

OPINION NO. 85-067**Syllabus:**

1. Where moneys held in the county treasury for distribution to other governmental entities and subject to advancement pursuant to R.C. 321.34 and R.C. 321.341 are invested or deposited by the county and are not the subject of a request for an advancement, the county must, pursuant to R.C. 135.351(B), either make distribution of such moneys to the other governmental entities by the tenth day of the month following receipt or by a later date authorized by the governmental entities or pay the interest set forth in R.C. 135.351(C), unless a schedule for distribution of such moneys is otherwise provided by law.

2. A schedule for distribution of the moneys referred to in paragraph 1, above, is otherwise provided by law when state statutes provide a settlement date for a particular type of revenue, as is the case with respect to moneys derived from real and public utility property taxes, general personal and classified property taxes, and estate taxes. A schedule for distribution of such moneys is also otherwise provided by law by R.C. 321.33, with respect to the distribution to the treasurer of a municipal corporation of moneys subject to that provision which are received by the county treasurer from taxes levied and assessments made. Where a schedule for distribution of such moneys is otherwise provided by law, no time period for distribution is prescribed by R.C. 135.351(B), and no interest is payable under R.C. 135.351(C).
3. No schedule for distribution of the moneys referred to in paragraph 1, above, is otherwise provided by law with respect to moneys subject to R.C. 321.33 which are received by the county treasurer for municipal corporations from sources other than taxes levied and assessments made, or with respect to local government fund moneys under R.C. 5747.50(B). Therefore, the interest provisions of R.C. 135.351(C) apply to distributions of such moneys which are not made within the time periods prescribed by R.C. 135.351(B).
4. When tax moneys are collected by a county for distribution to a joint-county community mental health service district, or to another governmental entity for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal officer and which is governed by similar provisions of law, the payment and distribution of such moneys from the undivided tax fund to the county treasurer for deposit in a fund in the county treasury for the benefit of such governmental entity does not constitute a payment and distribution to which R.C. 135.351(B) and (C) apply. Even if such payment and distribution is not timely within the limits set forth under R.C. 135.351(B), no interest need be paid to such governmental entity under R.C. 135.351(C).
5. In light of R.C. 135.351(A) and R.C. 1545.22, when tax moneys are collected by a county for distribution to a park district created under R.C. Chapter 1545, the provisions of R.C. 135.351(B) and (C) apply. If timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C).

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 29, 1985

I have before me your request for an opinion on the following questions concerning R.C. 135.351:

1. Where moneys held in the county treasury for distribution to other governmental entities and subject to advancement pursuant to R.C. 321.34 and 321.341 are invested or deposited by the county and are not the subject of a request for an advancement, must the county either make distribution of such moneys to the other governmental entities by the tenth day of the month following receipt or pay the penalty set forth in R.C. 135.351(C)?
2. Where tax moneys are collected by a county for distribution to a governmental entity for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal

officer and timely distribution as required by R.C. 135.351 is not made, do the provisions of that section require payment of interest into the fund receiving the principal sum?

R.C. 135.351 states:

(A) Except as provided in sections 135.352 and 1545.22 and 5126.05¹ of the Revised Code, all interest earned on money included within the county treasury shall be credited to the general fund of the county.

(B) Unless otherwise provided by law, with respect to moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county, the county shall, on or before the tenth day of the month following the month in which the county received such moneys or on or before such later date authorized by the legislative authority or other governing body of the other political subdivision or district, pay and distribute all such moneys to the treasurer or other appropriate officer of the other political subdivision or district. A county shall pay and distribute any advance authorized by section 321.34 or 321.341 of the Revised Code within five business days after the request for the advance is delivered to the county auditor.

(C) If the county fails to make any payment and distribution required by division (B) of this section within the time periods prescribed by that division, the county shall pay to the appropriate other political subdivision, taxing district, or special district any interest that the county has received or will receive on any moneys or advance described in that division which accrues after the date such moneys or advance should have been distributed, together with the principal amount of such moneys or advance. The county shall make this payment of principal and interest within five business days after the treasurer or other appropriate officer of such other political subdivision or district files a written demand for payment with the county auditor. (Emphasis and footnote added.)

You have provided the following background concerning your first question:

[T]he county government serves as a collection agency for many other governmental entities, collecting money in their behalf, calculating the allocation due to the entities involved and making distribution to them by warrant of the county auditor. Examples of such collections and distributions include real and public utility property taxes and personal property taxes (Chapters 319, 321, 323, 5715 and 5719, Revised Code), estate taxes (Chapter 5731, Revised Code), and local government fund monies (Sections 5747.50 to 5747.55, Revised Code). With respect to many of these monies, a statutory "settlement" date is prescribed, upon which the county

¹ R.C. 135.351 has recently been amended to include exceptions as provided in R.C. 135.352 (applicable to certain moneys in the county library and local government support fund), see Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985), and R.C. 5126.05 (applicable to funds of county boards of mental retardation and developmental disabilities), see Am. Sub. H.B. 238, 116th Gen. A. (1985) (eff. July 1, 1985), in addition to the exception as provided in R.C. 1545.22 (applicable to funds of park districts), which was adopted in 1982, see Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982). Am. Sub. H.B. 146 does not include the language which was inserted into R.C. 135.351 by Am. Sub. H.B. 238. It appears, nonetheless, that the amendments made to R.C. 135.351 by Am. Sub. H.B. 146 and Am. Sub. H.B. 238 may be harmonized and put into simultaneous operation. See R.C. 1.52(B). I have therefore, included amendments made by both Am. Sub. H.B. 146 and Am. Sub. H.B. 238 in the quoted version of R.C. 135.351. See generally 1985 Op. Att'y Gen. No. 85-055 n. 3.

treasurer and county auditor must reconcile taxes collected by the treasurer with taxes charged by the auditor, and determine the proper distribution of the collections. Payment is made to the governmental entities pursuant to Section 321.31, Revised Code.

R.C. 321.31 states:

Immediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the township clerk, or the treasurer of a municipal corporation, school district, or any board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated by the boards and subdivisions to receive such funds or proceeds, all moneys in the county treasury belonging to such boards and subdivisions.

See generally Ratterman v. State, 44 Ohio St. 641, 643, 10 N.E. 678, 678-79 (1887) ("the law [R.S. 1115-1128] makes it the duty of the county treasurer [semiannually] to settle with the auditor for all taxes collected at the time of making such settlement, and immediately after each settlement, on demand and presentation of proper warrant, pay to the . . . proper officer, all moneys in the county treasury belonging to any township, city, village, hamlet, or school district"); 1984 Op. Att'y Gen. No. 84-005; 1957 Op. Att'y Gen. No. 638, p. 209.

R.C. 321.34 and R.C. 321.341 authorize the local authorities of various political subdivisions and taxing districts to request advance payments of moneys which are in the county treasury and which are credited to their accounts, and, with certain limitations, authorize the county auditor to pay such amounts to the appropriate governmental entities.² Each such advancement is to be made within

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R.C. 321.34 states, in part:

(A) When the local authorities by resolution so request, the county auditor shall pay township clerks, treasurers of municipal corporations, the treasurer of any board of education, and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer, any money that may be in the county treasury to the accounts of such local authorities, respectively, and lawfully applicable to the purpose of the current fiscal year in which such request is made. The auditor and county treasurer shall retain any amounts needed to make such payments of obligations of local political subdivisions or taxing districts as are required by law to be paid directly by the county authorities.

For purposes of this section, money in the county treasury to the account of a board of education that is to be included in the settlement required under division (C) of section 321.24 of the Revised Code becomes lawfully applicable to the purposes of the fiscal year in which the request is made upon the adoption of the resolution making the request.

....
(C) Upon the request, in like form, of any board of public library trustees or board of township park commissioners for which a share of the undivided classified property taxes collected in the county has been allowed and fixed by the budget commission, the auditor may, prior to the first day of April, in any year, pay to the treasurer of such board, from any undivided tax funds in the county treasury, an amount not exceeding twenty-five per cent of the board's share of such undivided classified property taxes; but the auditor and county treasurer shall retain an amount sufficient

five business days after the request is delivered to the county auditor. R.C. 135.351; R.C. 321.341. Your first question concerns the instances in which moneys are held in the county treasury for distribution to other governmental entities and subject to advancement under R.C. 321.34 or 321.341, but no advancement is requested. You want to know whether, in such instances, the county must pay the penalty set forth in R.C. 135.351(C) if it fails to distribute the funds by the tenth day of the month following receipt. Your request sets forth several examples of collections and distributions which are made by the county government on behalf of various governmental entities.

The clear intent of R.C. 135.351 was, with certain exceptions, to channel to the general fund of the county "all interest earned on money included within the county treasury." R.C. 135.351(A). See, e.g., 1985 Op. Att'y Gen. No. 85-002 (approving and following 1982 Op. Att'y Gen. No. 82-026 and 1982 Op. Att'y Gen. No. 82-027); 1984 Op. Att'y Gen. No. 84-089; 1984 Op. Att'y Gen. No. 84-085; 1983 Op. Att'y Gen. No. 83-055; 1982 Op. Att'y Gen. No. 82-027. The only exceptions to that general rule which have been recognized are the exception provided in R.C. 135.351(A) and R.C. 135.352 for moneys in the county library and local government support fund that are not distributed due to an appeal of the budget commission's allocation of such funds, see note 1, *supra*; the exception for park districts provided in R.C. 135.351(A) and R.C. 1545.22, see 1983 Op. Att'y Gen. No. 83-025; 1982 Op. Att'y Gen. No. 82-026; the exception for county boards of mental retardation and developmental disabilities provided in R.C. 135.351(A) and R.C. 5126.05, see 1985 Op. Att'y Gen. No. 85-055 (overruling 1982 Op. Att'y Gen. No. 82-035); note 1, *supra*; exceptions which may be required by the Ohio Constitution, see 1982 Op. Att'y Gen. No. 82-031; and the exception for interest on moneys which are not timely distributed under R.C. 135.351(B) and (C), see Op. No. 84-089; Op. No. 84-085; Op. No. 83-055; Op. No. 82-026. These exceptions have been narrowly construed. See, e.g., Op. No. 85-055; Op. No. 85-002; Op. No. 83-055; Op. No. 82-027; Op. No. 82-026. To carry out the intent of R.C. 135.351, it is appropriate to read the interest provision of R.C. 135.351(C) as requiring the county to pay interest to a political subdivision or district only if the county has clearly failed to carry

to meet all other requests for payments which have been made under this section or can be reasonably anticipated prior to such first day of April. On or after the first day of April all amounts paid out of undivided tax funds shall be reimbursed to the funds from which they have been paid and charged against the share of such board of library trustees or board of township park commissioners in the undivided classified property tax fund.

R.C. 321.341 provides:

Immediately upon receipt of payment for any taxes due under Chapter 5731. of the Revised Code, the county treasurer shall notify the taxing authority of the township or municipal corporation entitled to share in the proceeds thereof. The notice shall identify the estate for which the tax was paid and the portion of the estate's total tax credited to that subdivision in the undivided estate tax fund. At any time prior to a settlement under section 5731.46 of the Revised Code, the fiscal officer of a municipal corporation or a township may request the county auditor to make payment to such subdivision from the fund of an amount not to exceed seventy-five per cent of taxes paid into such fund and standing to the credit of the subdivision, including both taxes with respect to which a final determination has been made under section 5731.27 of the Revised Code and taxes subject to review and final determination under section 5731.26 of the Revised Code. Within five days of the receipt of such request the auditor shall draw a warrant in such amount upon such fund, payable to the subdivision.

out its responsibilities. See State ex rel. Chester Township Bd. of Trustees v. Makowski, 12 Ohio St. 3d 94, 97, 465 N.E.2d 453, 456 (1984) ("R.C. 135.351 requires the counties to disburse tax funds to the local taxing authorities within specified time limits and authorizes the payment of interest only when those time requirements are not complied with"); Op. No. 82-027 at 2-81 ("R.C. 135.351 requires that the county return the interest earned on money included within the county treasury only if the county has failed to return the principal to the subdivision at the appropriate time. . . Any interest earned prior to the date specified for the distribution. . . would be credited to the county's general fund, pursuant to R.C. 135.351(A)"). See generally R.C. 1.47; Cochrel v. Robinson, 113 Ohio St. 526, 149 N.E. 871 (1925).

R.C. 135.351(B) states that, "[u]nless otherwise provided by law," moneys belonging to another political subdivision, taxing district, or special district that are deposited or invested by the county must be distributed to such political subdivision or district "on or before the tenth day of the month following the month in which the county received such moneys," or on or before a later date authorized by the political subdivision or district. R.C. 135.351(C) provides that, if the county fails to make such distribution on time, it shall pay to the political subdivision or district "any interest that the county has received or will receive" on such moneys "which accrues after the date such moneys. . . should have been distributed, together with the principal amount of such moneys." It is my judgment that, when a date for distribution of particular moneys has been established by statute, the distribution schedule of such moneys must be considered to be "otherwise provided by law," as those words are used in R.C. 135.351(B), so that such moneys are not required to be distributed within the time periods set forth in R.C. 135.351(B). R.C. 135.351(C) requires that the county make a payment of interest only "[i]f the county fails to make any payment and distribution required by division (B) of [R.C. 135.351] within the time periods prescribed by that division." Where a schedule for distribution of moneys is otherwise provided by law for purposes of R.C. 135.351(B), the time periods for distribution of such moneys are not prescribed by R.C. 135.351(B) and, as a result, no interest is payable under R.C. 135.351(C). See generally State ex rel. Chester Township Bd. of Trustees v. Makowski; Op. No. 82-027. Such a situation occurs when a settlement date is established by statute. See R.C. 321.31.

I turn now to the particular examples which you have presented. R.C. 319.43 and R.C. 321.24(A) and (C) establish February fifteenth and August tenth as the dates by which the county auditor and county treasurer shall make settlement for amounts collected as real property taxes and assessments and public utility property taxes. It has long been established that, upon completion of each semiannual settlement, the treasurer is to pay the moneys which he holds to the appropriate officers of the various boards and subdivisions which are entitled to share in the distribution of the tax. See generally R.C. 321.31; 1933 Op. Att'y Gen. No. 1003, vol. II, p. 1005. The fact that the General Assembly intended that real and public utility property taxes should be distributed semiannually is evidenced by R.C. 5705.63, which states that taxes and penalties collected under R.C. 5705.62 (a tax on the privilege of using real property not otherwise subject to taxation, see R.C. 5705.61) "shall be distributed semiannually, at the same time distribution is made of real estate and public utility taxes." I conclude, therefore, that the distribution dates for real and public utility property taxes are "otherwise provided by law" for purposes of R.C. 135.351(B), so that the interest provisions of R.C. 135.351(C) are not applicable.

R.C. 319.49 and R.C. 321.24(B) and (D) establish June thirtieth and October thirty-first as the settlement dates for general personal and classified property taxes. R.C. 5707.05 sets forth the manner in which the county treasurer shall, at

³ You have not asked, and I am not considering, what consequences may result from a county's failure to make timely distribution of moneys which are not subject to R.C. 135.351(B) and (C).

the first and second settlements, distribute the undivided classified property tax fund in the county treasury. See R.C. 5707.04.⁴ It is, thus, clear that moneys collected by the county as classified property taxes shall be distributed at these semiannual settlement dates. See State ex rel. Board of Trustees of Cleveland Public Library v. Zangerle, 137 Ohio St. 628, 32 N.E.2d 19 (1941); 1972 Op. Att'y Gen. No. 72-110 at 2-430 (approving and following 1935 Op. Att'y Gen. No. 4218, vol. I, p.518) ("there appears to be no provision for distribution of the classified property tax fund or residue otherwise than at the two settlements"). I believe that the same result is applicable to general personal property taxes. See generally R.C. 321.24; R.C. 5705.49; R.C. 5711.01(H), (I). I conclude, therefore, that the distribution dates for general personal and classified property taxes are "otherwise provided by law" for purposes of R.C. 135.351(B), so that the interest provisions of R.C. 135.351(C) are not applicable.

R.C. 5731.46 provides that, on February twenty-fifth and August twentieth, the county treasurer shall settle with the county auditor for estate taxes and interest received under R.C. Chapter 5731. R.C. 5731.49 states that, at each semiannual settlement provided for by R.C. 5731.46, the amount due to each municipal corporation or township "shall be paid upon the warrant of the county auditor to the county treasurer or other proper officer of such municipal corporation or township." I conclude, therefore, that the distribution dates for estate taxes are "otherwise provided by law" for purposes of R.C. 135.351(B), so that the interest provisions of R.C. 135.351(C) do not apply.

R.C. 321.33 provides for periodic payments from the county treasurer to the treasurer of a municipal corporation, as follows:

On the first Monday of February and August, each year, the county treasurer shall pay over to the treasurer of the municipal

⁴ R.C. 5707.04 provides that no taxes will be levied on the kinds of intangible property, enumerated in that section, on the classified tax list in the office of the county auditor and the duplicate in the office of the county treasurer for 1986 and subsequent years. Pursuant to Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985), R.C. 5707.05 shall be repealed, effective January 1, 1986, and R.C. 5707.04 shall be amended as of that date to provide that the object and distribution of taxes levied pursuant to R.C. 5707.04 (taxes on certain kinds of intangible property on the classified tax list) shall be as provided in R.C. 5705.32 and R.C. 5747.48. See R.C. 321.08 (amended by Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985) and Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985, with amendment to R.C. 321.08 eff. Jan. 1, 1986), to provide that the county treasurer shall credit collections of classified property taxes, including interest and penalties thereon, to the county library and local government support fund, for distribution in accordance with R.C. 5747.48). R.C. 5705.32 and R.C. 5747.48 relate to the distribution of the county library and local government support fund. R.C. 5747.48 states that, "[o]n the fifteenth day of each month, the county treasurer shall distribute the balance in the county library and local government support fund" among the various bodies for which the county budget commission has fixed allocations. It appears that the provision of R.C. 5747.48 calling for monthly distribution of moneys in the county library and local government support fund will, with respect to classified property taxes, prevail over the earlier and more general provisions of R.C. 319.49 and R.C. 321.24, which set semiannual settlement dates for general personal and classified property taxes. See R.C. 1.51; R.C. 1.52. A schedule for the distribution of classified property tax moneys received by the county will, thus, be "otherwise provided by law" for purposes of R.C. 135.351(B), so that the interest provisions of R.C. 135.351(C) will not be applicable to such moneys. R.C. 135.352, enacted by Am. Sub. H.B. 146, 116th Gen. A. (1985) (eff. Sept. 11, 1985), provides that interest earned on moneys in the county library and local government support fund that are not distributed due to an appeal of the budget commission's allocation of such fund shall be distributed in accordance with R.C. 5747.48.

corporation all moneys received by such county treasurer up to that date, arising from taxes levied and assessments made, belonging to the municipal corporation. Moneys received from other sources for municipal corporations shall be paid over on or before the tenth day of each month following the receipt or collections thereof.

Moneys which are subject to this provision and which are received by the county treasurer from taxes levied and assessments made are clearly to be paid to the treasurer of the municipal corporation on the first Monday of February and August. I find that the distribution of such moneys is "otherwise provided by law," as those words are used in R.C. 135.351(B), and, thus, that such moneys are not subject to R.C. 135.351(B) and (C). The rule set forth in R.C. 321.33 for moneys which are subject to that provision and which are received for municipal corporations from sources other than taxes levied and assessments made is essentially the same as that set forth in R.C. 135.351(B). Compare R.C. 135.351(B) (providing that moneys shall be paid and distributed "on or before the tenth day of the month following the month in which the county received such moneys") with R.C. 321.33 (providing that moneys shall be paid "on or before the tenth day of each month following the receipt or collections thereof"). I find, therefore, that the distribution of moneys from such other sources is subject to R.C. 135.351(B) and (C).

Your request also references the distribution of local government fund moneys under R.C. 5747.50-.55. The local government fund in the state treasury consists of a certain percentage of the moneys collected under the state income tax provisions of R.C. Chapter 5747. See R.C. 5747.02; R.C. 5747.03(A)(1). Such moneys are to be distributed in accordance with R.C. 5747.50. R.C. 5747.03(A)(1). R.C. 5747.50(A) provides that the Tax Commissioner "shall determine in each month what proportion of that month's local government fund balance shall be distributed under [R.C. 5747.50(B)] and what proportion shall be distributed under [R.C. 5747.50(C)]." Under R.C. 5747.50(C), the Tax Commissioner shall provide for payments from the local government fund in the state treasury directly to municipal corporations; that provision is, thus, not relevant to your question. Under R.C. 5747.50(B), the Tax Commissioner shall, on or before the tenth day of each month, "provide for payment to the county treasurer of each county of an amount equal to the county's proportionate share of the total amount of the local government fund available for distribution during that month under this division, except as otherwise provided." R.C. 5747.50(B) also states:

Money received into the treasury of a county under this division shall be credited to the undivided local government fund in the treasury of the county on or before the fifteenth day of each month. The county auditor shall issue warrants against all of the undivided local government fund in the county treasury in the respective amounts allowed as provided in section 5747.51 of the Revised Code, and the treasurer shall distribute and pay such sums to the subdivision therein.

R.C. 5747.50(B) thus requires that the county treasurer distribute local government fund moneys to the various subdivisions; however, neither R.C. 5747.50(B) nor any other provision of the Revised Code specifies when such distribution must be made. I find, therefore, that the date for distribution of such moneys is not "otherwise provided by law" within the meaning of R.C. 135.351(B), but that such moneys are, instead, subject to the provisions of R.C. 135.351(B) and (C). Moneys received in the county treasury during one month must, therefore, be distributed on or before the tenth day of the following month, see R.C. 135.351(B), or interest must be paid pursuant to R.C. 135.351(C).

Your second question concerns instances in which tax moneys are collected by a county for distribution to a governmental entity for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal officer. You have indicated that a joint-county community mental health service district, established pursuant to R.C. Chapter 340, see R.C. 340.01, is an example of the sort of entity with which you are concerned, and I shall address this opinion to that example. Your question is whether, if timely distribution of such

tax moneys, as required by R.C. 135.351, is not made, the provisions of R.C. 135.351 require the payment of interest into the fund receiving the principal sum.

R.C. 340.10 provides that, in a joint-county community mental health service district (hereinafter sometimes referred to as a "joint-county district"), "the auditor of the county, the treasurer of which has been designated in the agreement between the counties of the district as custodian of the community mental health funds," is designated as the auditor and fiscal officer of the joint-county district. You have outlined the facts with which you are concerned as follows:

When tax monies are collected in this county for distribution to the community mental health district, they are initially deposited in the undivided tax fund in the county treasury. Upon distribution they are paid out of the undivided tax fund on warrant of the county auditor to the county treasurer, as ex officio treasurer of the community mental health district, for expenditure by warrant of the county auditor, as ex officio fiscal officer of the community mental health district, on presentation of a voucher approved by the community mental health district board.

See R.C. 319.14; R.C. 340.07; R.C. 5705.05; R.C. 5705.09-.10; R.C. 5705.221; Op. No. 85-002; 1981 Op. Att'y Gen. No. 81-044; 1969 Op. Att'y Gen. No. 69-015.

Your question refers to instances in which timely distribution as required by R.C. 135.351 is not made. It is my understanding that you are referring to instances in which the county has either received funds belonging to a joint-county community mental health service district and failed to distribute them within the appropriate period following receipt, as prescribed by R.C. 135.351(B), or has received a request from a joint-county district for an advance of money to the account of such district and has failed to make such an advance within the period prescribed by R.C. 135.351(B). I note that, in either instance, because the county treasurer serves as treasurer of the joint-county district, distribution would be made to the county treasurer, for deposit in a fund in the county treasury for the benefit of the joint-county district. See generally R.C. 5705.09-.10; Op. No. 85-002; Op. No. 69-015.

It appears that a joint-county community mental health service district is a "political subdivision or district" for purposes of R.C. 135.351(B). See R.C. 340.01; R.C. 5705.01(A), (C) (including a joint-county mental health service district as a "[s]ubdivision" and the district's mental health board as a "[t]axing authority"); 1975 Op. Att'y Gen. No. 75-089. Thus, the interest provision of R.C. 135.351(C) appears to be applicable to such a district, "[i]f the county fails to make any payment and distribution required" by R.C. 135.351(B) within the time periods prescribed. R.C. 135.351(C). It is, however, my judgment that, in light of the overall scheme of law governing the distribution of interest, the interest provision of R.C. 135.351(C) should not be applied to the sort of payment and distribution which is made from the undivided tax fund to a joint-county district. See generally State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956).

The clear intent of R.C. 135.351(B) and (C) was to provide a political subdivision or district with interest earned upon moneys due to it when the subdivision or district would have been able to earn such interest for itself if the moneys had been distributed in a timely manner. See generally R.C. 1.47; Cochrel v. Robinson; Op. No. 84-089; Op. No. 84-085; Op. No. 83-025; Op. No. 82-026. Since the county treasurer serves as treasurer of a joint-county community mental health service district, any distribution of tax moneys by the county to the district is made by the treasurer to himself. Such distribution results in a transfer of moneys from the undivided tax fund, see R.C. 319.14, to a fund for the benefit of the joint-county district, where they are available for expenditure by warrant of the county auditor on presentation of a voucher approved by the board, see R.C. 340.10. The moneys remain in the county treasury, however, and, pursuant to R.C. 135.351(A), all interest earned on such moneys is credited to the general fund of the county. See Op. No. 85-002.

Because the county treasurer serves as treasurer of a joint-county district, the district never has an opportunity to deposit its own funds and earn interest upon them. Therefore, any failure to make timely distribution of tax moneys to such a district will not prevent the board from earning interest upon the funds. Failure to make timely distribution of tax moneys to a joint-county district might result in delays in making payment on warrants issued for expenditures of the district. See, e.g., R.C. 321.16-.18; 1985 Op. Att'y Gen. No. 85-043; 1982 Op. Att'y Gen. No. 82-034. It is, however, not clear how greatly such delays would interfere with the general operations of the district, since R.C. 5705.41(D) would permit the district to make expenditures on the basis of amounts which are in the treasury or in process of collection to the credit of an appropriate fund. It does not appear that R.C. 135.351(C) was intended to penalize the county for delays in transferring moneys to a joint-county district by providing the district with interest which it would not have received if timely payment had been made. See R.C. 1.47; R.C. 1.49; Lake County National Bank of Painesville v. Kosydar, 36 Ohio St. 2d 189, 305 N.E.2d 799 (1973); State ex rel. Cooper v. Savord, 153 Ohio St. 367, 92 N.E.2d 390 (1950).

It has been stated that, where provisions of a statute make the county treasurer the custodian of funds of another political subdivision or district, "such funds are deposited and invested by the county and need not be distributed pursuant to R.C. 135.351(B)." Op. No. 82-026 at 2-77. See Op. No. 85-002; Op. No. 83-025; Op. No. 82-027; 1962 Op. Att'y Gen. No. 2850, p. 158. See generally Op. No. 84-089; Op. No. 84-085. While it may be necessary for the county treasurer to pay and distribute moneys from the undivided tax fund to a fund within the county treasury for the benefit of a joint-county mental health service district, it is my judgment that such payment and distribution is not the sort to which R.C. 135.351(B) and (C) apply and, thus, that even if such payment and distribution is not timely under the rules set forth in R.C. 135.351, no interest need be paid to the district under R.C. 135.351(C). It appears, instead, that, for purposes of the allocation of interest, the payment and distribution of tax moneys to a joint-county district is analogous to the allocation to various funds of moneys which are credited to different agencies of the county. See generally Op. No. 83-055 (R.C. 135.351(B) and (C) are not applicable to funds of a county children services board or county department of welfare which have been transferred to the county treasurer); note 6, *infra*.

While the foregoing analysis concerns a joint-county community mental health service district, it appears to be generally applicable to other governmental entities for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal officer, although a different result may follow if a particular entity is governed by different statutory provisions. For example, R.C. 135.351(A)⁵ and R.C. 1545.22 exclude funds under the control of a board of park commissioners from the general rule that interest earned on money included within the county treasury shall be credited to the general fund of the county. See generally note 5, *supra*. The analysis set forth above with respect to a joint-county community mental health service district is, therefore, not directly applicable to a park district. Rather, since a park district will be credited with interest earned on money which is under the control of the board of park commissioners, it is appropriate that the provisions of R.C. 135.351(B) and (C) remain applicable to money belonging to such a district. See R.C. 1545.21

⁵ The practical effect of 1982 Op. Att'y Gen. No. 82-026 was altered by the enactment of Am. Sub. S.B. 550, 114th Gen. A. (1982) (eff. Nov. 26, 1982), which amended R.C. 135.351(A) and R.C. 1545.22 to provide an exception for funds under the control of a board of park commissioners, permitting the park district to receive interest on funds which are under the control of the board of park commissioners and are in the custody of the county treasurer. See 1983 Op. Att'y Gen. No. 83-025; 1982 Op. Att'y Gen. No. 82-026.

⁶ R.C. 135.351(A) and R.C. 5126.05 create an exception from the general rule that interest earned on money within the county treasury shall be credited to the county's general fund for interest accruing on funds of a county board of mental retardation and developmental disabilities. See 1985

(authorizing a park district, with the approval of the electorate, to levy taxes); Village of Willoughby Hills v. Board of Park Commissioners, 3 Ohio St. 2d 49, 209 N.E.2d 162 (1965) (finding that park districts are political subdivisions). Cf. Op. No. 82-026 (considering the statutes which were in effect before R.C. 135.351 contained an exception for park districts and stating that, since funds of a park district were held by the county treasurer as custodian and were deposited and invested by the county, they did not need to be distributed pursuant to R.C. 135.351(B)). Thus, if timely payment and distribution is not made to a park district under R.C. 135.351(B), interest must be paid to the district under R.C. 135.351(C).

I conclude, therefore, in response to your second question, that, when tax moneys are collected by a county for distribution to a joint-county community mental health service district, or to another governmental entity for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal officer and which is governed by similar provisions of law, the payment and distribution of such funds from the undivided tax fund to the county treasurer for deposit in a fund within the county treasury for the benefit of such governmental entity is not a payment and distribution to which R.C. 135.351(B) and (C) apply. Thus, even if such payment and distribution is not timely under the rules set forth in R.C. 135.351(B), no interest need be paid to such board under R.C. 135.351(C). Rather, since such money is included within the county treasury, all interest earned on such money shall be credited to the general fund of the county pursuant to the provisions of R.C. 135.351(A). See Op. No. 85-002; Op. No. 82-027; Op. No. 82-026.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Where moneys held in the county treasury for distribution to other governmental entities and subject to advancement pursuant to R.C. 321.34 and R.C. 321.341 are invested or deposited by the county and are not the subject of a request for an advancement, the county must, pursuant to R.C. 135.351(B), either make distribution of such moneys to the other governmental entities by the tenth day of the month following receipt or by a later date authorized by the governmental entities or pay the interest set forth in R.C. 135.351(C), unless a schedule for distribution of such moneys is otherwise provided by law.
2. A schedule for distribution of the moneys referred to in paragraph 1, above, is otherwise provided by law when state statutes provide a settlement date for a particular type of revenue, as is the case with respect to moneys derived from real and public utility property taxes, general personal and classified property taxes, and estate taxes. A schedule for distribution of such moneys is also otherwise provided by law by R.C. 321.33, with respect to the distribution to the treasurer of a municipal corporation of moneys subject to that provision which are received by the county treasurer from taxes levied and assessments made. Where a schedule for distribution of such moneys is otherwise provided by law, no

Op. Att'y Gen. No. 85-055; note 1, supra. A county board of mental retardation and developmental disabilities is, however, a body of the county, rather than a separate political subdivision, taxing district, or special district and, therefore, R.C. 135.351(B) and (C) are not applicable to such a board in any event. See R.C. 5126.02; R.C. 5126.05 ("board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation and developmental disabilities to perform its functions and duties"). See generally 1982 Op. Att'y Gen. No. 82-035 (issued prior to the exclusion of funds of a county board of mental retardation and developmental disabilities from R.C. 135.351(A) and overruled by Op. No. 85-055 on the basis of that statutory change).

time period for distribution is prescribed by R.C. 135.351(B), and no interest is payable under R.C. 135.351(C).

3. No schedule for distribution of the moneys referred to in paragraph 1, above, is otherwise provided by law with respect to moneys subject to R.C. 321.33 which are received by the county treasurer for municipal corporations from sources other than taxes levied and assessments made, or with respect to local government fund moneys under R.C. 5747.50(B). Therefore, the interest provisions of R.C. 135.351(C) apply to distributions of such moneys which are not made within the time periods prescribed by R.C. 135.351(B).
4. When tax moneys are collected by a county for distribution to a joint-county community mental health service district, or to another governmental entity for which the county treasurer serves as ex officio treasurer and the county auditor serves as ex officio fiscal officer and which is governed by similar provisions of law, the payment and distribution of such moneys from the undivided tax fund to the county treasurer for deposit in a fund in the county treasury for the benefit of such governmental entity does not constitute a payment and distribution to which R.C. 135.351(B) and (C) apply. Even if such payment and distribution is not timely within the limits set forth under R.C. 135.351(B), no interest need be paid to such governmental entity under R.C. 135.351(C).
5. In light of R.C. 135.351(A) and R.C. 1545.22, when tax moneys are collected by a county for distribution to a park district created under R.C. Chapter 1545, the provisions of R.C. 135.351(B) and (C) apply. If timely payment and distribution is not made under R.C. 135.351(B), interest must be paid to the park district under R.C. 135.351(C).