

December 7, 2011

The Honorable Richard W. Moyer
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

SYLLABUS:

2011-045

Pursuant to R.C. 307.691, a board of county commissioners that wishes to make a donation for the general health and safety of the community may effect that purpose by donating a portion of general fund revenues derived from the sale of the personal property of a county hospital to a nonprofit corporation engaged in promoting safety in Ohio.



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OPINION NO. 2011-045

The Honorable Richard W. Moyer
Clinton County Prosecuting Attorney
103 East Main Street
Wilmington, Ohio 45177

Dear Prosecutor Moyer:

You have requested an opinion concerning the disposition of proceeds derived from the sale of personal property of a county hospital.¹ You have informed us that the real and personal property of the county hospital in Clinton County have been sold with a portion of the proceeds having been received at closing and the remainder to be received during the next ten years with interest.² You have

¹ R.C. Chapter 339 governs the establishment and operation of county hospitals, which “are supported by general fund appropriations, special levies, and money received from the operation of the hospital.” 2010 Op. Att’y Gen. No. 2010-024, at 2-173. Pursuant to R.C. 339.01(B), a board of county commissioners has authority to “purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof.” After a board of county commissioners determines by resolution to establish a county hospital, a board of county hospital trustees must be created pursuant to R.C. 339.02, if such a board of county hospital trustees is not already in existence. R.C. 339.02(B). Upon completion of construction or leasing and equipping of a county hospital, a board of county hospital trustees assumes and continues the operation of the county hospital. R.C. 339.01(B); R.C. 339.06(A). See generally 2011 Op. Att’y Gen. No. 2011-021, at 2-174 (“members of a board of county hospital trustees, by virtue of their appointment, perform numerous duties and exercise a broad range of powers, all of which are prescribed by statute and constitute a portion of the sovereignty of the state”); see also 2010 Op. Att’y Gen. No. 2010-024, at 2-173.

² Personal property may be defined as, *inter alia*, “[a]ny movable or intangible thing that is subject to ownership and not classified as real property.” *Black’s Law Dictionary* 1337 (9th ed. 2009); see R.C. 5701.03(A) (as used in R.C. Title 57, “[p]ersonal property’ includes every tangible

further informed us that some of the proceeds that were received at closing have been used to retire bond debt relative to the hospital grounds and the remainder of the proceeds received at closing have been placed in various county funds, including the county's general fund. Currently the board of county hospital trustees is winding up its affairs in expectation of its eventual dissolution. *See generally* 1986 Op. Att'y Gen. No. 86-043, at 2-232 to 2-233 (finding that insofar as a board of hospital governors is without any discernible powers and responsibilities, thereby rendering nugatory the continued existence of the board, such a board may be dissolved).

Within this context you seek our guidance regarding the distribution of proceeds derived from the sale of personal property of the county hospital that have been placed in the county's general fund.³ Specifically, you ask whether a board of county commissioners may donate a portion of the moneys in the county's general fund that are derived from the sale of the personal property of a county hospital to a nonprofit corporation if the board of county commissioners determines that the donation is for the general health and safety of the community. You further ask, if a board of county commissioners is without authority to donate a portion of general fund revenues derived from the sale of the personal property of a county hospital to a nonprofit corporation for the general health and safety of the community, whether a nonprofit corporation may "administer[]" for a specific purpose a portion of general fund revenues derived from the sale of the personal property of a county hospital.

"[A] board of county commissioners is a creature of statute that may exercise only those powers explicitly conferred by statute or necessarily implied by those powers that are expressly granted." 2010 Op. Att'y Gen. No. 2010-030, at 2-221; 2009 Op. Att'y Gen. No. 2009-040, at 2-296. *Accord State ex rel. Shriver v. Bd. of Comm'rs of Belmont County*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2); *Elder v. Smith*, 103 Ohio St. 369, 370, 133 N.E. 791 (1921).⁴ With respect to the expenditure of public moneys, a board of county commissioners "is permitted by law to expend public money only within the scope of its statutory authority and for a proper public

thing that is the subject of ownership, whether animate or inanimate, ... that does not constitute real property as defined in [R.C. 5701.02]"

³ Your letter's description of extant funds in the county treasury following the sale of the county hospital suggests that no moneys in the county treasury are available for the use of the board of county hospital trustees. In view of your letter's description, as well as the board of county hospital trustees' imminent dissolution, we shall presume for the purpose of this opinion that the board of county hospital trustees does not manage any of the proceeds from the sale of the county hospital about which you inquire.

⁴ Article X, § 1 of the Ohio Constitution directs the General Assembly to "provide by general law for the organization and government of counties." The Ohio Constitution also authorizes counties to adopt a charter by a vote of the people. Ohio Const. art. X, §§ 3, 4. Clinton County has not adopted a charter and thus is limited to exercise of the powers granted by the General Assembly. *See* 2009 Op. Att'y Gen. No. 2009-051, at 2-381.

purpose, within the reasonable exercise of the entity's discretion." 1997 Op. Att'y Gen. No. 97-043, at 2-268.

A board of county commissioners may donate a portion of general fund revenues derived from the sale of personal property of a county hospital to a nonprofit corporation only if a board of county commissioners has statutory authority, either express or necessarily implied, to make such a donation. Any such donation must be made in compliance with applicable law. *See* 2002 Op. Att'y Gen. No. 2002-031 (syllabus, paragraph 1) (“[a] county ... may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event only if the county ... has statutory authority, either express or necessarily implied, to make such a donation. Any such donation must be made in compliance with applicable law”); *see also* 1952 Op. Att'y Gen. No. 1713, p. 559, at 565.

Moneys of a county are public funds that are held in trust for the benefit of the public. Such funds may be expended only by clear authority of law in accordance with applicable statutes. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys ... constitute a public trust fund.... Said trust fund can be disbursed only by clear authority of law”); 2007 Op. Att'y Gen. No. 2007-043, at 2-429; 2002 Op. Att'y Gen. No. 2002-031, at 2-206 to 2-207. *See generally Kohler v. Powell*, 115 Ohio St. 418, 425, 154 N.E. 340 (1926) (“[p]ublic money may be used only for public purposes and never for private gain”). “Any doubt as to the authority to expend public funds must be resolved in favor of the public and against the grant of authority to make the expenditure.” 2007 Op. Att'y Gen. No. 2007-043, at 2-429; *see State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2007 Op. Att'y Gen. No. 2007-036, at 2-373; 2002 Op. Att'y Gen. No. 2002-031, at 2-207.

“The donation of public money is ... limited by the fact that the use of certain funds is restricted by statute or constitution. Donations may be made only from funds that are available to be expended as donations in particular circumstances.” 2007 Op. Att'y Gen. No. 2007-036, at 2-373; 2007 Op. Att'y Gen. No. 2007-043, at 2-429; *see, e.g., Ohio Const. art. XII, § 5; R.C. 5705.09-.10; see also* 2006 Op. Att'y Gen. No. 2006-009, at 2-79 to 2-80; 2004 Op. Att'y Gen. No. 2004-047, at 2-412; 2002 Op. Att'y Gen. No. 2002-031, at 2-207 n.2. Consequently, a board of county commissioners may make a donation of public funds only pursuant to clear statutory authority with funds that are available for that purpose.

Various statutes within R.C. Chapter 307 (powers of a board of county commissioners) grant authority to counties to make contributions to private nonprofit entities. Frequently, such statutes require contributions to be used for particular purposes or subject to certain restrictions. 2002 Op. Att'y Gen. No. 2002-031, at 2-208. *See, e.g., R.C. 307.23; R.C. 307.45; R.C. 307.62(B); R.C. 307.691; R.C. 307.692; R.C. 307.78; R.C. 307.85(A); R.C. 307.85(B); see also* 1997 Op. Att'y Gen. No. 97-051, at 2-319 to 2-320; 1984 Op. Att'y Gen. No. 84-096, at 2-324.

R.C. 307.691 grants authority to a county to make a contribution to a nonprofit corporation engaged in promoting safety in Ohio.⁵ According to R.C. 307.691, a board of county commissioners “may cooperate with, give financial assistance to, and provide equipment to any nonprofit corporation engaged in promoting safety in this state.”⁶ As used in any statute, the term “[t]his state’ ... means the state of Ohio,” unless another definition is provided in that statute or a related statute. R.C. 1.59(G). Thus, pursuant to R.C. 307.691, a board of county commissioners may cooperate with, give financial assistance to, and provide equipment to a nonprofit corporation, provided such a nonprofit corporation is engaged in promoting safety in Ohio.⁷

⁵ Pursuant to R.C. 307.691, a nonprofit corporation engaged in promoting safety in Ohio that receives financial assistance or equipment from a board of county commissioners “shall be required to make an audited account at least once every year of any funds received, and a report of the use and disposition of any equipment received, from the board of county commissioners ... to the board of county commissioners ... from which the funds or equipment is received.”

⁶ You ask whether a board of county commissioners may donate a portion of the general fund revenues derived from the sale of the personal property of a county hospital to a nonprofit corporation if the board of county commissioners determines that the donation is for the general health and safety of the community. Pursuant to R.C. 307.691, a board of county commissioners may “give” financial assistance to any corporation engaged in promoting safety in this state. *See* R.C. 307.691. The term “give,” in common usage, means, *inter alia*, “to make a present of,” and “to grant or bestow by formal action.” *Merriam-Webster’s Collegiate Dictionary* 529 (11th ed. 2005); *see* 2011 Op. Att’y Gen. No. 2011-033, slip op. at 2 n.3. Thus, for the purpose of this opinion, we consider a donation to be consonant with the term “give,” as that term is used in R.C. 307.691.

⁷ When determining for purposes of R.C. 307.691 whether a nonprofit corporation is engaged in promoting safety in this state, a board of county commissioners may review relevant documents, such as a nonprofit corporation’s articles of incorporation, and consider, *inter alia*, the actual character of the nonprofit corporation to establish whether a nonprofit corporation is engaged in promoting safety in this state. *See Gennari v. Andres-Tucker Funeral Home, Inc.*, C.A. No. E-84-21, 1984 Ohio App. LEXIS 11857, at *5 (Erie County Dec. 14, 1984) (“[t]he purpose for a corporation’s existence is defined by its articles of incorporation and by general state statute”). *But see State ex rel Russell v. Sweeney*, 153 Ohio St. 66, 91 N.E.2d 13 (1950) (syllabus paragraphs 2, 3, and 4) (a statement in articles of incorporation characterizing a proposed corporation as one not for profit is not conclusive as to its nature, rather the true test is the actual character of the proposed corporation as determined by the authority such a corporation actually possesses and may exercise under the articles recorded).

Whether, in a particular instance, a nonprofit corporation is engaged in promoting safety in this state for purposes of R.C. 307.691 requires an examination of pertinent facts relative to a nonprofit corporation. Such a factual determination, however, is beyond the scope of an opinion of the Attorney General. *See* 1993 Op. Att’y Gen. No. 93-033 (syllabus, paragraph 1) (a question of fact “cannot be determined by means of an Attorney General opinion”); 1983 Op. Att’y Gen. No. 83-057,

The term “safety,” in common usage means, *inter alia*, “the condition of being safe : freedom from exposure to danger : exemption from hurt, injury, or loss,” *Webster’s Third New International Dictionary of the English Language* 1998 (unabr. ed. 1993), while the term “health,” in common usage, means, *inter alia*, “the condition of being sound in body, mind, or spirit; *esp* : freedom from physical disease or pain.” *Merriam-Webster’s Collegiate Dictionary* 574 (11th ed. 2005). *See* R.C. 1.42; *see also* R.C. 1.41. The scope of the terms “safety” and “health” encompasses the notion of freedom from hurt or injury, which may result in enhanced welfare, *i.e.*, a state characterized by well-being. *See Webster’s Third New International Dictionary of the English Language* 2594 (unabr. ed. 1993) (defining “welfare,” as, *inter alia*, “the state of faring or doing well : thriving or successful progress in life : a state characterized *esp.* by good fortune, happiness, well-being, or prosperity”). Moreover, in some contexts, the term “safety” has been construed to mean freedom from danger to health or welfare. *See Ford Motor Co. v. Tomlinson*, 229 F.2d 873, 876 (6th Cir. 1956) (“[t]he word “safety” or “safe,” as used in [R.C. 4101.11 and R.C. 4101.12], means such freedom from danger to life, health, safety or welfare as the nature of the employment will reasonably permit”); *see also Kuhn v. Cincinnati Traction Co.*, 109 Ohio St. 263, 273-75, 142 N.E. 370 (1924). Thus, a board of county commissioners that wishes to make a donation for the general health and safety of the community may effect that purpose by making a donation to a nonprofit corporation engaged in promoting safety in Ohio.⁸

Your second question asks, if a board of county commissioners is without authority to donate a portion of general fund revenues derived from the sale of the personal property of a county hospital to a nonprofit corporation for the general health and safety of the community, whether a nonprofit corporation may “administer[]” for a specific purpose a portion of general fund revenues derived from the sale of the personal property of a county hospital. In view of our answer to your first question, we need not address this second question.

at 2-232 (“[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary”).

⁸ If a board of county commissioners makes a financial donation to a nonprofit corporation engaged in promoting safety in Ohio pursuant to R.C. 307.691, the board of county commissioners must ensure that the donation is not appropriated from general fund revenues that are restricted for another purpose. Generally speaking, “moneys in [a county’s] general fund may be used for any proper county purpose unless the use of money from a particular source has been restricted.” 1981 Op. Att’y Gen. No. 81-035, at 2-137. *See* 1999 Op. Att’y Gen. No. 99-022, at 2-148 (earmarking money in the county’s general fund for a particular use); *see also* 2011 Op. Att’y Gen. No. 2011-026, slip op. at 3 n.5 (“[a] township may earmark township building permit fees that are paid into the general fund for particular uses and require the fees to be deposited in an account within the general fund for those uses”). In this instance, you have not indicated that the proceeds derived from the sale of the county hospital that have been placed in the general fund have been restricted for a particular use.

Accordingly, it is my opinion, and you are hereby advised that pursuant to R.C. 307.691, a board of county commissioners that wishes to make a donation for the general health and safety of the community may effect that purpose by donating a portion of general fund revenues derived from the sale of the personal property of a county hospital to a nonprofit corporation engaged in promoting safety in Ohio.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

MICHAEL DEWINE
Ohio Attorney General