

November 18, 2013

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
4th Floor Administration Building
160 High Street N.W.
Warren, Ohio 44481-1092

SYLLABUS:

2013-037

1. A county transit board may borrow money from a bank to fund the operations of the county transit system without the approval of the board of county commissioners.
2. A county is not required to use moneys that do not belong to the county transit board to pay off a bank loan made to the board when the board is unable to repay the bank.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2013-037

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
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Dear Prosecutor Watkins:

You have requested an opinion about the authority of a county transit board to borrow money from a bank and the county's obligation to repay the loan.¹ Specifically, you ask:

1. May a county transit board borrow money from a bank to fund the operations of the county transit system without the approval of the board of county commissioners?
2. If a county transit board borrows money from a bank and is unable to repay the bank, is a county required to use moneys that do not belong to the county transit board to pay off the bank loan?

Fiscal Responsibilities of a County Transit Board

Provisions governing the establishment and operation of a county transit system are set out in R.C. 306.01-.13. When a county establishes a county transit system, the board of county commissioners "shall either appoint a county transit board, with powers and duties as specified by [R.C. 306.01-.13 and R.C. 306.99] or state in the resolution [establishing the system] that the board of county commissioners itself shall operate the county transit system and assume all the powers and

¹ You also ask several questions pertaining to a county's use of competitive bidding or a competitive procurement process to obtain transportation services for the county department of job and family services. We will address these questions in a formal opinion to be issued at a later date.

duties assigned to a board of county commissioners in [R.C. 306.04, R.C. 306.06, R.C. 306.08-.10, R.C. 306.12, and R.C. 306.13].”² R.C. 306.01(A).

The members of a county transit board are appointed, and may be removed for cause, by the board of county commissioners. R.C. 306.02. All other officers and employees of a county transit system operated by a county transit board are “under the sole control of the county transit board and are not subject to supervision of other county officers.” R.C. 306.11. *See generally* R.C. 306.04(A) (“[e]xcept as otherwise provided in division (B) of this section,³ employees of a county transit board ... are employees of the county” (footnote added)).

Except as provided in R.C. 306.04(C)(3), R.C. 306.09(A)-(B), and R.C. 306.04(C)(19),⁴ the financial affairs of a county transit system operated by a county transit board are handled by that board, rather than the board of county commissioners, as a county transit board has “exclusive control over the county transit system’s budgets, appropriations, collections, custody, and application of its revenues or other funds received by it.”⁵ R.C. 306.11. *See generally* R.C. 306.06 (when a county transit board agrees to provide transportation services to a political subdivision, moneys paid to a county transit board for such services are paid to the board). The fiscal powers of a county transit board include, among other things, the authority to issue bonds, R.C. 306.04(C)(3); R.C. 306.09(A)-(B), collect moneys for the use of the county transit system’s real and personal property, R.C.

² After the establishment of a county transit system, a “board of county commissioners may, by resolution, change the governing board for the system from the board of county commissioners to a county transit board, or from a county transit board to the board of county commissioners.” R.C. 306.01(B).

³ R.C. 306.04(B) states that “[a]ny county transit board that established its own civil service organization and procedure prior to October 25, 1995, shall continue to operate under that organization.”

⁴ R.C. 306.04(C)(3) and R.C. 306.09(B) require a board of county commissioners to approve the issuance of revenue bonds secured by revenues and other income accruing to a county transit board. R.C. 306.09(A) provides that a “board of county commissioners ... at the request of the county transit board if one is appointed, may issue bonds of the county pursuant to [R.C. Chapter 133] for the purpose of purchasing, acquiring, constructing, enlarging, and improving the county transit system.” R.C. 306.04(C)(19) requires a board of county commissioners to approve certain sales, leases, and grants to public entities to use all or a portion of a county transit system operated by a county transit board.

⁵ A county transit board is required to prepare and provide to the board of county commissioners an annual report showing the financial results of the operation of the county transit system and a “monthly summary statement of revenues and expenses for the preceding month sufficient to show the exact financial condition of the county transit system as of the last day of the preceding month.” R.C. 306.04(C)(18).

306.04(C)(5); R.C. 306.06, encumber its moneys as security for its obligations, R.C. 306.04(C)(7), “enter into trust agreements or indentures for the benefit of revenue bondholders[.]” R.C. 306.04(C)(7), and obtain for, and accept moneys on behalf of, the county transit system, R.C. 306.04(C)(8); R.C. 306.06; R.C. 306.08. A county transit board thus is the county entity that is responsible for financing the operations of a county transit system. *See generally* R.C. 306.04(C)(6) (a county transit board may employ financial consultants and accountants as it deems necessary to conduct the board’s business).

Authority of a County Transit Board to Borrow Money

Your first question asks whether a county transit board may borrow money from a bank to fund the operations of the county transit system without the approval of the board of county commissioners. R.C. 306.04(C) states that a county transit board may do the following:

(4) Enter into contracts in the exercise of the rights, powers, and duties conferred upon it, and execute all instruments necessary in the conduct of its business;

...;

(7) Pledge, hypothecate, or otherwise encumber its revenues and other income as security for its obligations...;

(8) Borrow money or accept or contract to accept advances [and] loans ... from and enter into contracts or agreements with any federal, state or other governmental or private source and hold and apply advances [and] loans ... according to the terms thereof including provisions which are required by such federal, state, or other governmental or private source to protect the interest of employees affected by such advances [or] loans.... Any advances or loans received from any federal, state, or other governmental or private source may be repaid in accordance with the terms of such advance or loan.

R.C. 306.04(C)(8) provides that a county transit board may borrow money or enter into a contract for a loan from a bank, savings and loan association, or other private source. And, R.C. 306.04(C)(4) and (7)-(8), in turn, authorize a county transit board to (1) execute all contracts or other instruments needed to secure a bank loan to fund the operations of the county transit system and (2) pledge or otherwise encumber moneys received by the board to secure the bank loan. This means that R.C. 306.04(C) authorizes a county transit board to borrow money from a bank to fund the operations of the county transit system.

Nothing in R.C. 306.04(C) or elsewhere in the Revised Code, however, requires a county transit board to obtain the approval of the board of county commissioners before borrowing money from a bank or entering into a contract for a loan. The absence of such language indicates that the General Assembly does not impose such a requirement upon a county transit board. Indeed, the fact that the General Assembly explicitly authorizes a county transit board to borrow money from a bank, but does not impose a corresponding duty upon the county transit board to obtain the approval of the board of county commissioners prior to doing so, evinces a legislative intent that such approval is not needed. *See generally Hubbard v. Canton City Sch. Bd. of Educ.*, 97 Ohio St. 3d 451, 2002-Ohio-

6718, 780 N.E.2d 543, at ¶14 (“where the language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written, making neither additions to the statute nor subtractions therefrom”); *State v. Teamer*, 82 Ohio St. 3d 490, 491, 696 N.E.2d 1049 (1998) (an unambiguous statute may not be modified “by deleting words used or inserting words not used”); *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) (“[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged”).

Moreover, if the General Assembly had intended for a county transit board to obtain the approval of the board of county commissioners prior to borrowing money from a bank, it could have enacted language comparable to that used in other statutes detailing the powers of a county transit board. *Cf.* R.C. 306.04(C)(3) (a county transit board may “[i]ssue, with the approval of the county commissioners..., revenue bonds of the county as provided in [R.C. 306.09(B)] to secure funds to accomplish its purposes”); R.C. 306.04(C)(19) (a county transit board may, “[w]ith the approval of the county commissioners ... and without competitive bidding, sell, lease, or grant the right of use of all or a portion of the county transit system to any other political subdivision, taxing district, or other public body or agency having the power to operate a transit system”); R.C. 306.09(B) (“a county transit board, with the approval of the county commissioners, may issue revenue bonds of the county for the purpose of purchasing, acquiring, constructing, enlarging, and improving the county transit system”). *See generally* *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm’n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the General Assembly intended a particular meaning, “it would not have been difficult to find language which would express that purpose” having used that language in other statutes); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). Given that the General Assembly has not used language to compel a county transit board to obtain the approval of the board of county commissioners before borrowing money, a county transit board may borrow money without such approval. Accordingly, a county transit board may borrow money from a bank to fund the operations of the county transit system without the approval of the board of county commissioners.

Repayment of a Bank Loan Made to a County Transit Board

Your second question asks, if a county transit board borrows money from a bank and is unable to repay the bank, whether a county is required to use moneys that do not belong to the county transit board to pay off the bank loan. When a county transit board borrows money from a bank, the county transit board, rather than the board of county commissioners or another county entity, is the public body borrowing the money and contractually agreeing to repay the bank. *See* R.C. 306.04(C)(4); R.C. 306.04(7)-(8). Also, only money or other property of the county transit board may be used to secure the bank loan, as a county transit board does not have the power to use moneys that do not belong to the county transit board to secure the bank loan. *See* R.C. 306.04(C)(7)-(8). *See generally* 2006 Op. Att’y Gen. No. 2006-008 at 2-71 n.3 (“financial powers given to public bodies are construed strictly, and there must be clear authority to enter into financial transactions”). Because no county entity other than the county transit board has entered into the loan agreement with the bank or used its moneys or property to secure the bank loan, no county entity other than the county transit board has a legal

obligation to repay the bank loan. *See generally Black's Law Dictionary* 1179 (9th ed. 2009) (an "obligation" is "[a] formal, binding agreement or acknowledgement of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons; esp., a duty arising by contract"). *See generally also* 1988 Op. Att'y Gen. No. 88-076 at 2-371 ("[i]t has been established as a general rule, that the contracts of a governmental entity, 'unless limited by positive provisions of statute law, are governed by the same principles as apply to contracts between individuals.'" *Phelps v. Logan Natural Gas & Fuel Co.*, 101 Ohio St. 144, 148, 128 N.E. 58, 59 (1920)).

Additionally, it is significant that various provisions of law indicate that (1) debts of a county transit board belong to the board rather than the county in general and (2) moneys that do not belong to the county transit board are not commingled with the board's moneys or used for the operation of the county transit system unless the board of county commissioners authorizes it. For example, R.C. 306.04(C) states that a county transit board may be held liable for negligent acts committed by its officers and employees:

A county transit board ... may:

....

(17) Sue or be sued, plead or be impleaded, and be held liable in any court of proper jurisdiction for damages received by reason of negligence, in the same manner and to the same extent as if the county transit system were privately operated, provided, that *no funds of a county other than those of the county transit board ... shall be available for the satisfaction of judgments rendered against that system.* (Emphasis added.)

Similarly, when the control of a county transit system is transferred from a county transit board to the board of county commissioners, or vice versa, R.C. 306.01(B) provides as follows:

If the resolution [to change the governing board of a county transit system] transfers the governing authority from the county transit board to the board of county commissioners, the transfer shall not occur for six months after the date of the resolution. On the date of the transfer, the transit board shall be dissolved, *the board of county commissioners shall assume all contracts, property, and debts of the transit board....*

If the resolution [to change the governing board of a county transit system] transfers the governing authority to a county transit board, ... *[t]he board of county commissioners shall transfer to the transit board, and the transit board shall assume, all contracts, property, and debts of the county relative to the transit system.* (Emphasis added.)

A board of county commissioners also may advance moneys to a county transit board from any available fund for the "purchase or acquisition of a transit system, surveys, planning, and mass transportation studies" and be reimbursed by the county transit board. R.C. 306.05. And finally, the county may issue county bonds or levy a tax to provide money to a county transit board. *See, e.g.,* R.C. 306.09(A) (a board of county commissioners "at the request of the county transit board ... may

issue bonds of the county pursuant to [R.C. Chapter 133] for the purpose of purchasing, acquiring, constructing, enlarging, and improving the county transit system”); R.C. 5705.19(Q) (a board of county commissioners may propose a tax levy “[f]or the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to [R.C. 306.01-.13]”); R.C. 5739.026(A)(2) (a board of county commissioners may levy a sales tax to provide additional revenue for a county transit board).

The foregoing provisions of law demonstrate that debts incurred by a county transit board are debts of the board unless transferred to the board of county commissioners and moneys that do not belong to a county transit board may not be used for the operation of a county transit system unless the board of county commissioners authorizes it. For these reasons, unless a board of county commissioners provides moneys to the county transit board to enable the county transit board to pay off a bank loan, no moneys other than moneys of the county transit board are used to repay the bank. Nor is a county required to use moneys that do not belong to the county transit board to repay a bank loan made to the county transit board, as any amount of moneys owed by the county transit board to the bank is not an obligation of the county in general. Therefore, a county is not required to use moneys that do not belong to the county transit board to pay off a bank loan made to the board when the board is unable to repay the bank.

Conclusions

For the foregoing reasons, it is my opinion, and you are hereby advised as follows:

1. A county transit board may borrow money from a bank to fund the operations of the county transit system without the approval of the board of county commissioners.
2. A county is not required to use moneys that do not belong to the county transit board to pay off a bank loan made to the board when the board is unable to repay the bank.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General