

OPINION NO. 87-009**Syllabus:**

After an amended official certificate of estimated resources has been issued by the county budget commission pursuant to R.C. 5705.36(A), the budget commission may issue a subsequent amended certificate

of estimated resources. In the case of a school district, subsequent amendments to the certificate of estimated resources may reflect both excesses and reductions in revenue. In the case of other subdivisions or taxing units, such amendments are limited to amendments reflecting excess revenues.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 27, 1987

I have before me your request for my opinion regarding revision of an amended official certificate of estimated resources. Your question reads as follows:

After a County Budget Commission has issued its Amended Official Certificate of Estimated Resources and the appropriations have been approved, does the County Budget Commission have the authority to reduce the estimated resources by issuing another Amended Official Certificate of Estimated Resources?

As their title suggests, these certificates list the amount of revenue that the taxing authority of each subdivision or taxing unit may expect to receive during the course of the fiscal year. The certificates are used to assure that a governmental authority spends no more than it expects to receive in revenue.

You have expressed concern about situations in which the county budget commission has, pursuant to R.C. 5705.35, issued to a taxing authority or taxing unit an official certificate of estimated resources for the upcoming fiscal year which includes anticipated revenue for a particular fund. Thereafter, an amended official certificate of estimated resources is issued by the budget commission pursuant to R.C. 5705.36. The amended official certificate is based upon anticipated revenue and balances carried forward. You wish to know whether, upon learning that anticipated revenues will not materialize, the county budget commission may issue another amended official certificate of estimated resources which reflects this deficiency in revenue.

A county budget commission is required by R.C. 5705.35(A) to prepare an official certificate of estimated resources. R.C. 5705.35(A) reads as follows:

(A) The certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in section 5705.34 of the Revised Code, shall show the various funds of such subdivisions other than funds to be created by transfer and shall be filed by the county budget commission with such taxing authority on or before the first day of March in the case of school districts and on or before the first day of September in each year in the case of all other taxing authorities. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation, and on the debit side, the total appropriations that may be made

therefrom. There shall be attached thereto a summary which shall be known as the "official certificate of estimated resources", which shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer, and a statement of the amount of the total tax duplicate of the school district to be used in the collection of taxes for the following calendar year. Before the end of the fiscal year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.
(Emphasis added.)

R.C. 5705.01(C) defines "taxing authority" as follows:

(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.

Thus, the budget commission presents an official certificate of estimated resources to the taxing authority. The taxing authority then uses this estimate to budget expenditures for the upcoming fiscal year.

R.C. 5705.36 permits the budget commission to amend the official certificate of estimated resources. This section reads as follows:

(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 estimate of the amounts that will be created to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certificate of estimated resources. 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. The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

(B) At the time of a settlement of taxes against which notes have been issued under section 133.302 [133.30.2] of the Revised Code and at the time a tax duplicate is delivered pursuant to section 319.28 or 319.29 of the Revised Code, the county auditor shall determine whether the total amount to be distributed to each school district from such settlement or duplicate, when combined with the amounts to be distributed from any subsequent settlement, will increase or decrease the amount available for appropriation during the current fiscal year from any fund. He shall certify his finding to the budget commission, which shall certify an amended official certificate reflecting the same or certify to the school district that no amended certificate needs to be issued.

R.C. 5705.01 defines "subdivision" and "taxing unit" as follows:

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.

....
 (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.

With these statutory provisions in mind, I turn to your specific question. The county budget commission is a creature of statute. As such, it enjoys only those powers expressly conferred by statute, or necessarily implied therefrom. See State ex rel. Clark v. Cook 103 Ohio St. 465, 134 N.E. 655 (1921)(board of county commissioners has only those powers expressly conferred or necessarily implied); Trustees of New London Township v. Miner 26 Ohio St. 452 (1874)(township trustees have only those powers expressly conferred or necessarily implied).

The second sentence of R.C. 5705.36(A) allows the budget commission to issue an amended official certificate to each subdivision. The next two sentences of the section describe the circumstances under which subsequent amendments to the certificates may be made. The first of these sentences applies to the general category of "subdivisions". It reads:

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 certificate including the same. (Emphasis added.)

The language of this sentence expressly empowers the budget commission to make a second amendment of the certificate upward so as to reflect increased revenues. See 1934 Op. Att'y Gen. No. 2693, p. 714. Were this the only language of the statute which enumerated the circumstances under which the certificate could be amended, I would be left to consider whether or not the authority to revise the certificate downward could necessarily be implied from the commission's express powers. However, in the next sentence R.C. 5705.36 goes on to make a special provision for school districts. It states:

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. (Emphasis added.)

Significantly, the definition of the term "subdivision" as used in R.C. Chapter 5705. includes school districts (except county school districts). R.C. 5705.01(A). It is a well established maxim of statutory construction that where the legislature has created a class those not expressly named as members of the class are excluded from it. State ex rel. Boda v. Brown, 157 Ohio St. 368, 105 N.E.2d 643 (1952). R.C. 5705.36(A) thus creates two classes of subdivisions. With regard to the general class of subdivisions, the county budget

commission has authority to amend the certificate of estimated resources to reflect "excess" revenues. Only for the special class of school districts may the budget commission amend the certificate to reflect a "deficiency or excess." By virtue of the express language of the statute, I conclude that the General Assembly intended to empower the budget commission to make downward revisions only in the case of school districts, and not in the case of other subdivisions.

My interpretation is reinforced by the fact that the fourth sentence of R.C. 5705.36(A), which allows school districts to receive certificates reflecting a "deficiency or excess" in estimated resources, was added to the statute through amendment. 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). If the General Assembly believed that the county budget commission had the authority to amend the official certificate downward to reflect decreases in estimated revenue under the then existing language of R.C. 5705.36(A), then the additional language regarding school districts would have been superfluous, and the amendment unnecessary. However, every part of a statute is presumed to have purpose and is to be given effect. See R.C. 1.47(B); State ex rel. Bohan v. Industrial Commission, 147 Ohio St. 249, 70 N.E.2d 888 (1946). Obviously, the legislature concluded that the original language of R.C. 5705.36(A) did not empower the budget commission to amend the certificates to reflect "deficiencies" in estimated resources. By amending R.C. 5705.36(A) to authorize the budget commission to make such a downward amendment, the General Assembly in the same stroke limited that authority solely to the special class of school districts.

It is therefore my opinion, and you are so advised, that after an amended official certificate of estimated resources has been issued by the county budget commission pursuant to R.C. 5705.36(A), the budget commission may issue a subsequent amended certificate of estimated resources. In the case of a school district, subsequent amendments to the certificate of estimated resources may reflect both excesses and reductions in revenue. In the case of other subdivisions or taxing units, such amendments are limited to amendments reflecting excess revenues.