

September 18, 1997

OPINION NO. 97-043

The Honorable Robert L. Becker
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

Dear Prosecutor Becker:

We have received your request for an opinion concerning interest earned on certain solid waste disposal fees. Your question is what options a joint solid waste management district¹ has for the expenditure of interest earned on revenues held pursuant to R.C. 3734.57(G).

The situation with which you are concerned involves a joint solid waste management district encompassing Coshocton, Fairfield, Licking, and Perry Counties. You have informed us that the joint district designated the county auditor and county treasurer of Licking County to serve as its fiscal officer and treasurer. Under R.C. 3734.57(G), certain fees received by the board of directors of the joint district are paid to the joint district's treasurer and are kept in a separate and distinct fund to the credit of the district. To date, interest earned on the fund has not been expended. The board of directors would like to use the interest, divided equally among the member counties, for some small solid waste projects that arise in each county. You are asking whether this sort of expenditure would be permissible.

In order to address your question, let us first consider the manner in which funds of a joint solid waste management district are held under Ohio law. R.C. 343.01 requires that each county either establish its own solid waste management district or become part of a joint solid waste management district. A joint solid waste management district is a distinct entity, separate from any of the counties that participate in its creation and operation. *See* R.C. 343.01; 1989 Op. Att'y Gen.

¹ This opinion does not address interest earned on funds of a county solid waste management district or a regional solid waste management authority. *See* R.C. 343.01, .011.

No. 89-102. The boards of county commissioners² of the counties establishing a joint district constitute the board of directors of the joint district. R.C. 343.01(B). The board of directors is required either: (1) to designate the auditor and treasurer of a participating county to serve as the fiscal officer and treasurer of the joint district; or (2) to appoint any other individual as treasurer and fiscal officer to act as custodian of the funds of the joint district.³ The fiscal officer is directed to establish a general fund and any other necessary funds for the district. *Id.* Since you have described a case in which a county auditor and treasurer were designated to serve as fiscal officer and treasurer of the joint district, let us address that situation first.

² Various statutory provisions address counties that have officials other than the statutory auditor, treasurer, and board of county commissioners. *See* R.C. 343.01; R.C. 3734.57(G). Since your situation does not include such a county, this opinion does not discuss those provisions.

³ Language authorizing these two options regarding the selection of a treasurer was adopted by 1991-1992 Ohio Laws, Part II, 3166, 3169 (Am. Sub. H.B. 150, eff. Mar. 4, 1992). Prior to that time, joint districts were required to designate the county auditor of a participating county as fiscal officer of the joint district. Under the earlier provisions, no mention was made in R.C. 343.01 of the designation of a county treasurer, but R.C. 3734.57(E) [now R.C. 3734.57(G)] provided for moneys to be paid "to the county treasurer or other official designated by the board of directors in a joint district." 1991-1992 Ohio Laws, Part II, 3166, 3182; *see also* R.C. 319.13.

Your question pertains to solid waste disposal fees that are paid to the joint district in accordance with R.C. 3734.57(G).⁴ All moneys paid to the joint district in accordance with that provision are required to be kept in a separate and distinct fund to the credit of the joint district.⁵ R.C. 3734.57(G); *see also* R.C. 343.99 (referring to fund created in accordance with R.C. 3734.57(G) as "special fund"). These moneys are public moneys. *See* R.C. 117.01(C), (D), (E); R.C. 135.01(K), .31(E).

Moneys paid to a joint district pursuant to R.C. 3734.57(G) come from various sources and may be used for various purposes.⁶ Two of the major sources are the tiered disposal fee, authorized

⁴ R.C. 3734.57(G) states, in part:

(G) *Moneys received by the board of county commissioners or board of directors under division (E) of this section or section 3734.571 [3734.57.1], 3734.572 [3734.57.2], 3734.573 [3734.57.3], or 3734.574 [3734.57.4] of the Revised Code shall be paid to the county treasurer, or other official acting in a similar capacity under a county charter, in a county district or to the county treasurer or other official designated by the board of directors in a joint district and kept in a separate and distinct fund to the credit of the district. If a regional solid waste management authority has been formed under section 343.011 [343.01.1] of the Revised Code, moneys received by the board of trustees of that regional authority under division (E) of this section shall be kept by the board in a separate and distinct fund to the credit of the district. Moneys in the special fund of the county or joint district arising from the fees levied under division (B) of this section and the fee levied under division (A) of section 3734.573 [3734.57.3] of the Revised Code shall be expended by the board of county commissioners or directors of the district in accordance with the district's solid waste management plan or amended plan approved under section 3734.521 [3734.52.1], 3734.55, or 3734.56 of the Revised Code exclusively for the following purposes.... (Emphasis added.)*

Specified purposes appear in R.C. 3734.57(G)(1)-(10).

⁵ It may be necessary or appropriate for a joint solid waste management district to have a number of funds and accounts to hold the moneys that are required to be placed in a separate and distinct fund to the credit of the district. *See generally* R.C. 131.01(A), (O); R.C. 5705.09(F) (requiring each subdivision to establish "[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"); 1986 Op. Att'y Gen. No. 86-056. You have not asked about accounting requirements, however, and this opinion does not address those matters.

⁶ R.C. 343.08 provides generally that all moneys collected by or on behalf of a joint solid waste management district "as rates or charges for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery service" are to be kept in a separate and distinct fund, to be used for payment of the cost of the management, maintenance, and operation of the solid waste

by R.C. 3734.57(B), and the generation fee, authorized by R.C. 3734.573(A). R.C. 3734.57(G) requires that moneys in the special fund arising from the tiered disposal fee and the generation fee be expended in accordance with the district's solid waste management plan exclusively for the purposes listed in R.C. 3734.57(G)(1)-(10).

facilities of the district and, if applicable, for payment of the cost of collecting rates or charges pursuant to R.C. 343.08(A)(1) or (2) from owners of the property served. R.C. 343.08(A). Before the joint district's solid waste management plan is approved, the fund may also be used for the purposes of R.C. 3734.57(G)(1) or (3), and after the plan is approved the fund may also be used for the purposes of R.C. 3734.57(G)(1)-(10), including a cost allocation plan to pay certain direct and indirect costs. Any surplus remaining after those uses of the fund may be used for the enlargement, modification, or replacement of solid waste facilities and for the payment of interest and principal on bonds and bond anticipation notes. The money may not "be expended otherwise than for the use and benefit of the district." *Id.*

R.C. 343.08 thus encompasses a different range of moneys than those covered by R.C. 3734.57(G) and contains different provisions governing the use of the moneys. Since your question pertains to fees that are governed by R.C. 3734.57(G), this opinion does not consider any moneys that might be included under R.C. 343.08 but not under R.C. 3734.57(G).

Moneys from certain other sources are also expressly required to be paid to the joint district pursuant to R.C. 3734.57(G).⁷ These moneys include joint use agreement fees under R.C. 3734.571, which may be used for the purposes specified in R.C. 3734.57(G)(1) and (2); export fees under R.C. 3734.572, which may be used for plan preparation, plan implementation, and inspection of in-district transfer facilities by a board of health; and continuation or other fees under R.C. 3734.574, which may be used for the purposes specified in R.C. 3734.57(G)(1)-(10) and the purposes specified in R.C. 3734.551.⁸ They also include fines imposed pursuant to R.C. 343.99, for which no use is specified.

The statute provides that, when a county treasurer serves as treasurer of a joint district, moneys received by the board of directors of a joint district from the named sources "shall be paid...to the county treasurer...and kept in a separate and distinct fund to the credit of the district." R.C. 3734.57(G). The statute does not specify the nature of that separate and distinct fund. In general, when a county treasurer receives public money, the treasurer must keep it in the county treasury, in the appropriate fund. R.C. 321.05, .07. Exceptions exist only "as otherwise specifically provided by law." R.C. 321.05.

When money is included in the county treasury, "all interest" earned on that money "shall be credited to the general fund of the county." R.C. 135.351(A).⁹ Exceptions exist pursuant to specific statutory reference,¹⁰ and other exceptions have been recognized in the case of statutes expressly

⁷ As a practical matter, a particular joint district might have no income, or only a negligible amount of income, from sources other than the tiered disposal fee and the generation fee. Nonetheless, because other income sources are possible, it is assumed for purposes of this opinion that they exist and produce moneys that must be held, invested, and spent in accordance with statutory requirements.

⁸ R.C. 3734.57(G) also includes a reference to moneys received under R.C. 3734.57(E). Division (E) refers to fees levied under divisions (B) and (C). Fees under R.C. 3734.57(C) are levied by a municipal corporation or township and are paid to the municipal corporation or township pursuant to R.C. 3734.57(E). Such fees are not paid to a joint solid waste management district and, therefore, are not relevant to this discussion.

⁹ R.C. 135.351 is not applicable to moneys that are not included in the county treasury. As discussed later in this opinion, if an individual other than a county auditor or treasurer is appointed to serve as the treasurer and fiscal officer of a joint district, the moneys received by that individual under R.C. 3734.57(G) will be held outside the county treasury and interest earned on those moneys will be credited to the general fund of the joint district in accordance with R.C. 135.21 and R.C. 5705.10.

¹⁰ R.C. 135.351(A) contains exceptions for interest earned on moneys in the county library and local government support fund that are not distributed due to an appeal of the allocation of the fund, *see* R.C. 135.352, and for interest earned on funds of a park district, *see* R.C. 1545.22.

directing a contrary result¹¹ and in the case of constitutional requirements that moneys derived from motor vehicle fuel taxes be expended for particular purposes.¹² If payments or distributions to other political subdivisions or districts are not made in a timely manner, R.C. 135.351(C) requires the payment of interest. *See* 1991 Op. Att'y Gen. No. 91-009; 1985 Op. Att'y Gen. No. 85-067. In the absence of such exceptions, the general rule that interest earned on money held in the county treasury must be credited to the general fund of the county has been applied even when the money belongs to a subdivision or district other than the county. For example, in 1985 Op. Att'y Gen. No. 85-002, one of my predecessors concluded that "[i]nterest earned on moneys of a joint-county community mental health service district and held by a county treasurer as the designated custodian

¹¹ 1992 Op. Att'y Gen. No. 92-075 concluded that interest earned on money received as a gift by a county board of mental retardation and developmental disabilities "must be deposited in the county treasury to the credit of the board and must be available for the use of the board." 1992 Op. Att'y Gen. No. 92-075 (syllabus). That conclusion was based on a statute stating expressly that gifts received by the board "shall be deposited in the county treasury to the credit of such board and shall be available for use by the board" and "[a]ny interest or earnings accruing from such gift...shall be treated in the same manner and subject to the same provisions as such gift." 1992 Op. Att'y Gen. No. 92-075 at 2-315 (quoting R.C. 5126.05(H), now R.C. 5126.05(F)).

¹² 1982 Op. Att'y Gen. No. 82-031 concluded that Ohio Const. art. XII, §5a requires that interest earned on motor vehicle fuel tax proceeds be credited to the special fund to which the principal belongs, rather than being paid into the general fund of the state, a county, or another governmental entity. *Paulding County Board of County Commissioners v. State ex rel. Kohli*, No. 11-91-14 (Ct. App. Paulding County Sept. 9, 1992), reached the same conclusion with respect to motor vehicle fuel tax funds, construing the words "moneys derived from," as used in Ohio Const art. XII, §5a, to include interest earned on the relevant funds.

of the district's funds...must be credited to the general fund of the county." 1985 Op. Att'y Gen. No. 85-002 (syllabus). The conclusion was applied even to the proceeds of a tax levied to provide for the current expenses of the district. *Id.*; see also 1985 Op. Att'y Gen. No. 85-067; 1983 Op. Att'y Gen. No. 83-055; 1982 Op. Att'y Gen. No. 82-027.

Unless an exception removes the moneys in question from the general provisions of R.C. 135.351, interest earned on those moneys must be credited to the general fund of the county. If the interest is credited in that manner, it becomes available to the county for any purpose for which the county's general fund may be expended. See R.C. 5705.05, .09. A county may expend money in its general fund for current expenses, including solid waste disposal services, and may transfer general fund money to any other fund of the subdivision. See R.C. 5705.09, .14. See generally *Colasant v. Olmsted Township*, 95 Ohio App. 3d 605, 643 N.E.2d 161 (Cuyahoga County), *discn'y appeal not allowed*, 71 Ohio St. 3d 1422, 642 N.E.2d 388 (1994). Therefore, general fund money is available for any proper purpose of the county.

Your letter states that the interest earned on the relevant fees has not yet been expended. It appears that it has been the practice, in the joint district in question and possibly in other joint districts, to keep that interest separate and not to credit it to the county general fund. Such a practice is permissible when a county treasurer is treasurer of the joint district only if an exception removes the fees from the operation of the general rule that interest earned on money in the county treasury is credited to the general fund of the county. No such exception is expressed in R.C. 135.351. It is necessary, therefore, to examine the statutes governing joint solid waste management districts to determine whether there is a basis for excepting the interest earned on solid waste disposal fees received under R.C. 3734.57(G) from the general requirement that interest earned on money in the county treasury should be paid into the county's general fund.

One possible basis for excepting interest earned on the joint district's solid waste fees from the general requirement that interest earned on money in the county treasury is paid into the county's general fund is to argue that the fees are not in the county treasury. This argument is supported by the language governing the designation of a county auditor and treasurer as fiscal officer and treasurer of the district, which states that "[t]he designated county officials shall perform any applicable duties for the district as each typically performs for the county of which he is an official, except as otherwise may be provided in any bylaws or resolutions adopted by the board of directors." R.C. 343.01(B)(1). The description of duties as those "typically" performed for the county and the fact that the duties may be defined or modified by the board of directors suggest that the treasurer is not acting in his capacity as county treasurer when he serves as treasurer of the joint district, but that he is serving in a separate capacity, and that money held in such capacity is not treated as money received in his capacity as treasurer but may instead be held completely apart from the county treasury. This argument is further supported by the fact that the joint district may pay the county money to reimburse the county for the cost allocable to the service of the auditor and treasurer on behalf of the joint district. *Id.* The argument thus is that the county treasurer wears a completely different hat when he acts as treasurer of a joint solid waste management district and, as a result, funds he receives in that capacity are treated differently from funds he receives as county treasurer.

The difficulty with this argument is that our research has disclosed no instance in which it has been adopted. A county treasurer may serve as custodian of moneys from a wide variety of entities, and his functions for all those entities have been found to be those of county treasurer, with the moneys of all those entities being placed in the county treasury. *See, e.g.*, 1985 Op. Att'y Gen. No. 85-002.¹³ *See generally* 1989 Op. Att'y Gen. No. 89-002. The language of R.C. 321.05 is

¹³ 1984 Op. Att'y Gen. No. 84-085 concluded that interest earned on funds collected pursuant to R.C. 6117.02 and kept in a separate and distinct fund to the credit of a county sewer district must be paid into the county general fund. That opinion suggested, however, that when moneys are kept in the county treasury as custodial funds "then arguably, the interest earned on such funds would, under some circumstances, be credited to the special district rather than to the county general fund." 1984 Op. Att'y Gen. No. 84-085, at 2-293; *see also* 1984 Op. Att'y Gen. No. 84-089, at 2-305 n.1.

In support of this suggestion, 1984 Op. Att'y Gen. No. 84-085 cites R.C. 135.351(B), which describes the time and manner in which the county is to distribute money belonging to another political subdivision, taxing district, or special district that is deposited or invested by the county. R.C. 135.351(B) does not address the allocation of interest. R.C. 135.35(C) requires that interest be paid if the money is not distributed in a timely fashion, but that is not the situation raised by your request. *See* 1991 Op. Att'y Gen. No. 91-009; 1985 Op. Att'y Gen. No. 85-067.

1984 Op. Att'y Gen. No. 84-085 also cites section 32 (uncodified) of 1981-1982 Ohio Laws, Part I, 1176, 1281 (Am. Sub. S.B. 550, eff. Nov. 26, 1982)), which states that the reference in R.C. 135.351 to R.C. 1545.22 was "to clarify the intentions of the General Assembly in enacting [R.C. 135.351] in [1981-1982 Ohio Laws, Part I, 2079, 2100 (Am. Sub. H.B. 230, eff. March 15, 1982)], which included the preserving to each board of park commissioners created under [R.C. Chapter 1545] the right to the interest earned on moneys of the district held by the county treasurer as its custodian." *See generally* 1982 Op. Att'y Gen. No. 82-026. Because R.C. 3734.57 was enacted after R.C. 135.351 was adopted, *see* 1987-1988 Ohio Laws, Part III, 4418, 4554 (Am. Sub. H.B. 592, eff. June 24, 1988), this argument is not applicable to the instant case.

In addition, 1984 Op. Att'y Gen. No. 84-085 cites 1983 Op. Att'y Gen. No. 83-025, which discusses the express reference to R.C. 1545.22 (park districts) that appears in R.C. 135.351(A). This reference is not relevant to your situation.

simple and clear: "Except as otherwise specifically provided by law, all public moneys and property in [the county treasurer's] possession shall be at all times kept in the county treasury." We can find no provision of law that *specifically* provides an exception for moneys of a joint county solid waste management district that are paid to a county treasurer pursuant to R.C. 3734.57(G).

These authorities provide no support for an argument that interest earned on moneys of a joint solid waste management district that are paid to a county treasurer should be credited to the joint district. We must interpret the relevant statutes in accordance with their express language and cannot recognize exceptions without clear direction from the General Assembly.

Another possible basis for excepting interest earned on the joint district's solid waste fees from the general requirement that interest earned on money in the county treasury is paid into the county's general fund is to argue that the law prescribes a particular use for the interest in question. This argument would create an exception to R.C. 135.351(A), which states: "Except as provided in [R.C. 135.352 and 1545.22], all interest earned on money included within the county treasury shall be credited to the general fund of the county." *See* note 10, *supra*; *see also* R.C. 5705.10 (with certain exceptions, "all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund").¹⁴

This exception to the general rule that interest earned on money within the county treasury is paid to the county's general fund could be based upon the portion of R.C. 3734.57(G) which states that "[m]oneys in the special fund of the...joint district arising from the fees levied under [R.C. 3734.57(B)] and the fee levied under [R.C. 3734.573(A)] shall be expended by the...directors of the district in accordance with the district's solid waste management plan" for the ten designated purposes. It may be argued that the words "arising from" include both fees collected and interest earned on those fees. *See, e.g.*, 6 C.J.S. *Arise* 525 (1975). *See generally Tomlinson v. Skolnik*, 44 Ohio St. 3d 11, 15, 540 N.E.2d 716, 720 (1989); *Paulding County Bd. of County Comm'rs v. State ex rel. Kohli*, No. 11-91-14 (Ct. App. Paulding County Sept. 9, 1992) (construing the term "derived from"); 1982 Op. Att'y Gen. No. 82-031. Under this argument, interest earned on the tiered disposal fee and the generation fee should be paid into the special fund created to hold those fees, to be expended for the purposes for which those fees may be expended. An exception based on this argument, however, would extend only to proceeds of the tiered disposal fee and the generation fee, discussed above, and would not include other moneys that might be paid to the county treasurer under R.C. 3734.57(G). Therefore, interest earned on moneys other than the tiered disposal fee and the generation fee would be required to be paid into the general fund of the county even if this argument were accepted.

There is serious question, however, whether this interpretation of "arising from" can reasonably be adopted. The proposed exception is not as clearly expressed as the other statutory exceptions to R.C. 135.351(A) that have been recognized. *Cf.* R.C. 135.352 ("[i]nterest earned on such investments shall be credited to the [county library and local government support] fund"); R.C. 1545.22 ("[i]nterest earned on all funds under the control of the board of park commissioners shall be credited to such funds"); R.C. 5126.05(F) ("[a]ny interest or earnings accruing from such gift,

¹⁴ R.C. 5705.10 prescribes in general terms the disposition of various moneys accruing to a subdivision or a taxing district. *See* 1985 Op. Att'y Gen. No. 85-002. A county is a subdivision under R.C. 5705.01(A). A joint solid waste management district is authorized to issue bonds payable from taxes on property within the district, *see* R.C. 343.07, and, therefore, constitutes a taxing unit for purposes of R.C. 5705.01(H). Thus, the provisions of R.C. 5705.10 are applicable. *See also* R.C. 343.01(B) and R.C. 343.99 (requiring that a joint solid waste management district have a general fund and such special funds as are necessary).

grant, devise, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, devise, or bequest"); 1992 Op. Att'y Gen. No. 92-075; 1985 Op. Att'y Gen. No. 85-055. *See generally* 1985 Op. Att'y Gen. No. 85-002 at 2-6 ("the express exclusion of interest earned on all funds under the control of a board of park commissioners from the operation of R.C. 135.351(A) constitutes a reaffirmation of the General Assembly's intent that the statute govern the disposition of interest earned on all other funds included within a county treasury, including funds which belong to another subdivision or district and are held by a county treasurer in a custodial capacity").

While the argument that "arising from" includes interest is similar to the exception for interest earned on motor vehicle fuel tax proceeds, *see* note 12, *supra*, the language is different. Ohio Const. art. XII, §5a speaks of "moneys derived from fees, excises, or license taxes," thereby encompassing both the fees, excises, and taxes and their earnings. In contrast, R.C. 3734.57(G) refers to "[m]oneys in the special fund of the county or joint district arising from" the specified fees. The moneys that are in the special fund are those that are placed there in accordance with the relevant statutes. No statute provides for placing interest income into the special fund. Rather, the term "arising from" seems to be used to distinguish among the various moneys included under R.C. 3734.57(G) and to prescribe certain uses (those listed in R.C. 3734.57(G)(1)-(10)) only for proceeds of the tiered disposal fee and the generation fee. Therefore, we reject the argument that the words "arising from" require that interest earned on the tiered disposal fee and the generation fee must be credited to the joint district's special fund.

The discussion set forth above leads to the conclusion that no exception removes the moneys in question from the general provisions of R.C. 135.351 requiring that interest be credited to the general fund of the county. As a result, when the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), designates the auditor and treasurer of a participating county to serve as the fiscal officer and treasurer of the joint district, the county treasurer holds money of the joint district in the county treasury and, pursuant to R.C. 135.351, interest earned on the money of the joint district should be credited to the general fund of the county that the treasurer serves, to be used for any proper purpose of the county.

In addressing your question, it is appropriate to consider also the manner in which interest will be held and distributed if the treasurer of the joint district is not a county treasurer. In the event that the board of directors of a joint solid waste management district appoints an individual who is not a county auditor or treasurer to serve as treasurer of the district, that individual will not be subject to R.C. 135.351. *See* R.C. 135.31. Instead, that individual may hold and invest moneys of the joint district outside the county treasury. *See* R.C. 135.01(L), (M); R.C. 343.01(B)(2). Interest earned on the moneys will be credited to the funds of the joint district in accordance with R.C. 135.21 and R.C. 5705.10.

R.C. 135.21 and R.C. 5705.10 provide, in general, that investment earnings, including interest earned on the principal of a special fund, should be credited to the general fund of the local authority to which the principal sum belongs. Therefore, interest earned on money of a joint district, as a general rule, is paid into the joint district's general fund when the joint district's treasurer is not a

county treasurer. R.C. 5705.10 recognizes an exception to that general rule when the law prescribes that revenue be used for a particular purpose. As discussed above, it might be argued that the "arising from" language of R.C. 3734.57(G) prescribes such a particular purpose, requiring that interest earned on the tiered disposal fee and the generation fee be paid into the special fund holding those fees. For the reasons outlined above, however, that argument has been rejected, and it is concluded, instead, that interest earned on money held under R.C. 3734.57(G) is subject to the general rule that it should be paid into the appropriate general fund. Therefore, when an individual other than a county auditor or treasurer serves as treasurer of a joint district, the interest earned on all moneys held under R.C. 3734.57(G) should be paid into the joint district's general fund.

Because the statutory provisions governing county treasurers are different from those governing other treasurers, interest is credited in different manners by the two types of treasurers. Therefore, when the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), appoints an individual who is not a county auditor or a county treasurer to serve as the treasurer and fiscal officer of the joint district, that individual holds money of the joint district outside the county treasury and, pursuant to R.C. 135.21, interest earned on the money should be credited to the general fund of the joint district, to be used for any proper purpose of the joint district. Those purposes include the acquisition, construction, maintenance and operation of solid waste facilities, the compensation of employees, the management of the district, the execution of various contractual arrangements, and the purposes set forth in R.C. 3734.57 (G)(1)-(10). *See* R.C. 343.01, .02, .022, .04, .08; R.C. 3734.57(G)(1)-(10); *see also* R.C. 3734.52-575. Thus, when money received by a joint solid waste management district under R.C. 3734.57(G) is held outside the county treasury and interest is credited to the joint district, the board of directors of the joint district may spend the interest for any statutory purpose of the joint district, including projects or contracts that may benefit the joint district's member counties. *See, e.g.,* R.C. 343.01; R.C. 3734.57(G)(4).

A literal interpretation of the applicable statutes thus leads to the conclusion that, if a joint district appoints an individual other than a county auditor or treasurer to serve as its treasurer, interest earned on the joint district's special fund is credited to the joint district's general fund. If, however, a joint district designates the treasurer of a participating county to serve as its treasurer, interest earned on the joint district's special fund is credited to the general fund of the county whose treasurer was selected.

It may appear that crediting a county with interest on a joint district's money would provide a windfall to the county, particularly in light of the fact that the joint district is authorized to reimburse the county directly for the costs of the services of the treasurer and auditor. *See* R.C. 343.01(B). Such an arrangement may also be viewed as benefiting one participating county at the expense of the joint district and the other participating counties. This result, however, appears to be consistent with the legislation that adopted the relevant provisions of R.C. 135.351. *See, e.g.,* 1985 Op. Att'y Gen. No. 85-067; 1985 Op. Att'y Gen. No. 85-002; 1982 Op. Att'y Gen. No. 82-027. R.C. 135.351 was in existence when R.C. 3734.57 was enacted, and no action was taken to exclude solid waste fees of a joint district from the general rule that, when money is held in the county treasury, interest is paid to the county's general fund. *See* note 13, *supra*.

Your letter and other general information we have received suggest that joint districts are holding the interest on their funds, even when their treasurer is a county treasurer. This practice is not consistent with the interpretation of R.C. 135.351 adopted in this opinion. The fact that the interest has not yet been expended, however, when coupled with your request for this opinion, indicates a common understanding that there is a question as to how current practice can be reconciled with existing statutes.

The common law rule that interest is generally credited to the fund on which it was earned, *see* 1992 Op. Att'y Gen. No. 92-030; 1983 Op. Att'y Gen. No. 83-055, was modified with respect to counties when R.C. 135.351 became effective in 1982. *See* 1981-1982 Ohio Laws, Part I, 2079, 2100 (Am. Sub. H.B. 230, eff. Mar. 15, 1982). A series of Attorney General opinions addressed the interest questions. *See, e.g.*, 1991 Op. Att'y Gen. No. 91-009; 1985 Op. Att'y Gen. No. 85-002. The General Assembly provided legislative direction on particular issues. *See* R.C. 135.352; R.C. 1545.22; R.C. 5126.05; *see also* 1992 Op. Att'y Gen. No. 92-075; 1991 Op. Att'y Gen. No. 91-009; 1985 Op. Att'y Gen. No. 85-067; 1983 Op. Att'y Gen. No. 83-025. Where the General Assembly has not provided an exception, the statutory language has been applied as written, and counties have received interest earned on money that is in the county treasury when the principal does not belong to the county. *See* 1985 Op. Att'y Gen. No. 85-067; 1985 Op. Att'y Gen. No. 85-002; 1982 Op. Att'y Gen. No. 82-027.

For the reasons discussed above, existing statutes compel the conclusion that interest earned on revenues held pursuant to R.C. 3734.57(G) should be credited to the general fund of the county, when the treasurer of a county serves as treasurer of the joint solid waste management district. There are, however, ways in which the joint district and other participating counties may share in the benefits of the interest proceeds.

As noted above, money that is in the general fund of a county is available for any proper purpose of the county. A county that participates in a joint solid waste management district has express authority to contribute money to the district, or to contribute real property, personal property, or services. R.C. 343.01(B). A county can also acquire real property within the county for use by the joint district. R.C. 343.01(C). The General Assembly has thus designated contributions to a joint solid waste management district as a public purpose and a proper use of county money. Therefore, a county that receives interest on joint district money held in the county treasury may contribute that interest to the joint district or expend it for property or services that benefit the joint district. The joint district, in turn, is permitted to expend money it receives for purposes authorized by statute, including projects or contracts that benefit member counties. *See, e.g.*, R.C. 343.01; R.C. 3734.57(G)(4).

Further, the agreement by which a joint solid waste management district is created "shall specify any contributions of participating counties and the rights of the participating counties in lands or personal property, or rights or interests therein, contributed to or otherwise acquired by the joint district." R.C. 343.01(B). "The agreement may be amended or added to by a majority vote of the board of directors, but no amendment or addition shall divest a participating county of any right

or interest in lands or personal property without its consent." *Id.* Thus, the agreement establishing the joint district will define the rights of participating counties in property contributed to or otherwise acquired by the joint district and will "specify any contributions." Accordingly, a participating county may agree to make contributions to the joint district.

A county that participates in a joint solid waste management district may enter into contracts with other counties for a variety of activities and services. *See* R.C. 307.15; R.C. 307.18. Similarly, the board of directors of a joint district may contract with a county for the operation and maintenance of solid waste facilities or for various other services or property. *See* R.C. 307.15; R.C. 307.18; R.C. 343.01; R.C. 343.02; R.C. 3734.52-.574.¹⁵ A board of county commissioners may also provide other entities with financial assistance in connection with a federal program. R.C. 307.85.

A public entity, including a board of county commissioners or the board of directors of a joint solid waste management district, is permitted by law to expend public money only within the scope of its statutory authority and for a proper public purpose, within the reasonable exercise of the entity's discretion. *See, e.g., Kohler v. Powell*, 115 Ohio St. 418, 154 N.E. 340 (1926); 1995 Op. Att'y Gen. No. 95-027; 1982 Op. Att'y Gen. No. 82-006. Particular individuals are subject to applicable conflict of interest provisions. *See* R.C. 102.03-.04; R.C. 343.01(K); R.C. 2921.41-.42.

Subject to applicable limitations, a county that participates in a joint solid waste management district may contribute money, real property, personal property, or services to the district pursuant to R.C. 343.01(B), and participating counties may contract with or provide assistance to the joint district or one another as authorized by statute. *See* R.C. 307.15; R.C. 307.18; R.C. 343.01; R.C. 343.02; R.C. 307.85; R.C. 3734.52-.574. Through these methods, interest earned on moneys of a joint district held within a county treasury may be directed to uses that benefit the joint district or other participating counties.

When the existing statutes are applied according to their terms, different consequences result depending upon which treasurer a joint district selects. Therefore, it is my opinion and you are advised, as follows:

1. When the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), designates the auditor and treasurer of a

¹⁵ As noted previously in this opinion, when the auditor and treasurer of a county are designated as the fiscal officer and treasurer of a joint solid waste management district, the board of directors of the joint district may pay to that county "any amount agreed upon by the board of directors and the board of county commissioners of that county to reimburse that county for the cost properly allocable to the service of its officials as fiscal officer and treasurer of the joint district." R.C. 343.01(B)(1). A joint district has similar authority to designate the prosecuting attorney of a participating county to serve as legal advisor and to pay the county for costs properly allocable to those services. R.C. 343.01(E)(2). Agreements of this sort constitute part of the financial arrangements between the county and the joint district.

participating county to serve as the fiscal officer and treasurer of the joint district, the county treasurer holds money of the joint district in the county treasury and, pursuant to R.C. 135.351, interest earned on the money of the joint district should be credited to the general fund of the county that the treasurer serves, to be used for any proper purpose of the county.

2. When the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), appoints an individual who is not a county auditor or a county treasurer to serve as the treasurer and fiscal officer of the joint district, that individual holds money of the joint district outside the county treasury and, pursuant to R.C. 135.21, interest earned on the money should be credited to the general fund of the joint district, to be used for any proper purpose of the joint district.

3. Subject to applicable limitations, a county that participates in a joint solid waste management district may contribute money, real property, personal property, or services to the district pursuant to R.C. 343.01(B), and participating counties may contract with or provide assistance to the joint district or one another as authorized by statute. Through these methods, interest earned on moneys of a joint district held within a county treasury may be directed to uses that benefit the joint district or other participating counties.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

September 18, 1997

The Honorable Robert L. Becker
Licking County Prosecuting Attorney
20 South Second Street
Newark, Ohio 43055

SYLLABUS:

97-043

1. When the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), designates the auditor and treasurer of a participating county to serve as the fiscal officer and treasurer of the joint district, the county treasurer holds money of the joint district in the county treasury and, pursuant to R.C. 135.351, interest earned on the money of the joint district should be credited to the general fund of the county that the treasurer serves, to be used for any proper purpose of the county.
2. When the board of directors of a joint county solid waste management district, acting pursuant to R.C. 343.01(B), appoints an individual who is not a county auditor or a county treasurer to serve as the treasurer and fiscal officer of the joint district, that individual holds money of the joint district outside the county treasury and, pursuant to R.C. 135.21, interest earned on the money should be credited to the general fund of the joint district, to be used for any proper purpose of the joint district.
3. Subject to applicable limitations, a county that participates in a joint solid waste management district may contribute money, real property, personal property, or services to the district pursuant to R.C. 343.01(B), and participating counties may contract with or provide assistance to the joint district or one another as authorized by statute. Through these methods, interest earned on moneys of a joint district held within a county treasury may be directed to uses that benefit the joint district or other participating counties.