OPINION NO. 82-034

Syllabus:

A county treasurer, acting as the county's investing authority, may not invest county funds in outstanding warrants of the county.

To: James L. Flannery, Warren County Prosecuting Attorney, Lebanon, Ohio
By: William J. Brown, Attorney General, May 28, 1982

I have before me your request for my opinion regarding the authority of a county treasurer to use county funds to purchase county warrants as an investment. You state that the warrants in question are those which, pursuant to R.C. 321.17, are bearing interest at a rate of 6% per annum.

R.C. 321.17 reads as follows:

> When a warrant is presented to the county treasurer for payment, and is not paid, for want of money belonging to the particular fund on which it is drawn, the treasurer shall indorse the warrant, "Not paid for want of funds," with the date of its presentation, and sign his name to the warrant. Such warrant shall thereafter bear interest at the rate of six per cent per annum. A memorandum of all such warrants shall be kept by the treasurer in a book for that purpose.

Thus, when a warrant of the county is outstanding and there are not sufficient funds in the account on which the warrant is drawn to pay the amount due, the warrant shall bear interest at a rate of 6% per annum. It is my understanding that at this time Warren County has warrants drawn on some accounts which are bearing the prescribed rate of interest. Other accounts in the Warren County treasury contain excess funds which are available for investment. See R.C. 135.35 (the investing authority may invest the county's "inactive" moneys); R.C. 135.31(B) ("inactive moneys" are those moneys in a public depository not needed as active moneys).

The statutes governing the investment of county funds have recently been altered by Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982). Such investment is now governed by R.C. 135.31 to R.C. 135.40. R.C. 135.31(C) states that the county treasurer is the investing authority of the county except as provided in R.C. 135.34. Pursuant to R.C. 135.35(A)(4), the investing authority may invest part or all of those county funds available for investment in "bonds and other obligations of this state, its political subdivisions, or other units or agencies of this state or its political subdivisions." A county may, therefore, invest in its own warrants if such warrants constitute a bond or other obligation.

The phrase "bonds and other obligations" is not defined by statute for purposes of R.C. 135.35, nor has there been any case law interpretation of R.C. 135.35 which would assist in arriving at a definition. Thus, it becomes necessary to turn to other means of statutory construction to determine whether a warrant is a bond or other obligation of a political subdivision.

A warrant clearly does not meet the statutory requirements for a bond. See R.C. 133.19 (face of bond must specify the purpose for which they were issued); R.C. 133.19(B) (bonds must be signed by at least two county commissioners and county auditor). Consequently, in order to conclude that R.C. 135.35 empowers counties to buy outstanding county warrants it must be found that a county warrant is an "obligation" of the county.

The term "obligation" is not defined by statute for purposes of R.C. Chapter 135. However, a basic premise in statutory construction is that words are to be given their plain meaning. R.C. 1.42. In this instance, however, the plain meaning

of the word "obligation" is of no assistance in interpreting R.C. 135.35. The word "obligation" is "[a] generic word. . .having many, wide, and varied meanings, according to the context in which it is used." Black's Law Dictionary 960 (5th ed. 1979). Since the meaning of the word "obligation" depends upon the context in which it is used, it becomes necessary to apply other rules of statutory construction to determine whether a warrant is an obligation within the meaning of R.C. 135.35.

> A well-known legal maxim is "ejusdem generis" which literally translated means "of the same kind or species." So, where in a statute terms are first used which are confined to a particular class of objects having well-known and definite features and characteristics, and then afterwards a term is conjoined having perhaps a broader signification, such latter term is, as indicative of legislative intent, to be considered as embracing only things of a similar character as those comprehended by the preceding limited and confined terms.

State v. Aspell, 10 Ohio St. 2d 1, 4, 225 N.E.2d 226, 228 (1967). Under this principle the general term "other obligation," following as it does the word "bonds," must be interpreted as encompassing only those types of obligations which are similar in character to a bond.

The distinction between a bond and a county warrant has not been analyzed by an Ohio court. The courts of other states and of the federal system have, however, frequently dealt with this issue. In Shelley v. St. Charles County Court, 21 F. 699, 700-701 (E.D. Missouri, 1884) the court stated:

> There is a vast difference between bonds and warrants. Warrants are general orders payable when funds are found, and there is propriety in the rule providing that they shall be paid in the order of presentation, the time of presentation to be indorsed by the treasurer on the warrants. But bonds are obligations payable at a definite time, running through a series of years. They are payable when the time of their maturity arrives, independent of any presentation.

An almost identical statement of the law was accepted in Marshall v. State ex rel. Sartain, 88 Fla. 329, 332, 102 S. 650, 651 (1924) in which the court reasoned that:

> There is a vast distinction between warrants and bonds. Warrants are mere orders or drafts on the treasury, payable on presentation when funds are available, or at a fixed date with interest if authorized by statute, while bonds are obligations running through a series of years, payable at a definite time with a fixed rate of interest independent of presentation.

See also State ex rel. Wehe v. Pasco Reclamation Co., 90 Wash. 606, 609-610, 156 P. 834, 836 (1916) ("[a] warrant of a municipal corporation is a general order, payable when the funds are found. . . A warrant even lacks the stable quality of a definite time of payment peculiar to a bond or note and will only be paid when there is sufficient money in that particular fund on which it is drawn to cash it. . ."). Thus, a warrant is seen as sharing none of the characteristics normally attributed to a bond. Moreover, those attributes, such as indefinite time of payment, which distinguish a warrant from a bond are particularly significant in the context of investment decisions. Under the principle of ejusdem generis, therefore, the term "other obligations" as used in R.C. 135.35 would not encompass a warrant.

As the above discussion has shown, a county warrant does not appear to be a bond or other obligation of a political subdivision within the meaning of R.C. 135.35. It is a well-established principle that a county has only that authority which is expressly granted or necessarily implied, and that doubts as to the legality of a public expenditure must be resolved against the expenditure. See State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 655 (1921); State ex rel. Bentley and Sons Co. v. Pierce, 96 Ohio St. 44, 117 N.E. 6 (1917).

Therefore, it is my opinion, and you are advised that a county treasurer, acting as the county's investing authority, may not invest county funds in outstanding warrants of the county.