

OPINION NO. 85-072

Syllabus:

1. Pursuant to R.C. 135.21 and R.C. 5705.10, the interest earned on the bond retirement fund of a school district must be credited to the general fund of the school district. (1980 Op. Att'y Gen. No. 80-003, overruled in part.)
2. A school district may, pursuant to R.C. 5705.14(E) transfer money from the general fund to the bond retirement fund to meet a deficiency in the bond retirement fund, or may, pursuant to R.C. 5705.15, transfer money from the general fund to the bond retirement fund in accordance with the procedure set forth in R.C. 5705.16.

To: Peter R. Seibel, Defiance County Prosecuting Attorney, Defiance, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1985

I have before me your request for my opinion concerning the distribution of interest earned on the bond retirement fund of a school district. You wish to know whether interest earned on the bond retirement fund of a school district may be credited to the bond retirement fund or whether such interest must be credited to the general fund of the school district.¹

¹ A county board of education is not a taxing authority or bond-issuing authority, but obtains its funds from the state and from the various school districts within the county school district. See R.C. 133.01; R.C. 3317.11; R.C. 5705.01. See also 1983 Op. Att'y Gen. No. 83-016. Thus, this opinion has no application to county school districts.

All school districts other than county school districts, see R.C. 5705.01(A), are required to establish certain funds for the deposit of their moneys. R.C. 5705.09 provides as follows:

Each subdivision shall establish the following funds:

- (A) General fund;
- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
- (G) A special fund for each public utility operated by a subdivision;
- (H) A trust fund for any amount received by a subdivision in trust. (Emphasis added.)

Thus, a school district is required by R.C. 5705.09(C) to establish a bond retirement fund for the deposit of tax proceeds collected "for the retirement of serial bonds, notes, or certificates of indebtedness." See Ohio Const. art. XII, §11; R.C. 5705.03 (empowering the taxing authority of a subdivision to levy taxes "as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit," and empowering the fiscal officer of the subdivision to deposit the proceeds in the treasury of the subdivision "to the credit of the appropriate fund"). See also R.C. 133.45; R.C. 5705.04; R.C. 5705.19.

R.C. 135.21, which is part of the Uniform Depository Act, governs the apportionment of investment earnings on moneys included within a public deposit, except for interest earned on moneys included within a county treasury, see R.C. 135.351. The first part of R.C. 135.21 directs the disposition of investment earnings on moneys belonging to undivided tax funds and on custodial funds. R.C. 135.21² then reads as follows: "All other investment earnings shall, except as provided in section 135.351 of the Revised Code, be credited to the general fund of the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs." See R.C. 135.01(D). (L). Thus, R.C. 135.21 requires that the investment earnings on the moneys included within the bond retirement fund of a school district be credited to the general fund of the school district.

This conclusion is also compelled by R.C. 5705.10, which governs the distribution of revenue earned on the various funds established under R.C. 5705.09 (set forth above). R.C. 5705.10 reads as follows:

² R.C. 135.21 was recently amended by Sub. H.B. 201, 116th Gen. A. (1985) (eff. July 1, 1985). Sub. H.B. 201 added the term "investment earnings" to replace the term "interest."

All revenue derived from the general levy for current expense within the ten-mill limitation, from any general levy for current expense authorized by vote in excess of the ten-mill limitation, and from sources other than the general property tax, unless its use for a particular purpose is prescribed by law, shall be paid into the general fund.

All revenue derived from general or special levies for debt charges, whether within or in excess of the ten-mill limitation, which is levied for the debt charges on serial bonds, notes, or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

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

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund.

All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue, and any interest earned on money in such special fund shall be used for the purposes for which the indebtedness was authorized. The premium and accrued interest received from such sale shall be paid into the sinking fund or the bond retirement fund of the subdivision.

If a permanent improvement of the subdivision is sold, the amount received for the same shall be paid into the sinking fund, the bond retirement fund, or into 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.

Money paid into any fund shall be used only for the purposes for which such fund is established. (Emphasis added.)

R.C. 5705.10 requires that the interest earned on the moneys in any special fund, "regardless of the source or purpose of the principal," be paid into the general fund of the subdivision. Thus, pursuant to R.C. 5705.10, interest earned on the moneys in the bond retirement fund of a school district must be paid into the general fund of the school district.

I am aware that my conclusion that interest earned on the moneys included within the bond retirement fund of a school district must be paid into the general fund of the school district is inconsistent with 1980 Op. Att'y Gen. No. 80-003.

In Op. No. 80-003, my predecessor addressed the question whether the language of the second paragraph of R.C. 5705.10 stating that "[a]ll revenue derived from general or special levies for debt charges. . . shall be paid into the bond retirement fund," should be interpreted as requiring that interest earned on the proceeds of levies for debt charges be paid into the bond retirement fund. My predecessor concluded as a matter of statutory construction that such revenue included interest, noting that, "[h]ad the General Assembly intended to distinguish between the proceeds of a levy and the interest earned on such proceeds, it could easily have done so," id. at 2-22. Op. No. 80-003 also discussed the impact of Ohio Const. art. XII, §5 on the question of distribution of interest. Article XII, §5 provides: "No 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." Op. No. 80-003 concluded at 2-21 that art. XII, §5 "restricts the allocation of interest earned from the deposit or investment of the proceeds of tax levies," and that art. XII, §5 requires that the interest earned on tax proceeds be used for the purpose for which the tax was levied. Construing the language of R.C. 5705.10 requiring revenue derived from levies for debt charges to be paid into the bond retirement fund, together with Ohio Const. art. XII, §5, my predecessor noted that these provisions "place a broad prohibition on the use or diversion of tax revenues for purposes other than that for which the tax was levied," Op. No. 80-003 at 2-23, and concluded: "Ohio Const. art. XII, §5 requires that interest earned from the deposit or investment of money in the bond retirement fund. . . be allocated to the bond retirement fund; such interest may not be used for any purpose other than that for which the bond retirement fund exists." Op. No. 80-003 (syllabus, paragraph one). Thus, Op. No. 80-003 concluded that interest earned on the moneys in a bond retirement fund must be credited to the bond retirement fund.

This conclusion was reached despite the language of R.C. 135.21, which as discussed above, requires that interest earned on money which belongs to neither undivided tax funds nor custodial funds and which is deposited or invested pursuant to R.C. Chapter 135 be credited to the general fund. My predecessor noted that if R.C. 135.21 were interpreted as requiring the interest earned on tax proceeds paid into the various funds established by R.C. 5705.09, other than the general fund, to be credited to the general fund, then R.C. 135.21 would be placed in conflict with Ohio Const. art. XII, §5. My predecessor opined: "the provisions of R.C. 135.21 are not applicable to interest earned on tax revenues, other than those belonging to the general fund, deposited after such revenues have been received by a taxing subdivision. . . [r]ather, the interest earned on the deposit of such revenues must, pursuant to Ohio Const. art. XII, §5 and R.C. 5705.10, be paid into the fund to which the principal belongs." Op. No. 80-003 at 2-24.

Subsequent to the issuance of Op. No. 80-003, the General Assembly enacted 1981-1982 Ohio Laws, Part I, 2079 (Am. Sub. H.B. 230, eff. March 15, 1982). Am. Sub. H.B. 230 amended R.C.

135.21, but only to add language referring to the exception provided by R.C. 135.351 to the requirements of R.C. 135.21. (R.C. 135.351 was enacted by Am. Sub. H.B. 230, and governs the interest earned on moneys included within a county treasury.) The General Assembly thus considered R.C. 135.21 subsequent to Op. No. 80-003, and affirmed its intent that R.C. 135.21 require that interest earned on public funds (except for undivided tax funds and custodial accounts, and except as provided in R.C. 135.351) be credited to the general fund.

Further, Am. Sub. H.B. 230 amended R.C. 5705.10. Am. Sub. H.B. 230 added the emphasized language to the fourth paragraph of R.C. 5705.10:

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund. (Emphasis added.)

As noted above, Op. No. 80-003 determined that, the General Assembly had not distinguished in R.C. 5705.10 between the proceeds of a tax levy for debt charges and the interest earned on such proceeds. *Id.* at 2-22. Am. Sub. H.B. 230 amended R.C. 5705.10 expressly to draw a distinction between the principal of any special fund and the interest earned thereon. By amending R.C. 5705.10, the General Assembly specifically determined that interest earned on the principal of any special fund, regardless of the source or purpose of the principal, is revenue derived from a source other than the general property tax for which the law does not prescribe use for a particular purpose and shall be paid into the general fund.³ See Legislative Service Commission analysis of Am. Sub. H.B. 230 ("[s]ection 5705.10 of the tax levy law is amended to prescribe that revenue derived from a source other than the general property tax (which is stated to include interest earned on a special fund, regardless of source or purpose) must be paid into the general fund"). See also 1966 Op. Att'y Gen. No. 66-130 (interest is compensation for the use of money and is distinct from revenue derived from a tax levy for purposes of R.C. 5705.10; interest is a form of revenue derived from a

³ If R.C. 5705.10 were not read to require that interest earned on a special fund be credited to the general fund, then the terms of R.C. 135.21 and R.C. 5705.10 would be in conflict. Such a result would violate well established principles of statutory construction. See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are in pari materia and should be read together to ascertain and effectuate if possible the legislative intent"); Gough Lumber Co. v. Crawford, 124 Ohio St. 46, 48-49, 176 N.E. 677, 677 (1931) (it is the duty of the court "to so construe statutes and parts thereof that the same may be reconciled and held harmonious, if this can be done and their intent and purpose be maintained").

source other than the general property tax for purposes of R.C. 5705.10, and thus should be paid into the general fund).

In sum, R.C. 135.21, which, as a general matter, requires that all interest earned on money included within a public deposit be credited to the general fund, remained substantially unchanged after the enactment of Am. Sub. H.B. 230. Am. Sub. H.B. 230 also amended R.C. 5705.10 specifically to provide that interest earned on any special fund must be paid into the general fund. I believe, therefore, that the General Assembly has clearly expressed its intent that the conclusion reached in Op. No. 80-003 be overruled, and I conclude that interest earned on the bond retirement fund of a subdivision must be credited to the general fund of the subdivision.

I realize that Op. No. 80-003 concluded that the result reached therein was required by Ohio Const. art. XII, §5. That analysis, however, was based upon somewhat different provisions in the constitutions of other states which had been construed by their courts. My predecessor properly followed these decisions in the absence of any authority on point in Ohio and given the fact that R.C. 5705.10 was at that time consistent with this approach. The General Assembly has acted since the issuance of Op. No. 80-003 and has clearly expressed its belief that interest earned on moneys included within a special fund may constitutionally be placed to the credit of the general fund. See R.C. 1.47 ("[i]n enacting a statute, it is presumed that: (A) [c]ompliance with the constitutions of the state and of the United States is intended"). In light of the plain meaning of the amendment to R.C. 5705.10 made by Am. Sub. H.B. 230, an amendment which renders R.C. 5705.10 inconsistent with the interpretation of Ohio Const. art. XII, §5 set forth in Op. No. 80-003, I am unable to adopt a broad reading of art. XII, §5. See 1981 Op. Att'y Gen. No. 81-100 at 2-377 (it is not the function of this office to opine on the constitutionality of state statutes. If a statute is clear, executive officers must act in accordance with its plain meaning, on the assumption that the statute is constitutional). See also Northern Ohio Patrolmen's Benevolent Association v. City of Parma, 61 Ohio St. 2d 375, 377, 402 N.E.2d 519, 521 (1980) (enactments of the General Assembly have a strong presumption of constitutionality). I believe that the plain language of R.C. 135.21 and R.C. 5705.10 requires that the interest earned on moneys included within a bond retirement fund be credited to the general fund. Thus, I overrule Op. No. 80-003 to the extent that it is inconsistent with this opinion.

Although I have concluded that interest earned on moneys included within a bond retirement fund must be credited to the general fund of the school district, I note that R.C. 5705.14(E) states that: "Money may be transferred from the general fund to the sinking fund or the bond retirement fund to meet a deficiency in either of the latter funds." Further, R.C. 5705.15 provides that, with several exceptions not relevant herein, the taxing authority of any political subdivision may "transfer from one fund to another any public funds under its supervision." In transferring funds, however, a taxing authority must comply with the procedure set forth in R.C. 5705.16.

In conclusion, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 135.21 and R.C. 5705.10, the interest earned on the bond retirement fund of a

school district must be credited to the general fund of the school district. (1980 Op. Att'y Gen. No. 80-003, overruled in part.)

2. A school district may, pursuant to R.C. 5705.14(E) transfer money from the general fund to the bond retirement fund to meet a deficiency in the bond retirement fund, or may, pursuant to R.C. 5705.15, transfer money from the general fund to the bond retirement fund in accordance with the procedure set forth in R.C. 5705.16.