November 19, 2010

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
Administration Building
105 Main Street
P.O. Box 490
Painesville, Ohio 44077

SYLLABUS: 2010-028

1. A tax levied pursuant to R.C. 5705.215(A)(2)(c) for the purpose of "current expenses for specified educational programs" is a special levy; the proceeds from such a tax must be placed into a special fund created for the purpose for which the levy was made.

2. An educational service center has no duty or authority to monitor or audit the use of levy funds by a school district participating in a county school financing district.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

November 19, 2010

OPINION NO. 2010-028

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
Administration Building
105 Main Street
P.O. Box 490
Painesville, Ohio 44077

Dear Prosecutor Coulson:

You have requested an opinion regarding the management of proceeds from a tax levied by a county school financing district pursuant to R.C. 5705.215(A)(2)(c). Specifically, you ask:

1. Is a tax levy submitted by a county school financing district pursuant to R.C. 5705.215(A)(2)(c) for the purpose of "current expenses for specified educational programs" a special or general levy?

2. May the proceeds of such a levy be placed into a school district's general fund or must the proceeds be placed in a special fund?

3. If the school districts participating in the county school financing district are required to place proceeds from the levy in a special fund, does an educational service center have the duty or authority to monitor or audit the use of such funds by the participating districts?

According to your request, the Lake County Educational Service Center created a county school financing district (Financing District) as authorized by R.C. 3311.50(B).[1] As permitted

[1] The county school financing district originally was created in 1990 by the Lake County School District Board of Education, rather than the Lake County Educational Service Center. Educational service centers are the successors to county school districts. 2001 Op. Att'y Gen.

by R.C. 3311.50(B)(2), the resolution creating the Financing District states that the District's purpose is:

> to levy taxes for the provision of the following specified educational programs and services by the school districts that are part of the Financing District: the provision of necessary personnel, materials, supplies and transportation for instruction in language arts, social studies, mathematics, fine and practical arts, health and physical education, sciences and business education.

See also R.C. 3311.50(B) (the resolution creating a county school financing district "shall state the purpose for which the county school financing district is created," which may include one or more of the purposes stated in R.C. 3311.50(B)(1), R.C. 3311.50(B)(2), or R.C. 3311.50(B)(3)).

The Financing District and the local school districts that are included in the District entered into an agreement pursuant to R.C. 3313.842(A), which permits school districts to enter into an agreement for "joint or cooperative establishment and operation of any educational program." *See also* R.C. 3311.51(B). The purpose of tax levies within the Financing District, according to this agreement, is for "current expense for specified educational programs within the territory of the Financing district." The agreement also notes that "the distribution and use of the proceeds of a tax levy of the Financing District ... will benefit each Member District by providing needed additional revenues for maintenance and improvement in each Member District" of the specified educational programs. Finally, the agreement requires that "[e]ach Member District will use and spend the amounts so received only for the purpose of current expenses and in accordance with the provisions of this Agreement."

A tax levy was placed on the ballots of the participating local school districts in 1990, and renewal levies have been included on the ballots as each levy period expired. The ballot language stated, in relevant part:

> An additional tax for the benefit of the Lake County School Financing District for the purpose of current expenses for specified educational programs within the territory of the Lake County School Financing District.

Your request indicates that the Financing District treats the levy funds as special funds, segregates them in accordance with 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"), and distributes the funds to the participating local school districts in accordance with the agreement. You

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No. 2001-043, at 2-267. In 1995, the General Assembly enacted legislation that renamed county school districts as "educational service centers" and county boards of education as "governing boards." 1995-1996 Ohio Laws, Part I, 898, 1129, 1160 (Am. Sub. H.B. 117, eff. June 30, 1995, with certain sections effective on other dates).

further explain that the participating school districts treat the funds differently, with some designating the funds as what your letter refers to as "government transfers" and others designating the funds as general operating funds. For the following reasons, I conclude that the levy is a special levy, and the proceeds must be placed into a special fund. I also conclude that an educational service center has no authority or duty to monitor the use of the levy proceeds by the participating school districts.

Ohio's public school system is organized into school districts, which include city school districts, local school districts, exempted village school districts, joint vocational school districts, and cooperative education school districts. R.C. 3311.01-.04. Each school district is governed by a board of education. *See* R.C. 3313.01-.02. Pursuant to R.C. Chapter 3313, a board of education has broad authority over the schools in the district, including management and control of the schools. *See, e.g.*, R.C. 3313.17 (board's corporate powers); R.C. 3313.20 (board's power to make rules necessary for government of employees and students); R.C. 3313.47 (board's power to manage and control schools).

Educational service centers (ESCs) also are an integral part of Ohio's public school system.[2] *See* R.C. 3311.05. ESCs serve the territory in a county other than city or exempted village school districts (*i.e.*, local school districts) and may combine to include several counties. R.C. 3311.05(A); R.C. 3311.053. ESCs also may provide services by agreement to city or exempted village school districts (commonly referred to as "client districts"). R.C. 3313.843. Rather than operating traditional schools, however, ESCs instead provide a wide range of services and support to the school districts that they serve. The services and programs provided vary widely and may include, for example, programs and resources for students (special education, gifted programs, expulsion/suspension alternatives, or speech therapists), resources for parents (parent mentoring), professional development for teachers or administrators (certification and licensure programs), or administrative or operational support for the participating schools (technical support, athletic program administration, or assistance with personnel).

ESCs receive funding from the state, and some of their expenses are apportioned among local school districts. *E.g.*, R.C. 3317.023; R.C. 3317.024; R.C. 3317.052; R.C. 3317.11. They also may receive payment for services pursuant to contracts or agreements with participating school districts. *See* 1999 Op. Att'y Gen. No. 99-023, at 2-151 to 2-152.

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[2] Although not defined as a school district in R.C. 3311.01, for purposes of R.C. Title 33 (education; libraries) an ESC is considered a school district whenever the term "school district" is used "without expressly referring to city, local, exempted village, or joint vocational school districts, or some specific combination thereof," and the governing board of an ESC is considered a "school board" or "board of education" in the same circumstances. R.C. 3311.055.

An important source of funding for school districts are taxes levied pursuant to R.C. Chapter 5705, Ohio's uniform tax levy law. Generally, this chapter includes provisions relating to the imposition of tax levies as well as provisions governing the expenditure of funds raised by such levies. The provisions of R.C Chapter 5705 apply to "subdivisions" and "taxing units" as defined by R.C. 5705.01. The school districts defined in R.C. 3311.01 (city, local, exempted village, cooperative education, and joint vocational school districts) are included in the definitions of "subdivision" and "taxing authority" and therefore may levy taxes pursuant to R.C. Chapter 5705. R.C. 5705.01(A); R.C. 5705.01(C). An ESC, however, is not included in these definitions and therefore has no power to levy taxes. *Id*.

An ESC may establish a special entity called a county school financing district for the purpose of levying taxes under R.C. Chapter 5705. If an ESC wants to create a county school financing district in order to levy taxes under this chapter, the ESC governing board must pass a resolution creating the financing district. R.C. 3311.05(B); R.C. 3311.50. The resolution creating the financing district must state the purpose for which the district is being created. The permissible purposes are to levy taxes to provide: (1) special education or permanent improvements for special education; (2) specified educational programs or services; or (3) permanent improvements of member school districts. R.C. 3311.50(B). A county school financing district itself cannot have any employees. R.C. 3311.50(B)(3). Instead, the employees of the ESC governing board perform the duties of the financing district. *Id*.

A county school financing district is defined as a "subdivision" under R.C. 5705.01(A). The ESC governing board is the "taxing authority" of the county school financing district and may therefore levy taxes under R.C. Chapter 5705. R.C. 5705.01(C); R.C. 3311.50(B)(3).

An ESC governing board, acting as the taxing authority of a county school financing district, may submit a levy pursuant to R.C. 5705.215. R.C. 5705.215(A) authorizes levies for several different purposes, including a levy "[f]or current expenses for specified educational programs within the territory of the district." R.C. 5705.215(A)(2)(c). Your first question is whether a levy pursuant to R.C. 5705.215(A)(2)(c) is considered a general or special levy. I conclude that such a levy is a special levy.

Property taxes under R.C. Chapter 5705 are divided into various levies, including the "general levy for current expense" within the ten-mill limitation; special levies authorized by R.C. 5705.01 to R.C. 5705.47 within the ten-mill limitation; levies for debt charges; and special or general levies authorized by law or by vote of the electorate in excess of the ten-mill limitation. R.C. 5705.04. The purpose of the general levy for current expenses (commonly referred to as the general levy) is set forth clearly in 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." (Emphasis added.) "Current operating expenses" and "current expenses" are defined as "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." R.C. 5705.01(F). The term "special levy" as used in R.C.

Chapter 5705 is not expressly defined by statute. Prior Attorney General opinions, however, have stated that a special levy is "a levy for a specific purpose, as opposed to a general levy for current expenses." 1992 Op. Att'y Gen. No. 92-058, at 2-239 n.1.

Although R.C. 5705.215(A)(2)(c) does not specify that a levy authorized pursuant to this provision is a special levy, I conclude that a levy pursuant to this section cannot be classified as a general levy but instead must be classified as a special levy. R.C. 5705.05 plainly states that revenue from a general levy may be expended for current expenses "of any kind." It is well established that "proceeds of a general levy for current expenses must be available for all current expenses of a subdivision." 1992 Op. Att'y Gen. No. 92-058, at 2-239; s*ee also* 2008 Op. Att'y Gen. No. 2008-009, at 2-106 (R.C. 5705.05 "plainly allow[s] the use of proceeds of the general levy for a myriad of purposes of the subdivision"); 1958 Op. Att'y Gen. No. 1504, p. 7, at 9 (R.C. Chapter 5705 "make[s] it clear that funds which are properly paid into the general fund of a county may be expended for the current expenses of such county"). Special levies, however, are restricted by resolution or ballot language to a particular use. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-058, at 2-239; 1990 Op. Att'y Gen. No. 90-069, at 2-292.

In accordance with this principle, prior Attorney General opinions consistently have concluded that a tax levied for a specific purpose cannot be treated as a general levy. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-058; 1988 Op. Att'y Gen. No. 88-101; 1979 Op. Att'y Gen. No. 79-024; 1963 Op. Att'y Gen. No. 154, p. 240; 1962 Op. Att'y Gen. No. 2997, p. 337; 1958 Op. Att'y Gen. No. 1504, p.7. Although the prior opinions do not address taxes levied pursuant to R.C. 5705.215(A)(2), the analysis in these opinions is equally applicable to questions regarding this section. "[T]he mere fact that the authorizing statute fails to label a particular levy as a special levy is inconclusive." 1979 Op. Att'y Gen. No. 79-024, at 2-84. Instead, these opinions "considered the statement of the purpose of the levy set forth in the taxing authority's resolution the proper basis for determining whether the levy in question was a special or general levy." 1979 Op. Att'y Gen. No. 79-024, at 2-84; s*ee also* 1963 Op. Att'y Gen. No. 154, p. 240, at 246 ("[t]he declaration of purpose contained in the resolution is controlling").

In 1958 Op. Att'y Gen. No. 1504, p. 7, the Attorney General addressed the proper use of funds derived from a tax levied pursuant to R.C. 5705.22. Although the issue in the opinion was whether the funds could be placed in the general fund "for the general purposes of the county," the opinion's reasoning is applicable in determining whether a tax levy may be classified as a general levy. The purpose of the tax at issue was "for the support of county hospitals." *Id.* at 8. The opinion concluded that funds derived from such a tax could not be used for any purpose other than the support of county hospitals and therefore could not be used for current expenses of the county. *Id.* at 10. The singular purpose of the tax levy was of central importance in this conclusion. "It is at once apparent that any tax levied pursuant to this section of the Revised Code is levied for the sole purpose of supporting the county hospitals, and it was for such purpose only that the electors approved such levy." *Id.* at 8. Any other use, concluded the opinion, would violate Article XII, Section 5 of the Ohio Constitution, which states that "[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied." Because the general fund may be used

for current expenses of the county, "if the revenue derived from a tax levy imposed for the special purpose of supporting county hospitals were paid into the general fund, such revenues would certainly be subject to use in whole or in part in disregard of the specific constitutional prohibition." *Id.* at 9.

Similarly, 1997 Op. Att'y Gen. No. 97-030, at 2-176 observed that a levy pursuant to R.C. 5705.24 "for the purpose of children services" was a special levy. In deciding whether funds collected pursuant to an expired levy should be distributed to the general fund or to the special fund established for purposes of the levy, the opinion noted that it is "fundamental under Ohio law that money that is derived from a particular tax levy may be expended only for the purpose for which that levy was adopted." *Id.* Accordingly, the opinion concluded that "all moneys derived from a tax levy for children services must be used for children services." *Id.* at 2-177; s*ee also* 1992 Op. Att'y Gen. No. 92-058, at 2-239 n.1 (because a levy pursuant to R.C. 5705.21(A) is for a particular purpose, as opposed to a levy for current expenses in general, it is a special levy); 1990 Op. Att'y Gen. No. 90-069, at 2-289 n.1 (levy adopted under R.C. 5705.191 for the purpose of current expenses of a subdivision "would be available for any current expense of the county, and could not be restricted to use for only children services and the C.A.P. Unit. Funds derived from such a levy ... could be used, for example, to pay current expenses of the county prosecutor's office").

These opinions make clear that a levy passed for a specific purpose cannot be used for anything other than that specific purpose. Here, the language of R.C. 5705.215(A)(2)(c) and the ballot language for the levy state that the levy's purpose is for the current expenses *of specified educational programs* within the territory of the county school financing district. The agreement entered into between the Financing District and the participating school districts uses identical language. Classifying this levy as a general levy, however, would permit use of the proceeds for purposes other than the current expenses of the specified educational programs. Accordingly, the levy cannot be classified as a general levy. Rather, a levy imposed pursuant to R.C. 5705.215(A)(2)(c) is a special levy intended for the sole purpose of paying for the current expenses of the specified educational programs of the county school financing district.

We acknowledge that R.C. 5705.215(A)(2)(c) and the levy's ballot language use the phrase "current expenses" in reference to specified educational programs. This might suggest that the levy should be classified as a general levy for current expenses. Use of the phrase "current expenses," however, is not determinative of whether this levy should be classified as a general or special levy. Several prior opinions have concluded that levies under other sections of R.C. Chapter 5705 were special levies despite the use of the phrase "current expenses."

1988 Op. Att'y Gen. No. 88-101, at 2-496 addressed a tax levied under R.C. 5705.20, which authorizes a tax in excess of the ten-mill limitation for "tuberculosis treatment." The language of the resolution pertaining to the levy declared its purposes as "the care, treatment and maintenance of residents of the County who are suffering from tuberculosis and related diseases (current expenses)." *Id.* In addressing the proper classification of the levy, the opinion noted that "[t]he presence of the words 'current expenses' in the resolution may suggest that the levy is

one for current expenses of the subdivision under R.C. 5705.19(A)." *Id.* at 2-497 n.1. Despite the use of this language, the opinion concluded that the levy was a special levy and that "the parenthetical insertion of the words 'current expenses' ... was intended to indicate that the moneys derived from the levy would be used for current expenses relating to the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis." *Id.* at 2-498 n.1.

A similar conclusion is warranted here. The use of the phrase "current expenses" in conjunction with "for specified educational programs" in R.C. 5705.215(A)(2)(c) and in the levy's ballot language indicates that proceeds from the levy are to be used only for current expenses related to the specified educational programs. If a different purpose was intended, the statute could simply have provided for current expenses without further restricting the purpose.

Additionally, a levy "for the purpose of current expenses of the subdivision to provide for the children's home and child welfare services" was found to be a special levy for child welfare services. 1963 Op. Att'y Gen. No. 154, p. 240, at 246. This opinion reasoned that the more limiting language, "child welfare services," defined the purpose of the levy. A contrary conclusion, noted the opinion, "would, for instance, enable a taxing authority to trade on the appeal of something like child welfare to raise funds for a totally unrelated object payable from the general fund as current expense." *Id.* at 247.

The more limiting language in R.C. 5705.215(A)(2)(c) and in the Financing District's levy ballot is "for specified educational programs." As in the 1963 opinion, a contrary conclusion would ignore the specific, limited purpose for which the voters approved the levy. Accordingly, the use of the phrase "current expenses" does not change the conclusion that a levy pursuant to R.C. 5705.215(A)(2)(c) for the purpose of "current expenses for specified educational programs" is a special levy.

Having determined that the tax levy in question is a special levy, your next question is whether the revenue derived from the levy may be placed into a participating school district's general fund or whether the revenue must be deposited into a special fund created for the purposes stated in the levy and in the agreement. Because R.C. 5705.215 does not expressly provide for the allocation of the tax proceeds to a particular fund, "the general statutes regulating the allocation of tax proceeds among the various funds of a taxing district must govern the resolution" of this question. 1979 Op. Att'y Gen. No. 79-024, at 2-83.

Each subdivision is required to establish several funds to hold levy proceeds, including a general fund and a special fund for each special levy. R.C. 5705.09(A), (D). As previously noted, school districts and county school financing districts are considered subdivisions for purposes of R.C. Chapter 5705 and therefore are required to establish these separate funds. R.C. 5705.01(A); R.C. 5705.09. Proceeds from the general levy for current expense within the ten-mill limitation and any general levy for current expense authorized by vote in excess of the ten-mill limitation must be paid into the general fund. R.C. 5705.10(A). Proceeds from a special levy must be paid into a special fund "for the purpose for which the levy was made." R.C.

5705.10(C); *see, e.g.*, 2009 Op. Att'y Gen. No. 2009-054, at 2-408 n.6; 1990 Op. Att'y Gen. No. 90-069, at 2-290 (levy under R.C. 5705.24 is a special levy and funds derived from such a levy must be placed in a special fund for the purpose for which the levy was imposed); 1986 Op. Att'y Gen. No. 86-103, at 2-570 to 2-571 (proceeds from special tax levied under R.C. 5705.19(L) must be placed in separate fund established for the specific purposes stated in the levy); 1979 Op. Att'y Gen. No. 79-024, at 2-84 (concluding that if the levy in question was a general levy, the proceeds must be placed in the school district's general fund; if, however, the levy was a special levy, the proceeds must be placed in a special fund); 1962 Op. Att'y Gen. No. 2997, p. 337, at 340 ("revenue from a general levy for current expense is paid into the general fund, but revenue from a special levy must be credited to a special fund"). Because I have concluded that the levy in question is a special levy, the Financing District and all participating school districts must deposit the funds into a special fund established for the levy's specific purpose.

Finally, you ask whether an ESC has the duty or authority to monitor or audit the participating school districts' use of the levy proceeds. I conclude that ESCs have no such duty or authority.

ESCs and their governing boards are creatures of statute, and therefore "their authority is limited to those powers either expressly granted by or clearly implied from the statute." *Educ. Servs. Inst., Inc. v. Gallia-Vinton Educ. Serv. Ctr.*, 4th Dist. No. 03-C.A.-6, 2004-Ohio-874, 2004 Ohio App. LEXIS 808, at ¶8 (citations omitted); *see also* 2005 Op. Att'y Gen. No. 2005-033, at 2-347 (same). No provision in R.C. Chapter 3313, or elsewhere in R.C. Title 33 (education; libraries), grants an ESC governing board authority to monitor or audit the financial affairs of the school districts participating in a county school financing district. Moreover, there is nothing in R.C. Chapter 5705 that authorizes one subdivision or taxing authority to monitor or audit the funds of another subdivision or taxing authority.

In fact, under the Revised Code each school district is an autonomous and distinct entity and each is independently controlled. Each school district is governed by its board of education or governing board and each is required to appoint a treasurer to oversee its financial affairs. R.C. 3313.22; *see generally* R.C. Chapter 3311; R.C. Chapter 3313. The treasurer "shall be the chief fiscal officer of the school district, shall be responsible for the financial affairs of the district, and shall report to and is subject to the direction of the district board of education." R.C. 3313.31(A). The treasurer of each school district and each ESC has statutorily defined responsibilities, including, for example, the duty to maintain all the district's funds and to ensure that all revenue received is credited to the proper fund. *See* R.C. 3313.29; R.C. 3313.51. Nothing in R.C. Chapter 3313, or elsewhere in R.C. Title 33, gives a treasurer of one school district the duty or authority to monitor or audit another district's use of its funds.

Because no provision of the Revised Code grants an ESC authority over another school district's financial affairs, an ESC may not monitor or audit another school district's use of its funds.

This conclusion is further supported by the fact that the General Assembly has provided an independent safeguard for monitoring a school district's finances. The Auditor of State has the duty and authority to oversee the spending of public offices in the state, including school districts. *See* R.C. 117.09 (Auditor of State "shall be the chief inspector and supervisor of public offices"); R.C 117.10 (duty to monitor all public offices); R.C. 117.01 (defining public office to include "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government"); R.C. 117.11 (frequency and scope of audits); *see also City of Cleveland v. Pub. Library Bd. of the City Sch. Dist. of the City of Cleveland*, 94 Ohio St. 311, 316, 114 N.E. 247 (1916) (city school district is a political subdivision); *White v. Columbus Bd. of Educ*., 2 Ohio App. 3d 178, 180, 441 N.E.2d 303 (Franklin County 1982) (R.C. 117.01 authorizes the Bureau of Inspection and Supervision of Public Offices [now the Auditor of State] "to examine the accounts and reports of all public offices, including school districts"); 1989 Op. Att'y Gen. No. 89-055, at 2-230 to 2-231 (discussing changes made to definition of "public office" under R.C. 117.01). The Auditor of State's express authority to monitor and audit school districts supports the conclusion that the General Assembly did not intend for one school district to act as the auditor of another school district.

In sum, it is my opinion, and you are hereby advised as follows:

1. A tax levied pursuant to R.C. 5705.215(A)(2)(c) for the purpose of "current expenses for specified educational programs" is a special levy; the proceeds from such a tax must be placed into a special fund created for the purpose for which the levy was made.

2. An educational service center has no duty or authority to monitor or audit the use of levy funds by a school district participating in a county school financing district.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General