

October 30, 2013

The Honorable Kevin J. Baxter  
Erie County Prosecuting Attorney  
247 Columbus Avenue, Suite 319  
Sandusky, Ohio 44870-2636

SYLLABUS:

2013-035

1. A county may, but is not required to, use moneys from the general fund to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer, provided the moneys are not required to be used for another purpose.
2. Pursuant to R.C. 315.12(A), a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer.
3. A county may, but is not required to, use moneys from the general fund to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer, provided the moneys are not required to be used for another purpose.
4. Pursuant to R.C. 5549.01, a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer. (1920 Op. Att’y Gen. No. 1460, vol. I, p. 802 and 1926 Op. Att’y Gen. No. 3092, p. 32, overruled. 1927 Op. Att’y Gen. No. 104, vol. I, p. 154; 1927 Op. Att’y Gen. No. 274, vol. I, p. 475, syllabus, paragraph 2; and 1930 Op. Att’y Gen. No. 1540, vol. I, p. 289, syllabus, paragraph 1, overruled in part.)



# MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

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

30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215  
www.OhioAttorneyGeneral.gov

October 30, 2013

OPINION NO. 2013-035

The Honorable Kevin J. Baxter  
Erie County Prosecuting Attorney  
247 Columbus Avenue, Suite 319  
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have requested an opinion about the payment of costs associated with the repair or purchase of a vehicle hoist for the county engineer's office. Specifically, you ask:

1. If a county undertakes to repair a vehicle hoist that is part of a county building used by the county engineer, must the county use moneys in the general fund to pay for the repair or may it use state motor vehicle license tax revenues distributed to the county under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to the county under R.C. 5735.27(A)?
2. If a county purchases a new vehicle hoist that will not be a permanent part of a building used by the county engineer, must the county use moneys in the general fund to pay for the purchase or may it use state motor vehicle license tax revenues distributed to the county under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to the county under R.C. 5735.27(A)?

### Use of Moneys in a County's General Fund

A county is required to establish a general fund in its treasury.<sup>1</sup> R.C. 5705.09(A). The general fund consists of moneys received by the county from various sources. *See* R.C. 325.31(A) ("fees, costs, penalties, percentages, allowances, and perquisites collected by" certain county officers are paid

---

<sup>1</sup> Erie County has not acquired home rule powers, *see* Ohio Const. art. X, § 1; R.C. 9.482; R.C. 307.15, adopted a charter, *see* Ohio Const. art. X, §§ 3 and 4, or adopted an alternative form of county government, *see* Ohio Const. art. X, § 1; R.C. Chapter 302. Thus, this opinion will consider your questions in light of the provisions of law governing the statutory form of county government. *See generally* R.C. Chapter 307 (general powers and duties of a board of county commissioners in the statutory form of county government); R.C. Chapter 315 (general powers and duties of the county engineer in the statutory form of county government).

“into the county treasury, to the credit of the general county fund”); R.C. 5705.10(A) (“[a]ll revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund”); R.C. 5705.10(D) (“[e]xcept as otherwise provided by resolution adopted pursuant to [R.C. 3315.01] or as otherwise provided by [R.C. 3315.40], 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”); 2008 Op. Att’y Gen. No. 2008-009 at 2-96 (overruled, in part, on other grounds by 2009 Op. Att’y Gen. No. 2009-054) (“the *general fund* also holds amounts other than *general levy* moneys”).

Moneys in the county’s general fund may be used for any proper county purpose, unless the law requires them to be used for a specific purpose. *See* 2006 Op. Att’y Gen. No. 2006-009 at 2-78 and 2-79 (“[t]he term ‘general fund’ suggests that moneys in the fund may be used for general expenses of the county, and many of the moneys in the county general fund are available for those purposes.” However, “when particular moneys in the county general fund are collected for specified purposes, their expenditure is restricted to those purposes”); 1984 Op. Att’y Gen. No. 84-024 at 2-76 n.3 (“[m]oneys paid into the general fund which are not derived from the general levy or otherwise similarly restricted as to use may be used for any proper purpose of the subdivision”); 1981 Op. Att’y Gen. No. 81-035 at 2-135 (“where the use of money paid into the [county] general fund is not restricted to a specific use, the use is limited only to a proper county purpose”). *See generally* 1969 Op. Att’y Gen. No. 69-015 at 2-22 (“[w]here general fund monies are appropriated to a specific use, it is only necessary to establish an account within the general fund for the purpose intended”). And, when the moneys are not required to be used for a particular purpose, the appropriation of such moneys is largely discretionary with the board of county commissioners.<sup>2</sup> *See* R.C. 5705.28 (a board of county commissioners adopts the annual tax budget for the county); R.C. 5705.38 (a board of county commissioners passes the county’s annual appropriation measure); R.C. 5705.39 (“[t]he total appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom, as certified by the budget commission, or in case of appeal, by the board of tax appeals”); R.C. 5705.392(A) (“[a] board of county commissioners may adopt as a part of its annual appropriation measure a spending plan, or in the case of an amended appropriation measure, an amended spending plan, setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund”); *Madden v. Bd. of Cnty. Comm’rs of Summit Cnty.*, 20 Ohio St. 2d 135, 254 N.E.2d 357 (1969) (syllabus, paragraph 3) (“[t]he authority to

---

<sup>2</sup> In some instances, a board of county commissioners is required to use moneys in the county’s general fund to pay for an item, even though the law does not require particular moneys in the general fund to be used for that purpose. *See, e.g.*, R.C. 309.06(A) (the compensation of certain persons appointed by a prosecuting attorney “shall be paid ... from the general fund of the county treasury”); R.C. 309.09(C) (the compensation of an attorney hired by a board of county commissioners “shall be paid from the county general fund”).

make appropriations from the various funds of a county, within the limits prescribed by law, is lodged in the board of county commissioners”).

### **Use of State Motor Vehicle License Tax Revenues and State Motor Vehicle Fuel Excise Tax Revenues**

The use of motor vehicle license tax revenues and motor vehicle fuel excise tax revenues is governed by Article XII, § 5a of the Ohio Constitution and various statutes. Article XII, § 5a of the Ohio Constitution reads as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

*See generally* 1975 Op. Att’y Gen. No. 75-088 at 2-353 (“[m]oneys subject to [Article XII, § 5a of the Ohio Constitution] may not be expended for any purposes other than those set forth in that section”).

In accordance with this constitutional dictate, the General Assembly has enacted statutes which specify “the purposes for which the revenues of particular taxes relating to the registration, operation, or use of vehicles on public highways may be used.” 1994 Op. Att’y Gen. No. 94-025 at 2-116; *accord* 1997 Op. Att’y Gen. No. 97-020 at 2-104 n.1; 1988 Op. Att’y Gen. No. 88-004 at 2-10; *see, e.g.*, R.C. 325.14(A); R.C. 315.12(A); R.C. 4501.04; R.C. 4503.02; R.C. 4504.02; R.C. 5735.27. *See generally* Ohio Const. art. XII, § 5 (“every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied”). Article XII, § 5a of the Ohio Constitution and various statutes thus strictly restrict the purposes for which motor vehicle license tax revenues and motor vehicle fuel excise tax revenues may be used. *Knox Cnty. Bd. of Comm’rs v. Knox Cnty. Eng’r*, 109 Ohio St. 3d 353, 2006-Ohio-2576, 847 N.E.2d 1206 (2006) (syllabus); *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph 1); 1994 Op. Att’y Gen. No. 94-031 at 2-140; 1994 Op. Att’y Gen. No. 94-019 at 2-87; 1992 Op. Att’y Gen. No. 92-049 at 2-201; 1991 Op. Att’y Gen. No. 91-043 at 2-229 and 2-230; 1988 Op. Att’y Gen. No. 88-067 at 2-339.

With respect to your specific inquiry, you have asked about the use of state motor vehicle license tax revenues distributed to a county under R.C. 4501.04 and state motor vehicle fuel excise tax revenues distributed to a county under R.C. 5735.27(A). R.C. 4501.04 provides for the distribution to, and use by, counties of moneys in the auto registration distribution fund.<sup>3</sup> Under this statute, 34% of certain moneys in the auto registration distribution fund are distributed to municipal corporations and

---

<sup>3</sup> The auto registration distribution fund is created in the state treasury pursuant to R.C. 4501.03.

counties. The portion of the 34% that is distributed to counties must be used to (1) plan, maintain, repair, construct, and repave public streets; (2) maintain and repair bridges and viaducts; and (3) pay “principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which [a] board of county commissioners may issue bonds under such chapter.” R.C. 4501.04(A). The statute also provides that another 61% of the moneys is distributed to counties for (1) planning, constructing, reconstructing, improving, maintaining, and repairing roads and highways; (2) maintaining and repairing bridges and viaducts; and (3) paying “principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which [a] board of county commissioners may issue bonds under such chapter.”<sup>4</sup> R.C. 4501.04(C); *accord* R.C. 4501.04(B), (D).

R.C. 5735.27(A), the other statute about which you ask, provides for the distribution to, and use by, counties of moneys in the gasoline excise tax fund.<sup>5</sup> This statute states that the amount of moneys credited to the gasoline excise tax fund pursuant to R.C. 5735.23(B)(2)(b) and R.C. 5735.23(C)(2)(c) and paid to a county must be used to (1) plan, maintain, and repair the county system of public roads and highways within the county; (2) plan, construct, and repair walks and paths along county roads in congested areas; (3) plan, construct, purchase, lease, and maintain suitable buildings for the housing and repair of county road machinery, housing of supplies, and housing of personnel associated with the machinery and supplies; (4) pay costs apportioned to the county under R.C. 4907.47; (5) pay “principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which [a] board of county commissioners may issue bonds under that chapter;” and (6) purchase, install, and maintain traffic signal lights. R.C. 5735.27(A)(3). The statute provides further that the amount of moneys credited to the gasoline excise tax fund pursuant to R.C. 5735.26(C) and paid to a county must be used to (1) plan, maintain, construct, widen, and reconstruct the county system of public roads and highways; (2) pay “principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] or incurred pursuant to [R.C. 5531.09] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which [a] board of county commissioners may issue bonds under that chapter;” and (3) pay costs apportioned to the county under R.C. 4907.47. R.C. 5735.27(A)(4).

---

<sup>4</sup> The remaining 5% of the moneys distributed under R.C. 4501.04 goes to townships. R.C. 4501.04(E).

<sup>5</sup> Pursuant to R.C. 5735.27(A), the gasoline excise tax fund is created in the state treasury.

### **Moneys Used to Pay for Repairs to a Vehicle Hoist that Is Part of a County Building**

We turn now to your first question, which asks, if a county undertakes to repair a vehicle hoist that is part of a county building used by the county engineer, whether the county must use moneys in the general fund to pay for the repair or may it use state motor vehicle license tax revenues distributed to the county under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to the county under R.C. 5735.27(A). According to your letter, the vehicle hoist is located in a county building that serves as the county engineer's office. The vehicle hoist was installed in the building when the building was constructed in 1966. Specifically, the vehicle hoist is built into the floor of the building and cannot be moved, as it is a permanent part of the building. The vehicle hoist is used to service the motor vehicles used by the county engineer in performing his statutory duties.

A vehicle hoist that is incorporated into a county building used by the county engineer is a fixture because the hoist is personal property that has been attached permanently to the building to enhance the utility of the building for the county engineer. *See Black's Law Dictionary* 713 (9th ed. 2009) (defining the term "fixture" to mean "[p]ersonal property that is attached to land or a building and that is regarded as an irremovable part of the real property.... Historically, personal property becomes a fixture when it is physically fastened to or connected with the land or building and the fastening or connection was done to enhance the utility of the land or building. If personal property has been attached to the land or building and enhances only the chattel's utility, it is not a fixture"). In other words, the vehicle hoist is considered to be a section of the county building used by the county engineer, rather than equipment that is provided to the county engineer's office.<sup>6</sup> *See id.*

R.C. 307.01(A) and R.C. 315.11(A) require a board of county commissioners to provide the county engineer with offices and other facilities to enable him to perform his duties.<sup>7</sup> *See generally* R.C. 5549.01 (a board of county commissioners "shall provide a suitable place for housing and storing machinery, tools, and equipment" used by the county engineer). No language in R.C. 307.01(A) or R.C. 315.11(A), however, requires a county to use moneys in the county's general fund to pay for

---

<sup>6</sup> The analysis used to answer your first question would be different if the vehicle hoist in question was a piece of equipment rather than a fixture. *See* note 11, *infra*.

<sup>7</sup> R.C. 307.01(A) provides, in part: "[O]ffices for county officers ... shall be provided by the board of county commissioners when, in its judgment, any of them are needed.... The board shall also provide ... such facilities as will result in expeditious and economical administration of such offices." *See generally State ex rel. Mikus v. Roberts*, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968) (syllabus, paragraph 2) (the county engineer is a county officer); 2013 Op. Att'y Gen. No. 2013-011, slip op. at 3 (same as the previous parenthetical). Similarly, R.C. 315.11(A) states that "[t]he county engineer shall keep the engineer's office in the county seat, or at another location as provided in division (B) of this section, in such rooms as are provided by the board of county commissioners[.]"

repairs to offices or other facilities used by the county engineer. Nor does a statute require the county to use moneys from another fund in the county treasury to pay for repairs to such offices or facilities.<sup>8</sup>

Instead, it is within a board of county commissioners' discretion whether moneys in the county's general fund are to be used to pay for repairs to a building used by the county engineer. As explained previously, it is well settled that, when moneys in the county's general fund are not required to be used for a particular purpose, a board of county commissioners has the discretion to appropriate the moneys for any proper county purpose.

The General Assembly has established that moneys in a county's general fund may be used to repair county buildings. R.C. 5705.03(A) authorizes a county to levy taxes annually, subject to the limitations of R.C. 5705.01-.47, on the real and personal property within the county for the purpose of paying the current operating expenses of the county and acquiring or constructing permanent improvements. *See generally* R.C. 5705.01(F) (as used in R.C. Chapter 5705, "current operating expenses" and "current expenses" are "the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision").<sup>9</sup> Included among the taxes that a county may levy are general levies for current operating expenses. *See* R.C. 5705.04(B); R.C. 5705.19(A). Revenue derived from a general levy for current operating expenses is paid into a county's general fund. R.C. 5705.10(A); *see* 2008 Op. Att'y Gen. No. 2008-009 at 2-96 (overruled, in part, on other grounds by 2009 Op. Att'y Gen. No. 2009-054).

---

<sup>8</sup> From the information you have provided to us, it appears that the county does not have moneys in a special fund in the county treasury that must be used to pay for permanent improvements to the county building in question. *See* R.C. 5705.06(A) (authorizing a special levy without a vote of the people for "any specific permanent improvement which the subdivision is authorized by law to acquire, construct, or improve, or any class of such improvements which could be included in a single bond issue"); R.C. 5705.10(C) ("[a]ll revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made"); R.C. 5705.10(I) ("[m]oney paid into any fund shall be used only for the purposes for which such fund is established"); R.C. 5705.12 (in addition to the funds provided for by R.C. 5705.09, R.C. 5705.13, and R.C. 5705.131, a county "may establish, with the approval of and in the manner prescribed by the auditor of state, such other funds as are desirable, and may provide by ordinance or resolution that money derived from specified sources other than the general property tax shall be paid directly into such funds"); 1981 Op. Att'y Gen. No. 81-037 at 2-146 (R.C. 5705.12 authorizes a county to establish a special fund for particular moneys and limit the use of the moneys in the fund to a specific purpose). *See generally* R.C. 5705.01(E) (as used in R.C. Chapter 5705, a "permanent improvement" or "improvement" is "any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more").

<sup>9</sup> For purposes of R.C. Chapter 5705, a county is a subdivision. R.C. 5705.01(A).

Pursuant to R.C. 5705.05, “[t]he purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made.” This statute states further that, “[w]ithout prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include: ... [i]n the case of counties, the amounts necessary for the maintenance, operation, and repair of public buildings[.]” R.C. 5705.05(E). The language of R.C. 5705.05(E) indicates that moneys from a general levy that are paid into the county’s general fund may be used to maintain and repair public buildings used by a county engineer. This means that a county may use moneys from the general fund to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer, provided the moneys are not required to be used for another purpose. *See generally* 2008 Op. Att’y Gen. No. 2008-009 at 2-98 (overruled, in part, on other grounds by 2009 Op. Att’y Gen. No. 2009-054) (“[t]o the extent that the general fund contains moneys that are not subject to any limitation against expenditure for road and bridge purposes, those moneys may be expended directly for road and bridge purposes”).

In addition, R.C. 315.12(A) declares:

Two thirds of the cost of operation of the office of county engineer, including the salaries of all of the employees and *the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose*, shall be paid out of the county’s share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county’s share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27]. (Emphasis added.)

R.C. 315.12(A) thus reflects “a presumption on the part of the General Assembly that no less than two thirds of the costs of operating the office of county engineer are directly related to the statutorily-enumerated purposes for which state motor vehicle license tax [revenues] and motor vehicle fuel excise tax revenues may be expended.” 1988 Op. Att’y Gen. No. 88-067 at 2-343; *accord* 1994 Op. Att’y Gen. No. 94-031 at 2-140 and 2-141; 1994 Op. Att’y Gen. No. 94-025 at 2-117. The statute also includes the costs of maintaining the county engineer’s office as a cost of operating the county engineer’s office. For this reason, if the cost to repair a vehicle hoist that is part of a county building used by the county engineer is a cost related to the maintenance of the county engineer’s office, the cost of the repair may be paid from state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues.

The term “maintenance,” as used in R.C. 315.12(A), has not been defined by statute or the courts. Absent such a definition, the term is accorded its common, everyday meaning. R.C. 1.42. *Black’s Law Dictionary* 1039 (9th ed. 2009) defines “maintenance” as “[t]he care and work put into property to keep it operating and productive; general repair and upkeep.” Thus, for purposes of R.C. 315.12(A), the term “maintenance” means keeping the property of the county engineer’s office in operating order and repairing the property if needed. *See generally* 2013 Op. Att’y Gen. No. 2013-032, slip op. at 6 (“[t]he provision and maintenance of facilities encompasses both daily operating expenses and permanent improvement expenses”).

Because the vehicle hoist is property used by the county engineer to perform his statutory duties, the cost to repair the hoist is related to the maintenance of the county engineer's office and is a cost of operating the county engineer's office for purposes of R.C. 315.12(A).<sup>10</sup> *See generally* 1994 Op. Att'y Gen. No. 94-019 (syllabus) (“[t]he cost of removing underground fuel storage tanks used to fuel equipment and vehicles of the county engineer's office is a ‘cost of operation of the office of county engineer’”); 1942 Op. Att'y Gen. No. 4728, p. 32, at 37 (discussing G.C. 2782-2 (now R.C. 315.12(A)) and concluding that “[t]he county engineer's office operating allowance from the motor vehicle license and fuel tax distributions being general and without restriction, it must be construed as applying to all expenses of his office, including such expenses as might be allocated to ditch improvement work”). A county therefore may use state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer. *See generally* R.C. 5735.27(A)(3) (the amount of moneys credited to the gasoline excise tax fund pursuant to R.C. 5735.23(B)(2)(b) and R.C. 5735.23(C)(2)(c) and paid to a county may be used to plan, construct, purchase, lease, and maintain “suitable buildings for the housing and repair of county road machinery, housing of supplies, and housing of personnel associated with the machinery and supplies”); 1994 Op. Att'y Gen. No. 94-025 (syllabus, paragraph 6) (“[m]otor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer”); 1993 Op. Att'y Gen. No. 93-057 (syllabus, paragraph 3) (“[a] township may expend motor vehicle fuel excise tax revenues paid to it pursuant to R.C. 5735.27(A)(5) to plan, construct, and maintain a driveway and parking lot that serve a building in which the township houses road machinery and equipment”).

---

<sup>10</sup> To perform his statutory duties, a county engineer must utilize numerous motor vehicles and keep them operational and available for use. *See generally* 1994 Op. Att'y Gen. No. 94-031 at 2-142 (“[t]he operation of the office of the county engineer requires the use of motor vehicles. A large part of the equipment used to construct, repair, maintain and improve roads, bridges, highways and culverts consists of motor vehicles. The county engineer and county engineer's employees also use motor vehicles to carry out the county engineer's duties of supervision and inspection. In addition to passenger cars, the county engineer uses a variety of motor vehicles such as trucks, road rollers, bulldozers, graders, and pavers”); 1993 Op. Att'y Gen. No. 93-057 at 2-272 (“[i]n the case of a building in which a township houses road machinery and equipment, some form of driveway will, in most instances, have to be provided if the township is to have proper and ready access to that machinery or equipment whenever it is needed for the construction, improvement, maintenance, or reconstruction of roads and highways within the township. Such a driveway will enhance the utility of a building in which a township houses road machinery and equipment by enabling that machinery and equipment to travel to and from that building in a safe and efficient manner. Certainly a variety of difficulties might reasonably be anticipated (particularly in inclement weather) if large road machinery or equipment must make its way to and from that building absent a driveway designed and constructed for that purpose”).

Accordingly, in response to your first question, a county may, but is not required to, use moneys from the general fund to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer, provided the moneys are not required to be used for another purpose. Moreover, pursuant to R.C. 315.12(A), a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer.<sup>11</sup>

### **Moneys Used to Purchase a New Vehicle Hoist for the County Engineer's Office**

Your second question asks, if a county purchases a new vehicle hoist that will not be a permanent part of a building used by the county engineer, whether the county must use moneys in the general fund to pay for the purchase or may it use state motor vehicle license tax revenues distributed to the county under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to the county under R.C. 5735.27(A). Unlike the previous question, your second question concerns a situation in which the vehicle hoist is not a fixture because it is not attached permanently to a county building. Instead, the vehicle hoist is a piece of equipment.

---

<sup>11</sup> The Ohio Supreme Court has declared that, “[u]nder the provisions of [R.C. 315.11], the cost and expense of equipment and supplies of the county engineer’s office *shall be allowed and paid from the general fund of the county* upon approval of the Board of County Commissioners.” *Bd. of Cnty. Comm’rs of Scioto Cnty. v. Scioto Cnty. Budget Comm’n*, 17 Ohio St. 2d 39, 244 N.E.2d 888 (1969) (syllabus, paragraph 3) (emphasis added). To reach this conclusion, the court examined the language of R.C. 315.11 and R.C. 315.12 and determined:

[R.C. 315.12] does not state, and in the absence of specific language, [does] not mean that one-third of the cost of the office of the county engineer is required to be paid from the general revenue fund. This section means that at least two-thirds of the cost of the office of the county engineer must be paid from motor vehicle license and fuel tax revenues. This language does not require any of the cost, except that specifically stated in [R.C. 315.11], be paid from the general revenue fund.

*Id.* at 43. In light of this court decision, it might be argued that R.C. 315.11(A) requires a county to use moneys from the general fund to pay the costs incurred to repair equipment provided to the county engineer’s office.

However, as explained earlier, a vehicle hoist that is part of a county building used by the county engineer is not a piece of equipment. Instead, the vehicle hoist is a fixture or a section of a county building used by the county engineer. The vehicle hoist thus does not constitute a piece of equipment provided to the county engineer’s office pursuant to R.C. 315.11(A), and, as such, the county is not required to use moneys from the general fund to pay for repairs to the vehicle hoist.

As stated earlier, when moneys in the county's general fund are not required to be used for a particular purpose, a board of county commissioners may appropriate such moneys for any proper county purpose. R.C. 315.11(A) requires a board of county commissioners to furnish the county engineer's offices "with all tools, instruments, books, blanks, and stationery necessary for the proper discharge of the official duties of [the] engineer." *Accord* R.C. 307.01(A). The statute provides further that "[t]he cost and expense of such equipment shall be allowed and paid from the general fund of the county upon the approval of the board" of county commissioners. Hence, R.C. 315.11(A) authorizes a county to use moneys from the general fund to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer, provided the moneys are not required to be used for another purpose.

Additional authority to pay for the cost of new equipment furnished to a county engineer's office is also found in R.C. 5549.01. This statute reads, in pertinent part:

The board of county commissioners may purchase such machinery, tools, or other equipment, including special wearing apparel, for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary....

....  
.... *All expenditures authorized by this section shall be paid out of any available road funds of the county.* (Emphasis added.)

Under R.C. 5549.01, a county may use moneys from "any available road funds" to purchase equipment to be used in the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county's jurisdiction. Insofar as state motor vehicle license tax revenues distributed to a county under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to a county under R.C. 5735.27(A) are available to a county for use in constructing, improving, maintaining, and repairing highways, bridges, and culverts under the county's jurisdiction, such revenues may be used for the purposes listed in R.C. 5549.01 and purposes directly connected thereto. *See* 1930 Op. Att'y Gen. No. 1540, vol. I, p. 289; 1927 Op. Att'y Gen. No. 274, vol. I, p. 475; 1927 Op. Att'y Gen. No. 104, vol. I, p. 154; *see also Stockberger v. Henry*, 134 Ohio St. 3d 213, 2012-Ohio-5392, 981 N.E.2d 807, ¶¶22, 29 (2012) ("[o]ur previous decisions have not limited the use of [state motor vehicle fuel excise tax revenues] to expenses of physical construction, maintenance, and repair of highways and bridges" and thus such revenues may be expended for items "directly connected to a highway purpose"); *Knox Cnty. Bd. of Comm'rs v Knox Cnty. Eng'r*, 109 Ohio St. 3d 353 (syllabus) ("[t]he Ohio Constitution restricts the expenditure of moneys derived from the registration, operation, or use of vehicles on public highways and from fuels used to propel such vehicles to the purposes listed in Section 5a, Article XII or to purposes directly connected thereto"); *Grandle v. Rhode*, 169 Ohio St. 77 (syllabus, paragraph 1) (same as the previous parenthetical). *See generally* 1991 Op. Att'y Gen. No. 91-043 at 2-230 ("[s]ince the testing of motor vehicle fuel bears no direct relationship to any of the purposes enumerated in R.C. 5735.05 and does not appear to be 'directly connected' to the construction, maintenance and repair of highways or the enforcement of traffic, funds derived from the motor vehicle fuel tax imposed by R.C. 5735.05 may not be used to fund a program to test motor vehicle fuels"); 1941 Op. Att'y Gen. No. 4008, p. 588 (syllabus,

paragraph 1) (“[c]ounty commissioners may purchase trucks for the repair and maintenance of highways under [G.C. 7200 (now R.C. 5549.01)]”).

Earlier we stated that a county engineer needs motor vehicles to perform his duties and that such vehicles must be operational and available for use. *See* note 10, *supra*. The motor vehicles may be used to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction. *See* R.C. 5543.01(A)(1). To repair these motor vehicles, a county engineer may need a vehicle hoist. When a vehicle hoist is used to repair motor vehicles used to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction, the hoist is being used for a purpose directly connected to the purposes set forth in R.C. 5549.01. A vehicle hoist thus is a proper expenditure under that statute. Accordingly, R.C. 5549.01 authorizes a county to use state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer to service motor vehicles used to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction.<sup>12</sup> *See* 1930 Op. Att’y Gen. No. 1540, vol. I, p. 289 (syllabus, paragraph 1) (a

---

<sup>12</sup> 1920 Op. Att’y Gen. No. 1460, vol. I, p. 802 and 1926 Op. Att’y Gen. No. 3092, p. 32 concluded that state motor vehicle license tax revenues and state motor vehicle fuel excise tax revenues may not be used by a county to purchase road equipment. After the issuance of these opinions, it was determined that the authority granted to a county under R.C. 5549.01 to expend state motor vehicle license tax revenues and state motor vehicle fuel excise tax revenues to construct, improve, maintain, and repair county highways and roads includes the authority to use such revenues to purchase road equipment. 1930 Op. Att’y Gen. No. 1540, vol. I, p. 289 (syllabus, paragraph 1); 1927 Op. Att’y Gen. No. 274, vol. I, p. 475 (syllabus, paragraph 2); 1927 Op. Att’y Gen. No. 104, vol. I, p. 154 (syllabus); *see State ex rel. Crabbe v. City of Columbus*, 21 Ohio App. 1, 153 N.E. 174 (Franklin County 1926). As we agree with the later interpretation of R.C. 5549.01 regarding the use of state motor vehicle license tax revenues and state motor vehicle fuel excise tax revenues, we overrule 1920 Op. Att’y Gen. No. 1460, vol. I, p. 802 and 1926 Op. Att’y Gen. No. 3092, p. 32.

Opinions of the Attorney General also have determined that, when road equipment is purchased by a county pursuant to R.C. 5549.01 with state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues, the equipment may be used *only* to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction. 1930 Op. Att’y Gen. No. 1540, vol. I, p. 289 (syllabus, paragraph 1); 1927 Op. Att’y Gen. No. 274, vol. I, p. 475 (syllabus, paragraph 2); 1927 Op. Att’y Gen. No. 104, vol. I, p. 154 (syllabus). When the aforementioned opinions were issued in 1927 and 1930, the General Assembly had not enacted R.C. 315.12(A). *See generally* 1939 Ohio Laws 594 (Am. S.B. 320, filed June 7, 1939) (enacting G.C. 2782-2 (now R.C. 315.12)). This statute authorizes a county to use state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues to pay “the cost of operation of the office of county engineer.” The operation of the county engineer’s office may require the use of a vehicle hoist to enable the county engineer to perform duties unrelated to the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction. Thus,

county may expend state motor vehicle license tax revenues and state motor vehicle fuel excise tax revenues “to purchase road machinery and equipment which is to be used exclusively for maintenance and repair of the county system of roads and highways”); 1927 Op. Att’y Gen. No. 274, vol. I, p. 475 (syllabus, paragraph 2) (a county may expend state motor vehicle fuel excise tax revenues “for the purchase of automobile trucks or other machinery, tools or equipment to be used solely in the maintenance and repair of roads in the county system of roads and highways designated under the provisions of [G.C. 6966 (now R.C. 5541.02)] and related sections of the General Code”); 1927 Op. Att’y Gen. No. 104, vol. I, p. 154 (syllabus) (a county may expend state motor vehicle fuel excise tax revenues “to purchase road drags, which are to be used exclusively in maintaining and repairing roads, which are a part of the county road system”); *see also State ex rel. Crabbe v. City of Columbus*, 21 Ohio App. 1, 153 N.E. 174 (Franklin County 1926) (syllabus, paragraph 1) (a city may use state motor vehicle fuel excise tax revenues to purchase a sand dryer for use in a city asphalt plant operated exclusively to prepare materials for maintaining and repairing city streets).

#### **Requirement that Moneys in a County’s General Fund Be Used to Pay for New Equipment for the County Engineer’s Office**

The language of R.C. 5549.01 authorizing a county to use moneys from “road funds” to purchase equipment for the county engineer is in conflict with the language of R.C. 315.11(A) authorizing a county to use moneys from the “general fund” to purchase equipment for the county engineer’s office. Specifically, when a county purchases equipment under R.C. 5549.01 for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction, the county “shall” use moneys from “road funds,” which are special funds that hold moneys for the construction, reconstruction, resurfacing, maintenance, and repair of roads and highways. *See, e.g.,* R.C. 5705.06(D) (authorizing a county to levy a special levy within the ten-mill limitation “for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges”); R.C. 5705.19(G) (authorizing a special levy in excess of the ten-mill limitation “[f]or the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in ... counties”); *see also* R.C. 5705.10(C) (“[a]ll revenue derived from a special levy shall be

---

when R.C. 5549.01 is read in conjunction with R.C. 315.12(A), a county may use state motor vehicle license tax revenues or state motor vehicle fuel excise tax revenues to purchase a new vehicle hoist that is not required to be used solely to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction. *See generally* 1994 Op. Att’y Gen. No. 94-025 (syllabus, paragraph 6) (“[m]otor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer”); 1942 Op. Att’y Gen. No. 4728, p. 32 (syllabus, paragraph 1) (the cost of operation of the county engineer’s office “embraces the cost of all services which the county engineer is required by law to perform”). We therefore overrule 1927 Op. Att’y Gen. No. 104, vol. I, p. 154; 1927 Op. Att’y Gen. No. 274, vol. I, p. 475, syllabus, paragraph 2; and 1930 Op. Att’y Gen. No. 1540, vol. I, p. 289, syllabus, paragraph 1, to the extent that they are inconsistent with this opinion.

credited to a special fund for the purpose for which the levy was made”). Whereas, pursuant to R.C. 315.11(A), a county “shall” use moneys from the county’s “general fund” when purchasing equipment for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction. *See Bd. of Cnty. Comm’rs of Scioto Cnty. v. Scioto Cnty. Budget Comm’n*, 17 Ohio St. 2d 39, 244 N.E.2d 888 (1969) (syllabus, paragraph 3).

No language in either R.C. 315.11(A) or R.C. 5549.01 indicates a legislative intent that the word “shall,” as used therein, should be given a meaning other than its common, everyday meaning. Absent such an intention, the term “shall,” as used in R.C. 315.11(A) and R.C. 5549.01, “denotes that compliance with the commands of [the statutes] is mandatory.” *Dep’t of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) (emphasis omitted); *see State v. Golphin*, 81 Ohio St. 3d 543, 545-46, 692 N.E.2d 608 (1998) (“use of the term ‘shall’ in a statute or rule connotes the imposition of a mandatory obligation unless other language is included that evidences a clear and unequivocal intent to the contrary”). Accordingly, an irreconcilable conflict exists between R.C. 315.11(A) and R.C. 5549.01 because the statutes require the county to use moneys from different sources when purchasing equipment that is to be used by the county engineer to construct, improve, maintain, and repair highways, bridges, and culverts under the county’s jurisdiction.

When two statutes are irreconcilable, it is a codified rule of statutory construction that the “special ... provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.” R.C. 1.51. *See generally State ex rel. Ehmann v. Schneider*, 78 Ohio App. 27, 31, 67 N.E.2d 117 (Hamilton County 1946) (“[f]or purposes of interpretation of legislative enactments, enactments have long been classified as either general or special, and given different effect upon other enactments dependent as they are found to fall in one class or the other”). Comparing R.C. 315.11(A) and R.C. 5549.01 discloses that R.C. 5549.01 is the special provision in that it concerns only equipment purchased for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction, while R.C. 315.11(A) relates to all equipment purchased for the county engineer’s office. *See generally* 1989 Op. Att’y Gen. No. 89-103 at 2-500 n.7 (modified, in part, on other grounds by 1990 Op. Att’y Gen. No. 90-022) (“[t]he determination as to whether a statute is general or special in character must be made in light of the statute with which it is to be compared. A given statute may be regarded as general when compared to a more narrowly tailored statute on the same subject, and special when viewed with regard to a more general or broad statute on the subject”).

Furthermore, the language of R.C. 5549.01 requiring a county to use moneys from road funds to purchase equipment for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction was enacted subsequent to the language of R.C. 315.11(A) requiring a county to use moneys from the general fund when purchasing equipment for the county engineer’s office. *Compare* 1914-1915 Ohio Laws 574, 617-18 (Am. S.B. 125, filed June 5, 1915) (enacting G.C. 7200 (now R.C. 5549.01) and authorizing the use of road funds for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county’s jurisdiction), *with* 1906 Ohio Laws 245, 246 (H.B. 663, filed Apr. 16, 1906) (amending R.S. 1181 (now R.C. 315.11) to require payments for equipment for the county engineer’s office to come

from the county's general fund). As the later enacted special provision, R.C. 5549.01 creates an exception to the general provision of R.C. 315.11(A) with regard to the source of moneys a county may use when exercising its power under R.C. 5549.01 to purchase equipment for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county's jurisdiction. *See generally Davis v. State Pers. Bd. of Review*, 64 Ohio St. 2d 102, 105, 413 N.E.2d 816 (1980) (“[u]tilizing the rules of statutory construction contained in R.C. 1.12, 1.51, and 1.52, a specific statute, enacted later in time than a preexisting general statute, will control where a conflict between the two arises”). Hence, R.C. 315.11(A) does not require a county to use moneys from the general fund when exercising its authority to purchase equipment for the county engineer's office under R.C. 5549.01.<sup>13</sup>

Therefore, our answer to your second question is that a county may, but is not required to, use moneys from the general fund to purchase a new vehicle hoist that will not be a permanent part of a

---

<sup>13</sup> Our conclusion that R.C. 315.11(A) does not require a county to use moneys from the general fund when exercising its authority to purchase equipment for the county engineer's office under R.C. 5549.01 is not in conflict with the third syllabus paragraph of *Bd. of Cnty. Comm'rs of Scioto Cnty. v. Scioto Cnty. Budget Comm'n*, which states that, “[u]nder the provisions of [R.C. 315.11], the cost and expense of equipment and supplies of the county engineer's office shall be allowed and paid from the general fund of the county upon approval of the Board of County Commissioners.” In that case the Ohio Supreme Court did not consider the specific issue whether R.C. 5549.01 creates an exception to R.C. 315.11(A).

In addition, R.C. 5549.01 does not foreclose a county from using moneys from the general fund to purchase equipment for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county's jurisdiction. R.C. 5549.01 states that a “board of county commissioners *may* purchase ... equipment ... for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary.” (Emphasis added.)

The use of “may” in R.C. 5549.01 to describe the purchasing authority of a county under that statute indicates that the term is to be interpreted as permissive unless the legislative intent is that it be construed as mandatory. *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph 1) (“[i]n statutory construction, the word ‘may’ shall be construed as permissive ... unless there appears a clear and unequivocal intent that [it] receive a construction other than [its] ordinary usage”). Nothing in the language of R.C. 5549.01 or elsewhere in the Revised Code suggests that the term “may,” as used in R.C. 5549.01, is to be construed as mandatory. To the contrary, the repeated use of the terms “may” and “shall” in the statute evinces that the terms are to be accorded their common, everyday meaning. *See generally United States ex. rel. Siegel v. Thomas*, 156 U.S. 353, 359 (1895) (when used in juxtaposition, the word “shall” indicates a mandatory provision and the word “may” indicates a permissive provision). Accordingly, a county may, but is not required to, use road funds to purchase equipment for the construction, improvement, maintenance, and repair of highways, bridges, and culverts under the county's jurisdiction.

building used by the county engineer, provided the moneys are not required to be used for another purpose. Moreover, pursuant to R.C. 5549.01, a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A county may, but is not required to, use moneys from the general fund to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer, provided the moneys are not required to be used for another purpose.
2. Pursuant to R.C. 315.12(A), a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to pay for repairs to a vehicle hoist that is part of a county building used by the county engineer.
3. A county may, but is not required to, use moneys from the general fund to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer, provided the moneys are not required to be used for another purpose.
4. Pursuant to R.C. 5549.01, a county may use state motor vehicle license tax revenues distributed to it under R.C. 4501.04 or state motor vehicle fuel excise tax revenues distributed to it under R.C. 5735.27(A) to purchase a new vehicle hoist that will not be a permanent part of a building used by the county engineer. (1920 Op. Att'y Gen. No. 1460, vol. I, p. 802 and 1926 Op. Att'y Gen. No. 3092, p. 32, overruled. 1927 Op. Att'y Gen. No. 104, vol. I, p. 154; 1927 Op. Att'y Gen. No. 274, vol. I, p. 475, syllabus, paragraph 2; and 1930 Op. Att'y Gen. No. 1540, vol. I, p. 289, syllabus, paragraph 1, overruled in part.)

Very respectfully yours,



MICHAEL DEWINE  
Ohio Attorney General