

**INSIDE MILLAGE AND FUND TRANSFERS:  
AN OVERVIEW**

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## INSIDE MILLAGE

### I. Fundamental Limitations

- A. Constitutional Limitation – “No property, taxed according to value, shall be taxed in excess of one per cent of its true value in money for all state and local purposes.”  
OHIO CONST. art. XII, § 2.
- B. Statutory Limitation – The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one tax year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof.”  
O.R.C. § 5705.02.

### II. Guaranteed Minimum

The minimum tax levies within the 10-mill limitation for current expense and debt service for each subdivision or taxing unit was determined by using two-thirds of the average levy that was allotted for current expense and debt service within the 15-mill limitation for each subdivision or taxing unit during the last five years the 15-mill limitation was in effect, which were 1929 to 1933. O.R.C. § 5705.31(D). That two-thirds average levy was rounded pursuant to O.R.C. § 319.33. Note: these 10 inside mills were shared among, and guaranteed to, the counties, school districts, townships, and municipalities.

### III. Free Millage

#### A. What is Free Millage?

Free millage is created when all the guaranteed minimums in a given taxing district total to less than 10 mills. Free millage is also created when all the inside millage actually levied in a given taxing district total to less than 10 mills, as when a particular subdivision requests less than its guaranteed minimum amount. Thus, free millage is the difference between 10 mills and what is otherwise being levied in a given taxing district for a specific tax year.

#### B. How is it Allocated?

The county budget commission, consisting of the county auditor, county treasurer, and county prosecuting attorney, allocates the inside millage among the political subdivisions and other taxing units based on the need shown in their budgets and the guaranteed minimums. "The budget commission's powers of allocation are broad and discretionary in nature." Bath Township v. Allen County Budget Comm'n, No. 86-J-1576, slip op. at 8 (Ohio B.T.A. Jan. 20, 1989)(citations omitted). Hence, the budget commission is not required to allocate free millage, but it has the authority to allocate such millage. Note: The budgetary process is an annual event, whereby guaranteed inside millage not requested by a subdivision in the past could be requested in the future. See Strongsville Bd. of Educ. v. Lorain County Budget Comm'n, 38 Ohio St.3d 50 (1988).

### C. Inside Millage – Not Always Guaranteed

A subdivision is not entitled to a guaranteed minimum inside millage under O.R.C. § 5705.31(D), if it did not exist during the period from 1929 through 1933. Carlisle v. Warren County Budget Comm'n, 63 Ohio St.3d 478 (1992). Moreover, a school district formed by consolidating existing school districts under O.R.C. § 3311.26 is a newly created district separate and distinct from the districts that combined to form it. Thus, a school district consolidated after 1933 did not exist during the period from 1929 through 1933 and is not entitled to any guaranteed minimum inside millage, even though the combining schools did exist during that period. In other words, such a consolidated school district is not guaranteed any minimum millage, but receives free millage only at the discretion of the budget commission. Washington Local School Dist. v. Scioto County Budget Comm'n, 73 Ohio St.3d 700 (1995).

### D. Who is Eligible for Free Millage?

Special Statute Theory – In 1966 Ohio Att'y Gen. Op. 139, the Geauga County Prosecutor asked whether a park district could receive inside millage under O.R.C. § 1545.20 because the inside millage guarantee provisions in O.R.C. § 5705.31(D) only apply to subdivisions that existed in 1929-1933. The Attorney General concluded that the park district could receive inside millage under O.R.C. § 1545.20 on the theory that a special statute takes precedence over a general statute. Some other special statutes that provide for the use of inside millage are the following: O.R.C. §§ 505.39 (township fire and township fire district levy); 3375.07, .09, .17, .23, and .31 (library levies); and 5707.01, and .02 (certain county levies). Note: if the special statute does not state that the levy is in excess of the 10-mill limitation or that a vote by the electorate is required, then that levy is deemed to be for inside mills. 1956 Ohio Att'y Gen. Op. 6609, at 417-18.

General Theory – When the Ohio Supreme Court held that a consolidated school district that did not exist in 1929-1933 could not receive any guaranteed inside millage, it said: "Of course, Washington Local may still receive inside millage under R.C. 5705.04; however, this millage will not be guaranteed." Washington Local School Dist. v. Scioto County Budget Comm'n, 73 Ohio St.3d 700, 703 (1995). Section 5705.04 states: "The taxing authority of each subdivision shall divide the taxes levied into the following separate levies." It then lists five types of levies: inside debt, inside current expense, inside special, voted debt, and other voted special or general levies. The word, "subdivision," as used in Chapter 5705 is defined in O.R.C. § 5705.01(A) to include a long list entities. If this language is sufficient to allow a consolidated school district that did not exist in 1929-1933 to get free millage, then it should be sufficient to allow any subdivision listed in O.R.C. § 5705.01(A) to receive free millage.

## IV. Uses of Inside Millage

O.R.C. § 5705.04 refers to inside levies for debt charges, current expenses, and special purposes. O.R.C. § 5705.06 lists seven specific uses of the inside millage: (1) any specific permanent improvement; (2) library purposes; (3) a municipal corporation levy for a municipal university under O.R.C. § 3349.13; (4) a county levy for the construction,

reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges; (5) a county levy to pay the county's proportion of the cost of the construction, improvement, and maintenance of state highways; (6) a township levy for the construction, reconstruction, resurfacing, and repair of roads and bridges, excluding state roads and bridges, and including the township's portion of the cost of the construction, improvement, maintenance, and repair of county roads and bridges; and (7) a municipal corporation levy of 0.3 of a mill for police and fire pensions under O.R.C. §§ 742.33(B) and 742.34(B). See Part III. D. above for a list of some other statutes that provide for the use of inside millage for other special purposes.

V. Charter Millage – O.R.C. § 5705.18

Charter millage prevails over the 10-mill limitation in O.R.C. § 5705.02. However, for purposes of determining the 10-mill limitation as it applies to the other political subdivisions, the municipal corporation's guaranteed minimum inside millage rate from 1934 will be used, unless the total charter millage levied for current operating expenses is less than its guaranteed minimum, in which case the actual charter rate levied will be used. For example, if a municipality's charter millage is 7.0 mills, which are all levied, and its guaranteed minimum inside millage is 2.0 mills, then 2.0 mills is used to determine the available inside millage for all other subdivisions, resulting in 8.0 inside mills left for the others. On the other hand, if that municipality only levied 1.5 mills of its charter millage, then 1.5 mills is used to determine the available inside millage for all other subdivisions, resulting in 8.5 inside mills left for the others.

VI. Special Provisions

A. Road Levies – O.R.C. § 5575.10

The board of township trustees is allowed to levy inside mills for road maintenance upon all the taxable property of the township outside any municipal corporation or part thereof, not exceeding, in the aggregate, 3.0 mills in any one year. Note: the township inside road and bridge levy under O.R.C. § 5705.06(F) must be assessed against all the property within the township, including the taxable property within any municipal corporations within the township, since no special statute exists to allow otherwise. 1969 Ohio Att'y Gen. Op. 55.

B. Annexations Prior to March 27, 2002 – O.R.C. § 5705.311

During any tax year when territory annexed by a municipality is not part of the municipality's school district, the **municipality's** inside millage within the annexed territory shall be the lower of the municipality's guaranteed minimum or the amount when added to the minimum levies of the other overlapping subdivisions equals ten mills. In other words, the municipality's inside millage rate in this circumstance can be nonuniform throughout the municipality.

C. Annexations On or After March 27, 2002 – O.R.C. § 5705.315

For annexations granted on or after March 27, 2002, **and** when the annexed territory remains part of the township, the inside millage rates for **both** the township and the municipality within the annexed territory can be reduced so that the full ten mills can be utilized in the annexed territory. In other words, **both** the township's and the municipality's inside millage rate in the annexed territory can be different from the amount levied in the rest of the township or municipality. Note: this section is only applicable if, after adding in the municipality's and the township's inside millage rates, the 10-mill limit is exceeded in the annexed territory. Otherwise, no reduction is needed.

The township and municipality can enter into an agreement under O.R.C. § 709.192 to divide the available inside millage in the annexed territory between them. The county auditor must use the agreed upon rates, as long as the 10-mill limit is not exceeded. If the 10-mill limit is exceeded, the auditor should reduce the agreed upon rates proportionately. If no agreement is entered into between the township and the municipality to divide the available inside millage in the annexed territory between them, then each of them will receive one-half of the inside millage available for use in the annexed territory after the budget commission has assigned inside millage to the other subdivisions in that taxing district.

Examples: Assume the following inside millage rates: school = 4.0, county = 3.0, city = 2.5, and township = 2.0, for a total of 11.5 mills in the annexed territory. **(1)** If an agreement is entered into giving the city 2.0 mills and the township 1.0 mill in the annexed territory, those amounts can be used because the total in the annexed territory will be 10.0 mills. **(2)** If no agreement is entered into, then the city and township share equally the available 3.0 mills (10.0 mills less 7.0 mills for school and county), getting 1.5 mills each in the annexed territory. **(3)** If an agreement is entered into giving the city 2.0 mills and the township 1.5 mills in the annexed territory, those amounts cannot be used because the total in the annexed territory would be 10.5 mills. Therefore, the available 3.0 mills should be allocated proportionately between them as follows: the city gets  $2.0/3.5 \times 3.0$ , or 1.7 mills; the township gets  $1.5/3.5 \times 3.0$ , or 1.3 mills.

No. 13 - CLERMONT COUNTY

MINIMUM TAX LEVIES WITHIN THE 10 M. LIMITATION FOR CURRENT EXPENSES & DEBT SERVICE FOR EACH TAXING UNIT, DETERMINED BY USING TWO-THIRDS OF THE AVERAGE LEVY FOR CURRENT EXPENSES & DEBT SERVICE LEVIED WITHIN THE 15 M. LIMITATION FOR EACH TAXING UNIT DURING THE LAST 5 YEARS THE 15 M. LIMITATION WAS IN EFFECT, BEING THE YEARS 1929 TO 1933, INCLUSIVE, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS (D) OF SECTION 5705.31, REVISED CODE. THE RATES APPEARING IN THE LAST COLUMN HAVE BEEN ADJUSTED IN COMPLIANCE WITH THE PROVISIONS OF SECTION 319.33, REVISED CODE, AUTHORIZING THE COUNTY AUDITOR TO DISPOSE OF FRACTIONAL MILLS.

COUNTY	1929	1930	1931	1932	1933	Total		Rounded	
						5 yr. Avg.	Rate	AV. Annual	2/3 AV. An. Levy Average
Clermont	4.80	4.80	4.80	4.10	3.70	22.20	4.44	2.96	3.00
<b>TOWNSHIPS</b>									
Batavia	2.30	2.30	2.50	2.55	2.55	12.20	2.44	1.63	1.60
Mun. Corp.	.70	.70	.90	.95	.95	4.20	.84	.559	.60
Williamsburg	2.50	2.60	2.70	2.75	2.75	13.30	2.66	1.77	1.80
Mun. Corp.	.70	.70	.90	1.15	1.15	4.60	.92	.61	.60
Tate	3.40	3.10	2.90	2.95	2.95	15.30	3.06	2.04	2.00
Mun. Corp.	1.45	1.20	.90	.95	.95	5.45	1.09	.73	.70
Franklin	3.10	2.90	2.90	2.95	2.95	14.80	2.96	1.97	2.00
Mun. Corp.	1.10	.90	.90	.95	.95	4.80	.96	.64	.60
Washington	2.90	2.90	2.90	2.95	2.95	14.60	2.92	1.946	1.90
Mun. Corp.	.90	.90	.90	.95	.95	4.60	.92	.61	.60
Monroe	3.20	3.10	2.90	2.95	2.95	15.10	3.02	2.01	2.00
Ohio	2.70	2.70	2.70	2.75	2.75	13.60	2.72	1.81	1.80
Mun. Corp.	.70	.70	.70	.75	.75	3.60	.72	.48	.50
Pierce	3.30	3.15	2.90	2.95	2.95	15.25	3.05	2.03	2.00
Mun. Corp.	1.30	1.10	.90	.95	.95	5.20	1.04	.69	.70
Union	2.70	2.40	2.50	2.55	2.55	12.70	2.54	1.69	1.70
Miami	2.40	2.40	2.40	2.45	2.55	12.20	2.44	1.63	1.60
Mun. Corp.	.40	.40	.40	.45	.55	2.20	.44	.29	.30
Goshen	3.65	3.55	2.90	2.95	2.95	16.00	3.20	2.13	2.10
Wayne	3.10	3.00	2.90	2.95	2.95	14.90	2.96	1.99	2.00
Mun. Corp.	1.10	1.00	.90	.95	.95	4.90	.98	.653	.70
Stonelick	3.75	3.60	3.00	2.95	2.95	16.45	3.29	2.19	2.20
Mun. Corp.	1.80	1.30	1.00	.95	.95	6.50	1.30	.87	.90
Jackson	3.00	3.05	2.90	2.95	2.95	14.85	2.97	1.98	2.00

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No. 13 - CLERMONT COUNTY

	5 yr. Agg.										Total	Av. An. Rate	2/3 Av. An. Levy	Rounded Average
	1929	1930	1931	1932	1933	2.65 M. State School Levy	5 yr. Agg.	5 yr. Agg.	5 yr. Agg.	5 yr. Agg.				
<b>MUNICIPAL CORPS.</b>														
Amelia	2.80	2.80	2.80	2.00	2.00	12.40	2.48	1.653	1.70	1.70	26.50	5.30	3.53	3.50
Batavia	2.00	1.90	1.90	1.90	1.50	9.20	1.84	1.23	1.20	1.20	26.50	5.30	3.53	3.50
Williamsburg	3.50	3.50	3.80	4.80	4.80	14.80	2.96	1.97	2.00	2.00	26.50	5.30	3.53	3.50
Bethel	3.20	3.80	3.80	3.80	4.80	20.20	4.04	2.69	2.70	2.70	27.55	5.51	3.67	3.70
Felicity	2.55	2.60	2.60	3.00	3.00	19.40	3.88	2.59	2.60	2.60	32.50	6.50	4.33	4.30
Neville	3.25	3.45	3.65	4.80	4.80	13.75	2.75	1.83	1.80	1.80	26.50	5.30	3.53	3.50
Moscow	2.80	3.00	3.00	3.00	3.00	19.95	3.99	2.659	2.70	2.70	26.50	5.30	3.53	3.50
New Richmond	3.00	3.00	3.50	4.50	4.50	14.80	2.96	1.97	2.00	2.00	26.50	5.30	3.53	3.50
Loveland	3.80	4.30	4.30	4.60	4.60	18.50	3.70	2.47	2.50	2.50	29.70	5.94	3.959	4.00
Milford	2.00	2.00	2.00	2.00	2.00	10.00	2.00	1.33	1.30	1.30	26.30	5.26	3.51	3.50
Newtownsville	2.50	2.90	3.00	3.00	3.50	14.90	2.98	1.99	2.00	2.00	28.50	5.70	3.80	3.80
Owensville	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	32.50	6.50	4.33	4.30
<b>SCHOOLS</b>														
Amelia	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Batavia	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Felicity-Franklin	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Moscow	3.40	3.00	3.00	2.35	2.35	13.25	2.35	1.51	1.50	1.50	27.55	5.51	3.67	3.70
Neville	3.85	3.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	32.50	6.50	4.33	4.30
New Richmond	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Newtownsville	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Bethel	2.80	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Branch Hill	3.75	3.75	3.85	2.55	2.55	13.25	2.55	1.66	1.65	1.65	29.70	5.94	3.959	4.00
Edenton	2.75	2.75	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.30	5.26	3.51	3.50
Khami	3.85	3.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	32.50	6.50	4.33	4.30
Monroe	3.85	3.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	26.30	5.26	3.51	3.50
Miamiville	4.30	4.25	3.95	3.85	3.85	13.25	3.85	2.59	2.60	2.60	28.50	5.70	3.80	3.80
Ohio	3.90	3.85	3.65	3.85	3.85	13.25	3.85	2.59	2.60	2.60	33.45	6.69	4.459	4.50
Raxton	3.85	3.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	32.55	6.51	4.34	4.30
Perintown	2.85	2.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	32.70	6.54	4.359	4.40
Pierce	3.35	4.00	2.95	2.35	2.35	30.50	4.07	2.71	2.70	2.70	30.50	6.10	4.07	4.10
Pt. Isabel	3.85	3.85	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	28.25	5.65	3.77	3.80
Wayne #8	3.90	3.95	3.85	3.85	3.85	13.25	3.85	2.59	2.60	2.60	32.50	6.50	4.33	4.30
Stonelick	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	32.65	6.53	4.353	4.40
Williamsburg	2.85	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	26.50	5.30	3.53	3.50
Loveland	4.15	4.15	3.65	2.60	2.60	13.25	2.60	1.66	1.65	1.65	26.50	5.30	3.53	3.50
Milford	3.35	2.85	2.85	2.35	2.35	13.25	2.35	1.51	1.50	1.50	30.40	6.08	4.053	4.10
						27.00	5.40	3.60	3.60	3.60	27.00	5.40	3.60	3.60

ED:bby

## FUND TRANSFERS

### I. Tax Commissioner's Role

- A. If a transfer of funds is provided for in O.R.C. § 5705.14, then no approval of the Tax Commissioner is required. The taxing authority of the subdivision needs to pass a resolution with an affirmative vote of two-thirds of its members, except when the transfer is from the general fund, which requires only a majority vote. Some of the transfers in that section also require the approval of the court of common pleas.
1. When a provision of O.R.C. § 5705.14 applies to a situation, it must be used to dispose of that fund transfer. In other words, a condition or prerequisite contained in O.R.C. § 5705.14 cannot be sidestepped by applying to the Tax Commissioner under O.R.C. §§ 5705.15 and 5705.16.
  2. For example, O.R.C. § 5705.14(C) is the exclusive mechanism to transfer money contained in a bond retirement fund. In re Margareta Local School Dist., 253 N.E.2d 836, 20 Ohio Misc. 243 (Erie County C.P. Ct. 1969). Under O.R.C. § 5705.14(C) only the "unexpended balance" in a bond retirement fund may be transferred to certain other funds. If a subdivision has not yet retired all its obligations, its bond retirement fund does not have an "unexpended balance" and O.R.C. § 5705.14(C) is inapplicable. However, this conclusion does not mean that O.R.C. §§ 5705.15 and 5705.16 can be used to transfer an unexpended balance. Until all indebtedness of the subdivision is retired, no moneys may be transferred from the bond retirement fund pursuant to O.R.C. § 5705.14(C).
- B. If a transfer of funds is not allowed by O.R.C. § 5705.14, then the subdivision must obtain approval from the Tax Commissioner to file a petition in the court of common pleas under O.R.C. §§ 5705.15 and 5705.16. The Board of Tax Appeals has succinctly described the Tax Commissioner's duties under the fund transfer provisions of O.R.C. § 5705.16 as follows:

While R.C. 5705.16 prescribes that a copy of the petition addressed to the court of common pleas be forwarded to the Commissioner "for his examination and approval," it is also clear from the terms of such provision that the Commissioner is authorized to either approve or disapprove such petition, *in his discretion*. Such provision does not state specific criteria which the Commissioner must use in making such determination; he is only required, in the event that he disapproves the petition submitted, to return the petition to the petitioners with a memorandum statement of his objections thereto.

Lake Township v. Kinney, No. 82-F-525, slip op. at 5 (Ohio B.T.A. Mar. 27, 1984). (emphasis added).

- C. In the approval process, our Division reviews the subdivision's resolution and petition to the court, determines whether any exceptions in O.R.C. § 5705.15 apply, and decides whether the transfer is prohibited by other Code sections. If an exception or prohibition applies, we deny the request to file the petition in the court of common pleas. Note: the common pleas court does not gain jurisdiction over the fund transfer petition, until the Tax Commissioner's approval is granted. If the Commissioner denies the fund transfer request, the subdivision may appeal that denial to the Board of Tax Appeals. O.R.C. § 5717.02.
1. By the explicit terms of O.R.C. § 5705.15, a subdivision may not transfer "the proceeds or balances of loans, bond issues, special levies for the payment of loans or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose." The first exception typically involves bond funds, bond retirement funds, and sinking funds. The second exception usually involves the motor vehicle fuel excise tax (O.R.C. § 5735.27) and the motor vehicle license fees (O.R.C. §§ 4503.02, 4504.02, 4504.06), but could pertain to other excise taxes and license fees if the constitution or Revised Code requires a certain usage.
  2. Other Revised Code sections may restrict the usage of moneys in certain funds. For example, the Ohio Supreme Court has already held that moneys in an Electric Fund can be transferred to any other fund and be used for any municipal purpose, since no Code section restricts the use of such money. On the other hand, moneys in a Water Fund cannot be transferred because their use is restricted by O.R.C. § 743.05. Niles v. Union Ice Corp., 133 Ohio St. 169 (1938). Similarly, moneys in a Trash Fund, which contains fees for the collection of refuse and garbage pursuant to O.R.C. § 715.43, may be transferred to the General Fund because no statutory restrictions exist on the use of those fees by the municipality.
  3. Examples of other Revised Code sections that contain restrictive use provisions: § 169.02(D) - unclaimed moneys in a Utility Deposit Fund, acting as a trust fund; § 321.261 - a 5% charge on "all delinquent real property, personal property, and manufactured home taxes and assessments collected by the county treasurer" deposited in the Delinquent Tax and Assessment Collection Fund; § 325.31 - fees charged against all moneys collected by the county treasurer on any tax duplicate of the county placed in the Real Estate Assessment Fund under § 319.54(B); § 505.84 - user charges for ambulance or emergency medical services in the EMS Fund; § 517.08 - proceeds from the sale of cemetery lots under § 517.07 placed in the Cemetery Fund; § 727.38 - surplus in a municipality's Special Assessment Fund.

4. Constitutional provisions restrict the transfer of funds derived from a voted tax levy. The Court of Appeals of Montgomery County denied a fund transfer from a township fire fund to the township's general fund because **art. XII, § 5** of the Ohio Constitution "prevents taxes levied for a specific purpose which the voters approve being used for a purpose the voters did not approve." In re Petition for Transfer of Funds by Perry Township, Montgomery County, Ohio, No. 10770, slip op. at 3 (Ct. App. June 24, 1988). Proceeds from a special levy can be transferred to the general fund under section 5705.14(D) after the termination of the activity for which the special fund existed. Since "the need for fire protection will continue indefinitely . . . no transfer of funds can occur under R.C. 5705.14(D)." Id. slip op. at 4. Furthermore, sections 5705.15 and 5705.16 cannot be applied to the type of fund transfer in question. Id. slip op. at 5. Finally, the court of appeals suggested that if a surplus exists in the fire fund, "in the future this special tax should be levied at a rate less than approved." Id. slip op. at 6. If the people need more money for current operating expenses, "they will vote for a levy to do so." Id.

As the Attorney General phrased it, the proceeds of a special levy may not be placed in, or transferred to, the general fund, except under O.R.C. § 5705.14(D). 1962 Ohio Att'y Gen. Op. 2997. To allow such a transfer would "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." 1963 Ohio Att'y Gen. Op. 154, at p. 247.

- D. If the resolution and petition are in order, and if no O.R.C. § 5705.15 exception or other statutory prohibition applies, we would approve the request to file the petition with the court of common pleas. Only after the Commissioner's journal entry is issued, may the subdivision file the petition with the court. Then, newspaper notice is given for the court's hearing. "Any person who objects to the prayer of such petition shall file his objections in such cause on or before the time fixed in the notice for hearing, and he shall be entitled to be heard." If the court determines that good reasons exist for the transfer or that the transfer is necessary, and that no injury will result from the transfer, then the court will grant the transfer of moneys. O.R.C. § 5705.16.

Summarizing, the Tax Commissioner makes preliminary, factual and legal determinations. If our review is satisfied, we approve the request to file the petition with the court of common pleas. The court makes the subjective, value judgments regarding the necessity of the transfer. If the court is satisfied, it will grant the transfer of moneys.

## II. What is a Transfer?

- A. Permanent Change - A transfer is a movement of money from one fund to another, which constitutes a permanent change from the original intended usage. See 1964 Ohio Att'y Gen. Op. 1209, at 2-268. For example, assume money was transferred from the General Fund to the Bond Retirement Fund. The transfer representing a permanent change makes the transferred money bond retirement money subject to all the statutory restrictions placed on such money. Thus, the money in question cannot be transferred back to the General Fund pursuant to O.R.C. §§ 5705.15 and 5705.16, but only pursuant to O.R.C. § 5705.14(C), since the original fund transfer changed the character of the money. See 1954 Ohio Att'y Gen. Op. 4342, at 511.
- B. Between Funds - "Fund" is defined in O.R.C. § 131.01(O). See also 1986 Ohio Att'y Gen. Op. 56. Funds are established by O.R.C. §§ 5705.09, 5705.12, and 5705.13.
- C. By a Subdivision - A department, board, or commission is neither a "subdivision" under division (A) of O.R.C. § 5705.01 nor a "taxing unit" under division (H) because it cannot levy taxes or issue bonds. Therefore, such an entity cannot request a fund transfer. For a department, board, or commission to effectuate a fund transfer it must ask the taxing authority of the subdivision that governs it who, in turn, would petition the Tax Commissioner and the court of common pleas.
- D. Within Same Subdivision - O.R.C. §§ 5705.14 - 5705.16 only apply to transfers of moneys between funds in the same subdivision. See Lake Township v. Kinney, No. 82-F-525 (Ohio B.T.A. Mar. 27, 1984), aff'd, Cassetty v. Kinney, No. CA-6378 (5th Dist. Ct. App. Stark County, Sept. 24, 1984) (cannot transfer funds from a township to a township police district - they are two separate subdivisions). See also 1994 Ohio Att'y Gen. Op. 004 (township cannot transfer money from its fire fund that contains the proceeds of a tax levied under O.R.C. § 5705.19(I) to the fire district it has joined, but the township can transfer the balance of its fire fund to its general fund under O.R.C. § 5705.14(D)).

## III. Transfer vs. Advancement

- A. A distinction exists between an advancement and a transfer. A transfer suggests a permanent change, while an advance connotes the expectation of repayment. 1964 Ohio Att'y Gen. Op. 1209, at 2-268. Sections 5705.14, 5705.15, and 5705.16 only deal with transfers, not advancements. Moreover, the reimbursement of an advance "is an entirely different matter from a transfer such as is contemplated by the statutes." 1951 Ohio Att'y Gen. Op. 859, at 654. Consequently, neither an advancement nor the repayment of an advance require the approval of the Tax Commissioner or the court of common pleas.
- B. "It should be pointed out, of course, that such an appropriation must be clearly labeled an advancement, or a clear indication that an advancement was intended must be shown at the time of the appropriation." If money is thus advanced from

the general fund to a special fund, the repayment to the general fund "is not a transfer but is an application of funds." 1954 Ohio Att'y Gen. Op. 4342, at 511. The repayment occurs by operation of the original resolution that created the advance.

#### IV. Transfer vs. Distribution

- A. A distinction exists between a transfer of funds and a distribution of funds. A transfer changes the use of the money from the purpose for which it was intended. In other words, a transfer rededicates the money to a new purpose, different from that for which it was originally collected. A distribution, on the other hand, pays the revenue collected to the political subdivision to be placed in the proper fund for which the revenue was intended, as evidenced by the subdivision's annual budget. A tax collection fund is a mere clearing house for the tax revenue collected. A distribution of money from a tax collection fund is not a transfer of funds contemplated under O.R.C. §§ 5705.14 to 5705.16, but rather an application of funds to the original intended purpose.
- B. Section 321.31 requires the county treasurer, immediately after each settlement, to pay to the subdivisions authorized to receive the tax revenue collected all moneys in the county treasury belonging to such subdivisions. No other authority is needed to distribute such revenue.

#### V. Funds vs. Accounts

- A. Moving money from one account to another within the same fund does not constitute a fund transfer. O.R.C. §§ 5705.14, .15. Thus, no fund transfer approval is required from either the Tax Commissioner or the court of common pleas.
- B. For example, if a Village is operating both a water and sewerage system under O.R.C. §§ 743.04 to 743.06, only two funds are contemplated under that framework: the waterworks fund (revenue fund or operating fund) and a sinking fund for the liquidation of debt incurred in the construction of waterworks. 1986 Ohio Att'y Gen. Op. 56. In the revenue fund, separate accounts may be set up for operation and maintenance, for repairs and improvements, and for surplus reserves. Money may be moved between those accounts without outside approval, subject to the conditions in O.R.C. § 743.05.
- C. For example, MRDD levies are authorized under O.R.C. § 5705.19(L). Under the prior version of that division, the proceeds of the levy could be used either for operating expenses or for capital improvements by appropriating the necessary money in the budget. The current version of that division refers to the procedures contained in O.R.C. § 5705.222. This latter section specifically provides for three accounts to be set up in the MRDD Fund: one for current operating expenses; one for capital improvements; and a reserve balance account for future operating expenses. Subject to the conditions in O.R.C. § 5705.222, money may be moved between those accounts through appropriations.

## VI. Transfer by Operation of Law

- A. Upon consolidation of services for various political subdivisions, transfers of funds may be required. See generally 1989 Ohio Att'y Gen. Op. 104 (consolidation of sewer districts). If the agreement with the county requires the subdivisions' funds as well as the plant to be transferred to the county, then such transfer would occur by operation of law and O.R.C. §§ 5705.14 - .16 would not apply. Those sections cannot be used to effectuate transfers of funds between subdivisions. Moreover, if the combining entities are not subdivisions, again O.R.C. §§ 5705.14 - .16 would not apply because they only apply to subdivisions.
- B. When a municipality annexes township territory, O.R.C. § 709.12 requires the county auditor to divide between the municipality and the unannexed portion of the township any unencumbered balance on hand to the credit of any township fund. The transfer of funds from the township to the municipality occurs by operation of law.
- C. A court-ordered settlement agreement might state that a township shall transfer some money from its Permanent Improvement Fund to a fund of the Water and Sewer District. Since the settlement agreement is part of the court's judgment entry, the transfer occurs by operation of that authority. No further court approval should be necessary to accomplish what the court has already ordered.
- D. The statutory scheme for the waterworks system in O.R.C. §§ 743.04 - 743.06 contemplates two funds: the water fund for water rents and charges, and the sinking fund for the payment of interest and principal on debts of the waterworks system. The water fund may be used for several purposes. Any surplus in that fund, after applying the statutory percentages, can be placed in separate accounts in the water fund for separate purposes and placed in the sinking fund for the payment of debts. See generally 1986 Ohio Att'y Gen. Op. 56. No approval of the Tax Commissioner or of a court of common pleas is needed to move revenue from the water fund to the sinking fund, since the "transfer" occurs by operation of law under O.R.C. § 743.05, as an application of funds.
- E. When the CETA program was replaced by the JTPA program in the early 1980s, federal and state rules required unused CETA grant moneys to be transferred to certain funds. Those transfers occurred by operation of law. Therefore, the fund transfer provisions contained in O.R.C. §§ 5705.14 - .16 would not apply. Consequently, the balances in any CETA grant funds could not be transferred to the county's General Fund.

## VII. Correction of Errors

The correction of a distribution or transfer wrongly made does not require the approval of the Tax Commissioner or a court of common pleas because that correction does not constitute a "transfer" of funds as contemplated in O.R.C. §§ 5705.14, .15, and .16. 1958 Ohio Att'y Gen. Op. 1833, at 153. No subdivision needs approval to do what is required by law.

## VIII. Federal Grants vs. State Grants

- A. The State's view, when local matching funds are required, is the following: if the expenditures are greater than the grant amount, then all the grant money is deemed to have been spent. In other words, the remaining moneys belong to the county because the grant money is deemed to be spent first. Consequently, any remaining balance in a state grant fund, after the project is completed, may be transferred to the subdivision's fund that provided the matching money by operation of law under the grant itself. Alternatively, if the grant fund is a specific permanent improvement fund, other than a bond fund, then the excess money could be transferred to the subdivision's General Fund under R.C. § 5705.14(B) by an order of the court of common pleas. As noted in Part I.A., no approval of the Tax Commissioner is required for any transfer under R.C. § 5705.14.
- B. The federal government's approach differs from that of the State's. When local matching funds are required, the local money is deemed to be spent first. In other words, federal grant money is deemed to be spent last. Consequently, any money remaining in the fund must be grant money. The federal government requires that any remaining balance in a grant fund be returned to them. Therefore, such balance may not be transferred, for example, to the subdivision's General Fund.

## IX. Unvoted Road & Bridge Levies

“It is a long-standing equitable maxim that equity will not permit to be done indirectly what cannot be done directly.” Brown v. City of Cleveland, No. 84708, 2005 Ohio App. LEXIS 548 (8<sup>th</sup> Dist Ct. App. Cuyahoga County, Feb. 10, 2005) (citing Hollister v. Dillon, 4 Ohio St. 197, 208 (1854)). See also Beth Jacob Congregation v. City of Huber Heights Board of Zoning Appeals, No. 16650, 1998 Ohio App. LEXIS 1037 (2<sup>nd</sup> Dist. Ct. App. Montgomery County, Mar. 20, 1998); Kinninger v. Tracy, No. 92AP-1143, 1992 Ohio App. LEXIS 6793 (10<sup>th</sup> Dist. Ct. App. Franklin County, Dec. 31, 1992).

Assume a township is assessing an unvoted levy upon all the taxable property within the township that is outside of the municipality pursuant to O.R.C. § 5575.10 for the purpose of road maintenance and attempts to transfer some of those levy proceeds to its general fund. No Revised Code section exists that would allow a township, or any other political subdivision for that matter, to assess a levy for general operating purposes that would exclude any part of the taxable property of the subdivision from taxation. Consequently, since the township could not assess a general operating levy upon all the taxable property within the township that is outside of the municipality, by levying the tax for road maintenance outside of the municipality and then transferring that revenue to the general fund, the township is attempting to do indirectly through the fund transfer procedures what it cannot do directly with a general operating levy under the general tax levy laws contained in the Revised Code.

X. What to Do if Transfer not Permitted

- A. Invoicing - One fund of a subdivision may invoice another fund for services rendered or for goods purchased. As long as the invoice for goods or services represents a proper charge against the invoiced fund, the invoice could be paid.
1. For example, money designated by will to be used to care for a designated plot, must be kept in trust in, say, a Cemetery Estate Fund and used only for that purpose. However, if money from the Cemetery Fund had been used to care for that designated plot, the Cemetery Fund may invoice the Cemetery Estate Fund for services rendered to that fund. Thereafter, the township should use money directly from the Cemetery Estate Fund to care for that designated plot.
  2. For example, assume the General Fund inadvertently made payments on a village's firefighting agreement. If those contract payments were made directly from the General Fund, then the General Fund could invoice the Fire Levy Fund for services rendered. However, if money was transferred from the General Fund to the Fire Levy Fund, then money could only be transferred back to the General Fund by O.R.C. § 5705.14(D). See Part I.C.4.
- B. Contracting - If two townships, which formerly provided their own fire protection, form a joint fire district, a fire district levy might not be in place to cover the initial costs of the district. Moreover, as we saw in part II.D., the townships cannot transfer their fire levy revenue to the district. However, under O.R.C. § 505.371, a joint fire district may enter into a contract pursuant to O.R.C. § 9.60 with one or more of the political subdivisions of which it is formed. See 1981 Ohio Att'y Gen. Op. 27. Hence, the two townships may contract with the fire district and use their existing fire fund balances to pay on the contract, until the fire district levy is passed.