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January 27, 2020

Office of the Ohio Attorney General  
Dave Yost, Attorney General  
c/o Opinion Section  
30 East Broad Street, 15<sup>th</sup> Floor  
Columbus, Ohio 43215

Dear Attorney General Yost:

This office represents the Mahoning County Board of Commissioners (“Commissioners”) and the Mahoning County Board of Developmental Disabilities (“DD Board”). Recently a question was raised regarding the distribution of proceeds from the sale of property.

In 1976, the Commissioners acquired real property for the purpose of having constructed thereon a building which was to be used to offer services to individuals with developmental disabilities. Construction of the building was completed in 1979. The real property and building are hereinafter collectively referred to as the “Property”. From the information available, it appears that the Property was paid for with DD Board funds, i.e., County DD Board levy proceeds, state DD grants, etc.<sup>1</sup> It does not appear that any funding for the Property came from the county’s general fund.

It is also the understanding of this office that from 1979 until the summer of 2018, the Property was used to offer programming and workshops to individuals with developmental disabilities. The programming and workshops, as well as the maintenance

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<sup>1</sup> It is the understanding of this office that funds used to acquire and maintain the Property were derived from real property taxes levied accordance with Section 5 of Article XII of the Ohio Constitution, R.C. 5705.222 and/or any applicable former state statute authorizing the levy of funds for the operation of community programs and services authorized by county boards of developmental disabilities. R.C. 5705.222 currently provides that “[t]he county board of developmental disabilities, within its budget and with the approval of the board of county commissioners through annual appropriations, shall use the proceeds of a levy approved under this section or division (L) of section 5705.19 of the Revised Code solely for the purposes authorized by that section or division...”

of the Property, were paid for with DD Board levy proceeds or with monies received by the DD Board from other outside sources, e.g. state or federal funds.

Recently, however, due to the changing law, the need for county boards of DD to purchase and/or operate facilities is now on the decline. As such, the County DD Board ceased programming at the Property in the summer of 2018, but continues to maintain it with DD Board funds, unless and until another use can be found or the Property is sold.

Given the contemplated sale of the Property, a question has arisen as to the proper distribution of any proceeds of sale considering the Property is titled in the name of the Commissioners, but was purchased and maintained with DD Board funding.

As you may be aware, in 1982 the Ohio Attorney General opined that a county board of developmental disabilities "...is not authorized to independently purchase real estate for a [developmental disabilities] facility..." 1982 Op. Ohio Atty. Gen. No. 18. However, as the Ohio Attorney General pointed out in such Opinion, the Ohio Revised Code has permitted purchases of real estate for use by a county board of developmental disabilities either by "the [county] board [of developmental disabilities] with the approval of the board of county commissioners pursuant to R.C. 5705.19 (L) or by the board of county commissioners under R.C. 307.02". *Id.* Note that the language quoted by the Ohio Attorney General from R.C. 5705.19 in its 1982 Opinion is currently located in R.C. 5705.222.

Additionally, R.C. 307.10(B) appears to authorize a board of county commissioners to transfer real property to a county board of developmental disabilities "for public purposes upon the terms and in the manner that it may determine to be in the best interests of the county...". However, that was not done with respect to the Property in question. As such, the Commissioners remain the owners of the Property and upon its sale the proceeds are presumptively to be distributed in accordance with either R.C. 307.09 and/or R.C. 5705.10.

R.C. 307.09(C) governs sales of real property held in the name of a board of county commissioners and states as follows:

In case of the sale of such real property not used for county purposes...all or such part of the proceeds thereof as the board designates *may* be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor, or for the payment of principal of or interest on bonds of the county issued for any county building. [Emphasis added].

Revised Code 5705.10, entitled "Disposition and Use of Tax Revenues and Proceeds of Sales of Public Obligations and Subdivision Properties", provides, in pertinent part, as follows:

(C) All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made...

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(F) Except as provided in divisions (G) and (H)<sup>2</sup> of this section, if a permanent improvement of the subdivision is sold, the amount received from the sale shall be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. *Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained or, if there is no such fund, into the general fund.* [Emphasis added].

Further, R.C. 5705.01(E) defines “Permanent improvement” or “improvement” as “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.” Hence, it appears the Property in question would qualify as a “permanent improvement” or “improvement” under R.C. 5705.10.

Accordingly, there appears to be a dispute regarding whether the distribution of the proceeds from the sale of the Property is governed by R.C. 307.09(C) or R.C. 5705.10. Additionally, there is the potential issue created by the fact that the Property was presumptively purchased with levy funds, and therefore, R.C. 5705.10(C) can be read to require that the revenue generated from the sale of the facility that was paid for and maintained with county developmental disability levy proceeds should be returned to the special fund for which the levy was made.

Consequently, this office is seeking the opinion of the Ohio Attorney General with regard to the following question:

What is the required legal distribution of proceeds from the sale of real property titled in the name of a board of county commissioners that was purchased maintained, renovated, repaired and improved through the years by a county board of developmental disabilities’ levy funds?

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<sup>2</sup> R.C. 5705.10 (G) and (H) provide exception for the distribution of proceeds of sale of permanent improvements by townships and school districts, respectively.

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If you require additional information to answer this request for opinion, please feel free to contact the undersigned or Chief Assistant Prosecutor Linette M. Stratford.

Very truly yours,



Paul J. Gains  
Mahoning County Prosecutor