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CONFIDENTIAL
ATTORNEY CLIENT PRIVILEGE

VIA E-MAIL AND REGULAR U.S. MAIL

Christopher A. Jakab
Director of Finance
Medina County, Ohio
Medina County Administration Building
144 North Broadway, Room 205
Medina, OH 44256

Re: Medina County, Ohio
School Financings and County Sales Tax

Dear Chris:

You inquired regarding the possibility of providing financial assistance to school districts through the levy of a sales tax.

The State of Ohio levies a sales tax under Section 5739.02 of the Revised Code: "for the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter . . . ." That tax was reduced by ½% (from 6% to 5½%) beginning July 1, 2005, as a result of passage of the recent State "budget bill."

Similarly, each county in the State may levy a sales tax up to 1% pursuant to Section 5739.021 of the Revised Code "for the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county, or both, and to pay the expenses of administering such levy . . . ." The revenue generated by this sales tax is used by a county for its general operation, which would not include provision of financial assistance to school systems in the county. Counties are creatures of statute and can generally do only what has been authorized by statute. Because there is no statutory authority under

Section 5739.021 for a county to use such sales tax revenues to assist school systems, the county would not be able to provide funding for school purposes from this source. Such expenditures for public education would not be a "county purpose" but rather a school district purpose.

The Ohio Attorney General has concluded that a county has no authority to deposit revenues derived from county sales tax pursuant to Sections 5739.021, 5739.026 and other sections of the Revised Code into a revenue sharing fund for which money would be distributed to townships and municipalities in the county to be used as the recipients determined.

Counties do, however, have further authority to levy an additional sales tax up to ½% for the various other purposes set forth in Section 5739.026. The purposes relevant to this discussion include:

> "(2) To provide additional revenues for a transit authority operating in the county;
>
> (3) To provide additional revenue for the county's general fund;
>
> (4) To provide additional revenue for permanent improvements within the county to be distributed by the community improvements board in accordance with section 307.283 and to pay principal, interest, and premium on bonds issued under section 307.284 of the Revised Code;
>
> (5) To provide additional revenue for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements … ."

Under this statute, a county may levy a ½% sales tax for any one or more of the purposes listed.

The purpose listed as "(3)" would require the county to use its general fund revenues, which is a problem as noted above. We believe that the "permanent improvements" discussed under purpose "(5)" are those of the county itself rather than those of other subdivisions.

This leaves purpose "(4)," which refers only to "permanent improvements" and <u>not</u> to general financial assistance. Under this provision, sales tax revenues could be used to fund permanent capital improvements of the county and other political subdivisions, including school districts, within the county. The funds would be distributed by a community improvement board created under Section 307.282 of the Revised Code. The community improvement board consists of nine members. Three members are appointed by the mayor of the city with the largest population. The board of county commissioners appoints the other six members, which are to include the mayor of another municipal corporation in the county, a township trustee and one member appointed from among the following: "a chief executive of a municipal corporation in the county that is not the municipal corporation with the greatest population residing in the county, a trustee of a township in the county, a representative of a major business trade association located in the county, or a representative of a labor organization located in the county."

The sales tax revenues are distributed by the community improvement board annually through grants to the county and the other political subdivisions in the county.

The statute does not provide directions on the grant application process or procedures for selecting the projects to be funded. Presumably, those are to be developed by the board. There may be some concern that the revenues be made available to all subdivisions in the county, but it is also possible that a board could determine that the first priority is education and thus determine to fund only educational projects. It could also determine that certain school districts in the county should have priority for that funding. For example, the Ohio School Facilities Commission provides State funds to school districts for capital projects on the basis of priority of need and other criteria. The community improvement board could adopt this prioritization and provide part of the required local matching funds for the projects funded by the Commission. The county commissioners by unanimous vote may disallow a grant awarded by the board.

The levy of this additional tax must be approved by the voters of the county. Clearly, there is the potential for "political" considerations. The composition of the board as well as the priority for funding projects may well have to be negotiated and established prior to the election on the issue of levying the additional sales tax.

Thus, under existing law, Section 5739.026(A)(4) provides a mechanism for raising additional revenues that could be used to provide financial assistance to a school system in the form of permanent improvements.

There is, of course, the possibility of requesting the General Assembly to amend the Revised Code to provide statutory authority to use a county sales tax to finance schools more generally. One approach would be to create a new section to provide such authorization. This would permit, for example, the levy of a full ½% or even a full 1% for this purpose without sharing it with other purposes. The new section could provide in somewhat more detail the procedures for providing such financial assistance to the various school districts within the county.

It should not, however, be unexpected that the General Assembly may balk at such a proposal to create a new funding mechanism for schools or, much less, allow each of the 88 countries to create its own procedures. As you know, the State's own school funding mechanism has been under attack for many years and remains so. The statutory process often requires considerable time before a proposal is eventually enacted into law.

I trust this letter will serve your needs. Of course, should you have any further questions or require additional information, please give me a call.

Very truly yours,

Michael L. Sharb