

May 18, 2001

OPINION NO. 2001-018

The Honorable C. David Warren  
Athens County Prosecuting Attorney  
Athens County Court House  
First Floor  
Athens, Ohio 45701

Dear Prosecutor Warren:

Thank you for your letter requesting an opinion regarding the possibility of the county commissioners modifying the allocation of permissive motor vehicle license taxes. You have asked specifically whether it is permissible for the county commissioners under R.C. 4504.05 to increase the percentage of permissive tax proceeds directed toward the townships and, if so, what steps are needed to provide the change and whether there is authority to rescind the change in the future.

Let us begin the analysis of your question with a brief review of county permissive motor vehicle license taxes. R.C. 4504.15 authorizes a county, by resolution adopted by its board of county commissioners, to levy an additional county motor vehicle license tax at the rate of five dollars per motor vehicle on certain motor vehicles registered in the county. The tax is for various road-related purposes and is in addition to other motor vehicle taxes. R.C. 4504.15; *see* R.C. 4504.02; R.C. 4504.05; R.C. 4504.18. R.C. 4504.16 authorizes a county that has a tax under R.C. 4504.15 to levy a second additional five-dollar county motor vehicle license tax, in the same manner and for the same purposes.

The moneys received from the county permissive motor vehicle license taxes levied under R.C. 4504.15 and R.C. 4504.16 are allocated as provided in R.C. 4504.05. Under that provision, “costs and expenses incurred by the county in the enforcement and administration of the tax” are paid first. R.C. 4504.05(A). The remaining moneys arising from motor vehicles registered in unincorporated areas of the county “shall be allocated seventy per cent to the county and thirty per cent to the townships in which the owners of the motor vehicles reside.” R.C. 4504.05(B)(2)(b) and (B)(3)(b). The moneys so allocated to townships are paid into their treasuries and may be used only for statutorily-authorized purposes. *Id.*; *see also* R.C. 4504.18.

Your question is whether the county commissioners may increase the percentage of the permissive tax that is allocated to the townships.<sup>1</sup> The statute makes no provision for changing the allocation. It states plainly that the moneys “shall be allocated seventy per cent to the county and thirty per cent to the townships.” R.C. 4504.05(B)(2)(b) and (B)(3)(b). The word “shall” is generally understood to impose a mandatory duty. *See, e.g., Dep’t of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368, 370 (1992) (“[i]t is axiomatic that when it is used in a statute, the word ‘shall’ denotes that compliance with the commands of that statute is *mandatory*”); *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 102, 271 N.E.2d 834, 835 (1971) (syllabus, paragraph 1) (“[i]n statutory construction, the word ‘may’ shall be construed as permissive and the word ‘shall’ shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage”); 1999 Op. Att’y Gen. No. 99-054, at 2-332 (where statute uses the word “shall,” money must be deposited, appropriated, and expended in accordance with its provisions); *see also* R.C. 1.42. When a statute is clear and unambiguous, it must be construed and applied in accordance with its terms. *See, e.g., State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 584, 651 N.E.2d 995, 997 (1995) (“[i]f the meaning of a statute is unambiguous and definite, then it must be applied as written and no further interpretation is appropriate”).

Your letter suggests that an argument in favor of increasing the allocation to the townships might be based on legislative history indicating that the thirty-per cent requirement was intended to protect the interests of the townships. We note, however, that the intention of the legislators was codified in the language of the statute, and we are constrained to read literally language that is clear and unambiguous. R.C. 4504.05 states clearly that, after costs and expenses are paid, permissive tax proceeds received under R.C. 4504.15 or R.C. 4504.16 from motor vehicles registered in unincorporated areas of the county “shall be allocated seventy per cent to the county and thirty per cent to the townships.” R.C. 4504.05(B)(2)(b) and (B)(3)(b). There is no ambiguity and no indication in the statute that the thirty per cent figure is only a minimum or is otherwise subject to modification by the county commissioners. *See, e.g., Slingluff v. Weaver*, 66 Ohio St. 621, 621, 64 N.E. 574, 574 (1902) (syllabus, paragraph 2) (“the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation”); *cf.* R.C. 1.49 (matters that may be considered in determining the intention of the legislature if a statute is

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<sup>1</sup> Apart from the question you have asked, there are means by which a county may make some of its funds available to a township for use by the township for certain road purposes. R.C. 5535.08 provides that a “county or township, by agreement between the board of county commissioners and the board of township trustees, may contribute to the repair and maintenance of the roads under the control of the other.” R.C. 5535.08(A). This provision has been construed to permit a county to agree to contribute to the repair and maintenance of the roads of a township within the county by making a grant of money to the township for that purpose, and it has been found that moneys received by the county pursuant to R.C. 4504.15 or R.C. 4504.16 are among the moneys that may be used for such purpose. 1990 Op. Att’y Gen. No. 90-097.

ambiguous). Accordingly, there is no basis for construing the statute to mean anything except what it plainly says, and compliance with the allocation provisions contained in R.C. 4504.05 must be considered mandatory. *See, e.g., Wachendorf v. Shaver*, 149 Ohio St. 231, 232, 78 N.E.2d 370, 372 (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”).

Therefore, it is my opinion, and you are advised, that pursuant to R.C. 4504.05, after the payment of costs and expenses, moneys received from an additional county motor vehicle license tax under R.C. 4504.15 or a second additional county motor vehicle license tax under R.C. 4504.16 that arise from motor vehicles registered in unincorporated areas of the county must be allocated seventy per cent to the county and thirty per cent to the townships in which the owners of the motor vehicles reside. The county commissioners have no authority to modify that allocation.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

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SYLLABUS:

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Pursuant to R.C. 4504.05, after the payment of costs and expenses, moneys received from an additional county motor vehicle license tax under R.C. 4504.15 or a second additional county motor vehicle license tax under R.C. 4504.16 that arise from motor vehicles registered in unincorporated areas of the county must be allocated seventy per cent to the county and thirty per cent to the townships in which the owners of the motor vehicles reside. The county commissioners have no authority to modify that allocation.