporations to be used as the townships and municipal corporations determined. *Id.* at 2-72 to 2-73.

In reaching that conclusion, the opinion recognized that the fiscal condition of townships and municipal corporations within a county may reasonably be of concern to the county, but noted that “[t]he General Assembly has not ... identified responsibility for the general financial needs of townships and municipalities as a county purpose.” *Id.* at 2-71 to 2-72 (footnote omitted). The opinion then recognized that “a special fund may be established under R.C. 5705.12 only for a purpose for which the moneys placed into the fund may properly be used.” 1988 Op. Att’y Gen. No. 88-018, at 2-73. Because no statute authorized a board of county commissioners to distribute revenues from the sales and use taxes to townships and municipal corporations for their own use, the opinion concluded that a special fund could not be established for that purpose. *Id.*

We reach a similar conclusion here. “[A] special fund may be established under R.C. 5705.12 only for a purpose for which the moneys placed into the fund may properly be used.” 1988 Op. Att’y Gen. No. 88-018, at 2-73. R.C. 307.11 requires oil and gas lease revenues to be expended for county purposes. Providing for “the general financial needs of townships and municipalities” is not a county purpose. 1988 Op. Att’y Gen. No. 88-018, at 2-71 to 2-72; *see* 1988 Op. Att’y Gen. No. 88-039, at 2-

⁸ In answering this question, we presume that oil and gas lease revenues will be deposited directly into a newly-created special fund, rather than transferred from an existing special fund to a newly-created special fund. Therefore, this opinion does not consider the transfer of county moneys among funds as authorized by R.C. 5705.14-.16.

191 n.3 (“the municipality may not simply donate funds to the county, but must achieve some public purpose by making the funds available. This public purpose must consist of some benefit to the municipality beyond that which it shares generally with the entire county”).

Furthermore, the authority to donate public moneys may be limited by statutory or constitutional restrictions upon the use of the moneys. 2007 Op. Att’y Gen. No. 2007-043, at 2-429 (“the donation of public money is limited by the fact that the use of certain funds is restricted by statute or constitution. Donations may be made only from funds that are available to be expended as donations in particular circumstances”).⁹ “There is no general authority for one political subdivision to donate money to another political subdivision.” 2007 Op. Att’y Gen. No. 2007-036, at 2-373; *see* 2002 Op. Att’y Gen. No. 2002-031, at 2-207 n.3 (“[p]ublic officers, in the expenditure of public funds, are the trustees of such funds and are not philanthropists” (quoting 1952 Op. Att’y Gen. No. 1713, p. 559, at 565)); *see also* 2011 Op. Att’y Gen. No. 2011-036, at 2-291 (“a county or township’s ability to donate funds to a private entity must be tied to a specific statutory grant of authority”). No statute specifically authorizes a board of county commissioners to disburse oil and gas lease revenues directly to a township or municipal corporation within the county to be used as the township or municipal corporation decides.

Pursuant to R.C. 307.11, a board of county commissioners may expend oil and gas lease revenues for a township or municipal corporation public improvement, provided the public improvement constitutes a county purpose. A township or municipal corporation public improvement may constitute a county purpose if a statute authorizes a board of county commissioners to contribute county moneys to the township or municipal corporation for the particular public improvement.¹⁰

⁹ While the proposed distribution is not characterized as a “donation” in your predecessor’s letter, a distribution of county funds to another political subdivision to be used as that political subdivision sees fit without any requirement of repayment is essentially a donation of public funds to that political subdivision. *See generally Merriam-Webster’s Collegiate Dictionary* 371 (11th ed. 2005) (defining “donation” as “**a** : the making of a gift ... **b** : a free contribution”).

¹⁰ The opinion request does not specify a particular public improvement that the county proposes to fund with oil and gas lease revenues. The Revised Code authorizes the expenditure of county moneys for a township or municipal corporation public improvement, as defined for the purpose of this opinion, in a variety of situations. *See, e.g.,* R.C. 153.61 (agreement between a county and a municipal corporation for a joint public improvement); R.C. 307.77 (“[t]he board of county commissioners of any county may give aid to [*inter alia*, a municipal corporation or political subdivision] by the appropriation of money or by the issuance of bonds and payment of proceeds ... for a public improvement” that is related to water management); R.C. 513.08 (a board of county commissioners and the legislative authority of a municipal corporation may agree that the board of county commissioners contribute to the cost of constructing, maintaining and operating a municipal hospital instead of constructing a county hospital); R.C. 5535.08(A) (a county and township may agree to “contribute to the repair and maintenance of the roads under the control of the other” and

Therefore, in response to the first question, a board of county commissioners shall expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for county purposes. A board of county commissioners has broad discretion to determine whether a particular expenditure serves a county purpose. A board of county commissioners may expend revenues from a lease entered pursuant to R.C. 307.11 for a township or municipal corporation public improvement within the county so long as the board of county commissioners concludes, in the reasonable exercise of its discretion, that the expenditure constitutes a county purpose. A board of county commissioners may not establish a special fund in the county treasury for the purpose of disbursing revenues from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 to a township or municipal corporation for the construction of a township or municipal corporation public improvement unless a statute authorizes the disbursement of county moneys to a township or municipal corporation for that purpose.

Board of County Commissioners' Authority to Expend Oil and Gas Lease Revenues for Public Improvements Made Pursuant to R.C. 303.26-.56

The second question asks whether a board of county commissioners may expend oil and gas lease revenues to fund a township or municipal corporation public improvement within the county pursuant to R.C. 303.26-.56, which address the renewal of slum or blighted areas in a county.¹¹ R.C. 303.28 authorizes a board of county commissioners to develop:

“[t]he state, county, or township, or any two or more of them, by agreement, may expend any funds available for road construction, improvement, or repair upon roads inside a village”); R.C. 5535.15(A) (“[t]he board of county commissioners ... may maintain, repair, construct, reconstruct, improve, or widen any section of a road under the control of the state or another political subdivision if[,]” in addition to other requirements, “[t]he county ... proposing the project certifies to the ... political subdivision ... that all funds necessary to complete the project are available either privately or from the county ... proposing the project”); R.C. 5535.15(D) (once a road project under R.C. 5535.15 is complete, and the project has been accepted by the political subdivision having control over the road, that political subdivision is responsible for repairing and maintaining the road. If there has been acceptance by the political subdivision, “the county ... may contribute to the cost of repair and maintenance of the road”).

A board of county commissioners that contemplates disbursing oil and gas lease revenues to a township or municipal corporation for a public improvement should consider whether there is statutory authority on the part of the board of county commissioners to make the expenditure for the particular public improvement and to disburse particular county moneys directly to the township or municipal corporation for that public improvement.

¹¹ For purposes of R.C. 303.26-.56, “slum” and “blighted area” are defined as:

a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and blight, to encourage needed county rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such of the aforesaid activities or other feasible county activities as may be suitably employed to achieve the objectives of such workable program.

To implement projects authorized by R.C. 303.26-.56, a board of county commissioners shall adopt “a resolution finding that one or more slum or blighted areas exist in the county; and the rehabilitation, conservation, redevelopment, or combination thereof, of such slum or blighted area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such county.” R.C. 303.29. A county renewal project shall not be approved “unless [the board of county commissioners] has, by resolution, determined [the county renewal area] to be a slum area or a blighted area or a combination thereof and designated such area as appropriate for a county renewal project.” R.C. 303.30.¹² A county’s planning commission shall prepare a general plan for the county before the board of county commissioners may approve a county renewal plan. *Id.*¹³ In addition, each county renewal plan shall be submitted to the county’s planning commission to ensure that the proposed county renewal plan is consistent with the county’s general plan. R.C. 303.31. To approve a proposed county renewal plan, the board of county commissioners must hold a public hearing, R.C. 303.32, and then conclude:

that a feasible method exists for the location of families who will be displaced from the county renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families; the county renewal plan conforms to the general plan of the county; and the county renewal plan will afford maximum opportunity, consistent with the sound needs of the county, for the rehabilitation or redevelopment of the county renewal area by private enterprise.

an area in which at least seventy per cent of the parcels are blighted parcels and those blighted parcels substantially impair or arrest the sound growth of the state or a political subdivision of the state, retard the provision of housing accommodations, constitute an economic or social liability, or are a menace to the public health, safety, morals, or welfare in their present condition and use.

R.C. 303.26(D), (E); R.C. 1.08(A); *see generally* R.C. 1.08(B) (defining “blighted parcel”).

¹² “‘County renewal project’ may include undertakings and activities of a county in a county renewal area for the elimination and for the prevention of the development or spread of slums and blight[.]” R.C. 303.26(F). A “[c]ounty renewal area” is defined as “a slum area or a blighted area or a combination thereof which the board of county commissioners designates as appropriate for a county renewal project.” R.C. 303.26(G).

¹³ *See* R.C. 303.26(H) (defining and setting forth requirements of a county renewal plan).

R.C. 303.33.

R.C. 303.37 sets forth the authority a board of county commissioners has to effectuate the purposes of R.C. 303.26-.56. Generally, a board of county commissioners has “all the powers ... necessary or convenient to carry out [R.C. 303.26-.56.]” R.C. 303.37. A board of county commissioners is authorized “[t]o undertake and carry out county renewal projects within the county but outside the corporate limits of cities and other incorporated municipalities[.]” R.C. 303.37(A); *see, e.g.*, R.C. 303.37(I) (authority “[t]o close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; and to plan or replan any part of a county area outside the corporate limits of cities and other incorporated municipalities”); R.C. 303.37(J) (authority “[t]o organize, coordinate, and direct the administration of the provisions of [R.C. 303.26-.56], as they apply to the area of the county outside the corporate limits of cities and other incorporated municipalities”).

A board of county commissioners also has authority “[t]o provide, arrange, or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with a county renewal project; [and] to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements[.]” R.C. 303.37(B). A board of county commissioners also may “acquire ... any real property, or personal property for its administrative purposes, together with any improvements thereon; ... hold, improve, clear, or prepare for redevelopment any such property; ... and ... enter into any contracts or agreements necessary to effectuate the purposes of [R.C. 303.26-.56.]” R.C. 303.37(C). Finally, to effectuate the purposes of R.C. 303.26-.56, a board of county commissioners may “appropriate such funds and make such expenditures as may be necessary[.]” R.C. 303.37(H).¹⁴

A county may receive assistance from any other public body in the administration and completion of a county renewal project. R.C. 303.53. A public body that has authority to act in the area in which a county renewal project is located may assist a county in a variety of ways, such that the public body may:

dedicate, sell, convey, or lease any of such public body’s interest in any property or grant easements, licenses, or other rights or privileges therein to a county; incur the entire expense of any public improvements made by such public body in exercising the powers granted in [R.C. 303.53]; do any and all things necessary to aid or cooperate in the planning or carrying out of a county renewal plan; lend, grant, or contribute funds to a county; enter into agreements ... with a board of county commissioners respecting action to be taken pursuant to any of the powers granted by

¹⁴ R.C. 303.45 states that a board of county commissioners “may” fund county renewal projects with the county’s general tax revenues or through the issuance of bonds and bond anticipation notes. As indicated by the use of the permissive word “may,” general tax revenues, bonds, and bond anticipation notes are some, but not the exclusive, funding sources for county renewal projects.

[R.C. 303.26-.56] ...; and cause administrative and other services to be furnished to the county.

R.C. 303.53. In addition, “any affected municipality or any affected county or other public entity may ... upon such terms, with or without consideration, as it may determine, perform any or all of the actions ... a public body is authorized [by R.C. 303.53] to perform, including the furnishing of financial or other assistance.” *Id.*

In its enactment of R.C. 303.26-.56, the General Assembly has indicated its determination that a county renewal project constitutes a county purpose. Likewise, public improvements completed in accordance with that county renewal project constitute county purposes. Therefore, a board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for a public improvement that is lawfully part of a county renewal project undertaken pursuant to R.C. 303.26-.56.¹⁵

Board of County Commissioners’ Authority to Expend Oil and Gas Lease Revenues for Public Improvements Made Pursuant to Agreements under R.C. 307.15 or R.C. 153.61

We now consider the third question, whether oil and gas lease revenues may fund a township or municipal corporation public improvement within the county that is undertaken in accordance with agreements entered under R.C. 307.15 or R.C. 153.61. We will examine each statute individually.

R.C. 307.14-.19 govern agreements between a board of county commissioners and various political subdivisions or taxing districts for the performance of any service or the exercise of any power in the other entity’s place.¹⁶ Your predecessor’s question asks about the authority of a county to use county revenues to fund a township or municipal corporation public improvement. Consequently, we will focus on the parts of R.C. 307.14-.19 that authorize a board of county commissioners to exercise powers or perform services on behalf of a board of township trustees or the legislative authority of a municipal corporation.

In pertinent part, R.C. 307.15(A)(1) provides:

¹⁵ It is important to note that a board of county commissioners’ authority to construct public improvements under R.C. 303.26-.56 is limited to the unincorporated areas of the county. *See* R.C. 303.37.

¹⁶ For purposes of R.C. 307.14-.19, a “contracting subdivision” is “any governmental subdivision or taxing district of the state which, by its legislative authority, enters into an agreement with a board of county commissioners under the authority of [R.C. 307.14-.19].” R.C. 307.14(B).

Subject to [R.C. 307.15(C)],¹⁷ the board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation [or] township ... and such legislative authorities may enter into agreements with the board of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render[.] (Footnote added.)

Performing services or exercising powers under an agreement entered pursuant to R.C. 307.15(A) includes the authority to exercise those powers related to making public improvements. *See* 1988 Op. Att’y Gen. No. 88-039, at 2-194 (“[s]ince a municipality and a county have authority to repair, maintain, and improve a bridge on a county road located within the municipality, it would appear that R.C. 307.15 provides authority for both to enter into a joint agreement to undertake such a project”); 1986 Op. Att’y Gen. No. 86-012 (syllabus, paragraph 2) (“[p]ursuant to R.C. 307.15, a board of trustees of a township free public library may enter into an agreement with the board of county commissioners for the purpose of allowing the commissioners to exercise the contracting powers of the trustees in bidding on a capital improvement to the library”).

A board of county commissioners that agrees pursuant to R.C. 307.15(A)(1) to exercise a power or perform a service on behalf of a township or a municipal corporation may only exercise the power and perform the services to the extent that the board of township trustees or the legislative authority of the municipal corporation is authorized to exercise the power or perform the service. R.C. 307.15(A)(2). “R.C. 307.15 ... addresses those situations in which one political subdivision assumes, pursuant to contract, responsibility for undertaking and performing a particular function of government that is the duty of, and would otherwise have been undertaken by, the other contracting subdivision.” 1986 Op. Att’y Gen. No. 86-084, at 2-478. The authority conferred by R.C. 307.15(A) to enter into agreements to perform services or exercise powers on behalf of another subdivision or taxing district does not expand the authority that the contracting subdivision otherwise has. 1986 Op. Att’y Gen. No. 86-084, at 2-478 (“R.C. 307.15 ... does not enlarge the authority otherwise conferred upon cities and counties. . . . R.C. 307.15 would merely permit one subdivision to assume the duties and powers of another subdivision conferred by one of the aforementioned statutory provisions”).

An agreement under R.C. 307.15(A) “shall provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made by the contracting subdivision into the county treasury, or by the county to the municipal corporation, in consideration of the performance of the agreement.” R.C. 307.16. Payment as consideration for the performance of an R.C. 307.15(A) agreement may “be made by the retention in the treasury of the amounts due from taxes collected for the contracting subdivision[.]” R.C. 307.16. An R.C. 307.15(A) agreement may also provide that

¹⁷ R.C. 307.15(C) prohibits entering an agreement under which a board of county commissioners exercises investment authority or powers of the contracting subdivision.

“any property, real or personal, used or useful, in the performance of functions or the rendering of services under such agreement” may be transferred to the county that is to perform the functions under the agreement. R.C. 307.18.

The Ohio Supreme Court and the Attorney General have addressed whether under R.C. 307.16, and its predecessor, G.C. 2450-3, county moneys may be expended by a board of county commissioners when performing services under an R.C. 307.15(A) agreement or whether a contracting subdivision is required to provide payment to the board for its performance under that agreement. *State ex rel. Ranz v. City of Youngstown*, 140 Ohio St. 477, 45 N.E.2d 767 (1942); 1995 Op. Att’y Gen. No. 95-004; 1963 Op. Att’y Gen. No. 270, p. 344. In *State ex rel. Ranz v. City of Youngstown*, the Ohio Supreme Court concluded that G.C. 2450-3 did not require payment to the board of county commissioners by the contracting subdivision; the statute merely provided a procedure to follow in the event that payment by the contracting subdivision was provided for in the agreement. *State ex rel. Ranz v. City of Youngstown*, 140 Ohio St. 477 (syllabus, paragraph 9). After considering the language of the statute, the court concluded that “there is no provision even here for requiring any payment to be made.” *Id.* at 489.

Twenty-one years later, 1963 Op. Att’y Gen. No. 270, p. 344, at 346-47 examined the language of *Ranz* and noted that the court’s holding appeared to indicate that “payment by the contracting subdivision is not a necessary part of all agreements under [R.C. 307.15-.16].” However, 1963 Op. Att’y Gen. No. 270, p. 344, at 347 reasoned that *Ranz* “does not stand for the proposition that agreements pursuant to [R.C. 307.15-.16] convey general authority to expend county funds, but that if the board of county commissioners does [not]¹⁸ have independent authority to make the expenditure, funds sufficient to finance the undertaking in question would have to be provided by the contracting subdivisions in the agreement.” 1963 Op. Att’y Gen. No. 270, p. 344 (syllabus, paragraph 2) thus advised:

¹⁸ The word “not” appears to have been erroneously omitted in 1963 Op. Att’y Gen. No. 270, p. 344, at 347. In discussing *State ex rel. Ranz v. City of Youngstown*, 140 Ohio St. 477, 45 N.E.2d 767 (1942) (syllabus, paragraph 9), the 1963 opinion notes that under the facts of *Ranz*, the county had authority to perform the agreed upon services “even in the absence of the agreement.” 1963 Op. Att’y Gen. No. 270, p. 344, at 347. The opinion concludes that when the board of county commissioners has authority to perform the services in the R.C. 307.15 agreement solely by virtue of the agreement, the board may use county moneys in its performance of the service only if the moneys are made available to the county as a result of payments made by the contracting subdivision pursuant to the terms of the agreement. 1963 Op. Att’y Gen. No. 270, p. 344, at 347-48. In other words, if the board of county commissioners does not otherwise have authority to make the expenditure from county funds, the contracting subdivision must provide payment in consideration of the agreement. For this conclusion to follow logically from the analysis, the writer must have intended to state that *Ranz* stands for the proposition that, “if the board of county commissioners does [not] have independent authority to make the expenditure, funds sufficient to finance the undertaking in question would have to be provided by the contracting subdivisions in the agreement.” *Id.* at 347.

[A] board of county commissioners is without authority to expend county funds for the establishment and operation of such base radio station except to the extent that the funds are available as the result of payments made pursuant to the agreements with the contracting political subdivisions or as a result of contracts made under powers granted to the board in such arrangements.

The ruling in *Ranz* and the advice in the 1963 opinion were considered in 1995 Op. Att’y Gen. No. 95-004, at 2-19 to 2-20. 1995 Op. Att’y Gen. No. 95-004 endorsed a narrow reading of the *Ranz* court’s interpretation of R.C. 307.16, advising that a township or municipal corporation that has entered into an agreement pursuant to R.C. 307.15 cannot be required to pay a county for costs the county incurs in performance of the agreement, but that reimbursement of the costs incurred by a county may be negotiated by the parties as part of the agreement’s terms. 1995 Op. Att’y Gen. No. 95-004, at 2-21; accord 1986 Op. Att’y Gen. No. 86-105, at 2-578 n.2 (citing *State ex rel. Ranz v. City of Youngstown*, 140 Ohio St. 477 (syllabus, paragraph 9)). We adopt anew the reading of R.C. 307.16 and the holding in *Ranz* that were endorsed in 1995 Op. Att’y Gen. No. 95-004. In doing so we also overrule syllabus paragraph 2 of 1963 Op. Att’y Gen. No. 270, p. 344. A board of county commissioners entering an agreement under R.C. 307.15(A) may agree to have the contracting subdivision provide payment for the county’s performance of the agreement, but cannot require the contracting subdivision to provide payment. County moneys may be expended in the performance of an agreement under R.C. 307.15(A) so long as the moneys have not been otherwise restricted to another use that is inconsistent with the performance of the agreement. See R.C. 5705.10(I); 2013 Op. Att’y Gen. No. 2013-035, at 2-354 to 2-355; 2010 Op. Att’y Gen. No. 2010-017, at 2-107; 1997 Op. Att’y Gen. No. 97-001, at 2-3 n.4.

Thus, R.C. 307.15(A) authorizes a board of county commissioners to agree to exercise a power or perform a service that a board of township trustees or the legislative authority of a municipal corporation is authorized to exercise or perform. To the extent that a board of township trustees or the legislative authority of a municipal corporation has the authority to construct a public improvement within a county, a board of county commissioners may agree pursuant to R.C. 307.15(A) to construct the public improvement for the township or municipal corporation. In defining the terms of the agreement, the parties should negotiate how the costs of the public improvements shall be allocated. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, to fund a public improvement lawfully constructed pursuant to an agreement under R.C. 307.15 between a board of county commissioners and a board of township trustees or the legislative authority of a municipal corporation located within the county, provided that the board of county commissioners determines that the public improvement constitutes a county purpose.

We now turn to R.C. 153.61, which authorizes a county and a municipal corporation to agree to undertake a joint public improvement. R.C. 153.61 provides, in pertinent part:

Any county or counties¹⁹ and any municipal corporation or municipal corporations may enter into an agreement providing for the *joint* construction, acquisition, or improvement of any public work, public building, or other permanent improvement benefiting the parties thereto and providing for the *joint* management, occupancy, maintenance, and repair thereof. (Footnote and emphasis added.)

A public improvement undertaken pursuant to R.C. 153.61 shall be a joint project that benefits each party to the agreement. *Beal v. City of Elyria*, 26 Ohio Misc. 282, 284, 271 N.E.2d 571 (C.P. Lorain County 1971) (“R.C. 153.61 empowers counties and cities to enter into agreements providing for joint construction benefitting the two parties”).

A joint public improvement under R.C. 153.61 “may be used for any lawful purpose by each party so long as the use thereof is an authorized proper use for that party.” R.C. 153.61. A joint public improvement agreement entered between a board of county commissioners and the legislative authority of a municipal corporation must include an allocation “among the parties of the cost of jointly constructing, acquiring, or improving [the] work, building, or improvement and of jointly managing, maintaining, and repairing it.” R.C. 153.61(D); *see also* R.C. 153.61(A)-(C) (additional provisions that must be included in the R.C. 153.61 agreement).

Insofar as R.C. 153.61 authorizes a joint public improvement between a county and a municipal corporation, and the joint public improvement benefits the county, a municipal corporation public improvement made in accordance with an agreement under R.C. 153.61 reasonably may constitute a county purpose. Accordingly, revenues received from an oil and gas lease on county property may be used to fund the public improvement in accordance with the cost allocation negotiated by the parties and reflected in the R.C. 153.61 agreement. Therefore, a board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, for a municipal corporation public improvement within the county lawfully constructed pursuant to an agreement under R.C. 153.61, provided that the board of county commissioners determines that the public improvement constitutes a county purpose.

¹⁹ 1986 Op. Att’y Gen. No. 86-084, at 2-478 to 2-479 concluded based on the version of R.C. 153.61 then in effect that a city could not enter into an agreement under R.C. 153.61 with more than one county. Since the issuance of 1986 Op. Att’y Gen. No. 86-084, R.C. 153.61 was amended to add “or counties” to the opening sentence of the statute. 1987-1988 Ohio Laws, Part II, 3809, 3811 (Am. Sub. H.B. 455, eff. July 20, 1987). Therefore, 1986 Op. Att’y Gen. No. 86-084, syllabus, paragraph 3, is overruled, in part, due to statutory change.

Board of County Commissioners' Authority to Expend Oil and Gas Lease Revenues for Public Improvements when the County's Expenditure is Repaid by a Municipal Corporation

The final question is whether a board of county commissioners may expend the county's oil and gas lease revenues on a municipal corporation public improvement within the county when the electors of the municipal corporation approve a property tax levy for the purpose of repaying the county for constructing the public improvement. Essentially, this question asks whether a board of county commissioners may loan oil and gas lease revenues to a municipal corporation for the purpose of making a municipal corporation public improvement.²⁰

Unless a specific statute authorizes a public entity to loan public moneys, the public entity is without authority to do so. 1979 Op. Att'y Gen. No. 79-048, at 2-152; *see State v. Ex'r of Buttes*, 3 Ohio St. 309, 317-18 (1854); 2010 Op. Att'y Gen. No. 2010-024, at 2-175 to 2-176 (when the General Assembly intends to authorize a public body to make a loan, it provides that authority explicitly). A county or county agency is authorized to loan moneys in certain circumstances. *See, e.g.*, R.C. 133.52 (“[a] county ... may issue or incur public obligations ... to provide, or assist in providing, grants, loans, loan guarantees, or contributions for conservation and revitalization purposes pursuant to [Ohio Const. art. VIII, §§ 2o, 2q]”); R.C. 165.02(D) (under the authority of Ohio Const. art. VIII, § 13, a county, as an issuer, may “[m]ake loans for the acquisition, construction, reconstruction, enlargement, improvement, furnishing, or equipping of projects ... upon such terms as the issuing authority may determine or authorize”); R.C. 307.07(B)(5) (county director of development is authorized to “[w]ith the approval of the board [of county commissioners], make loans or grants and provide other forms of financial assistance for the purpose of economic development,²¹ including financial assistance for permanent public improvements” (footnote added)); R.C. 3735.30 (board of county commissioners

²⁰ The Attorney General advises county prosecuting attorneys concerning matters related to the duties of the prosecuting attorney, which do not include advising municipal corporations. 1991 Op. Att'y Gen. No. 91-023, at 2-121 (“the authority of the Attorney General to advise prosecuting attorneys extends only to matters ‘respecting their duties.’ R.C. 109.14”); *see* R.C. 309.09. Consequently, this opinion does not address the authority of a municipal corporation to levy a property tax on property within the municipal corporation for the purpose of repaying the county for a loan of county moneys. We do note, however, that “the contemplated uses of the proceeds of a levy can be no broader than the powers of the taxing authority of the subdivision levying the tax.” 1994 Op. Att'y Gen. No. 94-053, at 2-267.

²¹ The same meaning of the term “economic development” in R.C. 307.64 applies to R.C. 307.07. R.C. 307.07(D). “Economic development” is defined in R.C. 307.64 as “promoting the economic welfare and improving the economic opportunities of the people in the county ... by assisting in the establishment or expansion within the county ... of industrial, commercial, or research facilities and by creating and preserving job and employment opportunities for the people of the county[.]”

may loan money to a metropolitan housing authority located within the county “for the purpose of paying expenses of organizing and supervising the work of the authority during the period of initial construction of the proposed projects”); R.C. 3735.54 (“[a]ny municipal corporation or county, located in whole or in part within the territorial limits of a metropolitan housing authority, may lend or donate money to the authority or agree to take such action”).²²

Whether a statute authorizes a board of county commissioners to loan oil and gas lease revenues to a municipal corporation for a public improvement depends upon the circumstances of the public improvement and the agencies of county government involved in the transaction. Your predecessor’s letter does not provide sufficient information for us to reliably determine whether a board of county commissioners may loan oil and gas lease revenues to a municipal corporation for a public improvement.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners shall expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for county purposes. A board of county commissioners may expend revenues from a lease entered pursuant to R.C. 307.11 for a township or municipal corporation public improvement within the county so long as the board of county commissioners concludes, in the reasonable exercise of its discretion, that the expenditure constitutes a county purpose.
2. A board of county commissioners may not establish a special fund in the county treasury for the purpose of disbursing revenues from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 to a township or municipal corporation for the construction of a township or municipal corporation public improvement unless a statute authorizes the disbursement of county moneys to a township or municipal corporation for that purpose.
3. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11 for a public improvement that is lawfully part of a county renewal project undertaken pursuant to R.C. 303.26-.56.

²² The statutes we have identified are not intended to be an exhaustive compilation of the statutes that may authorize a county or county agency to loan county moneys for the purpose of making public improvements.

4. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, to fund a public improvement lawfully constructed pursuant to an agreement under R.C. 307.15 between a board of county commissioners and a board of township trustees or the legislative authority of a municipal corporation located within the county, provided that the board of county commissioners determines that the public improvement constitutes a county purpose. (1995 Op. Att’y Gen. No. 95-004, syllabus, paragraph 2, followed; 1963 Op. Att’y Gen. No. 270, p. 344, syllabus, paragraph 2, overruled.)

5. A board of county commissioners may expend revenues received from a lease on county property for the extraction of petroleum and gas pursuant to R.C. 307.11, that has not been otherwise restricted to another purpose, for a municipal corporation public improvement within the county lawfully constructed pursuant to an agreement under R.C. 153.61, provided that the board of county commissioners determines that the public improvement constitutes a county purpose. (1986 Op. Att’y Gen. No. 86-084, syllabus, paragraph 3, overruled, in part, due to statutory change.)

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General