

# Legal Advice

The Panel relied on legal advice provided by Squires, Sanders and Dempsey and Buckingham, Doolittle, and Burroughs in determining the appropriateness of recommending a sales tax to fund school improvements. Their written legal advice is attached.

4900 Key Tower  
 127 Public Square  
 Cleveland, Ohio 44114-1304

Office: +1.216.479.8500

Fax: +1.216.479.8780

Direct Dial: +1.216.479.8535

bkeefe@ssd.com



February 27, 2002

**CONFIDENTIAL**  
**ATTORNEY CLIENT PRIVILEGE**

Max Rothal, Law Director  
 City of Akron  
 202 Ocasek Government Office Building  
 161 South High Street  
 Akron, Ohio 44308

**Re: School Financing**

Dear Max:

On several occasions, we have discussed the possibility of providing financial assistance to the public school system through the levy of a sales tax. You asked me to summarize those discussions. As you know, 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 general assistance in the existing economic crises, 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, and 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...."

Similarly, each county in the State may levy a sales tax up to one percent pursuant to Section 5739.021: "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 are 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. Since 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. (See Hubbard v. Fitzsimmons, 57 Ohio St. 436 (1898), but see later discussion.)

As I mentioned previously, there is an opinion of the Ohio Attorney General that is on point (Opinion No. 88-019 (1988)). The Attorney General 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. Because this opinion deals with a proposal that is analogous to the one under discussion, I am enclosing herewith a copy of that opinion.

Counties do, however, have further authority to levy an additional sales tax up to one-half percent 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 133.312 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 an one-half percent sales tax for any one or more of the purposes listed. Thus, if the county has previously levied an one-quarter percent sales tax for the operation of a transit authority in the county, it could only levy another one-quarter percent for a different purpose. I understand that the County does have an existing sales tax levy for the transit authority. It may be that such tax was levied under Section 5739.023 (a separate authorization for a county sales tax to provide revenues for a transit authority) rather than Section 5739.026(2). Cathy Watson was researching that matter.

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 could apply to our situation. 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 county commissioners (or council) 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 particular, funding for its 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. One approach would be to create a new section to provide such authorization. This would permit, for example, the levy of a full one-half of one percent or even a full one percent 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 counties to create its own procedures. As you know, the State's own school funding mechanism has been under attack for the last ten years, and after three Ohio Supreme Court decisions is still before that court. It might be more advisable to structure any new statutory authority more narrowly, e.g., providing funding for school system permanent improvements rather than general financial assistance for operations. The statutory process often requires considerable time before a proposal is eventually enacted into law.

In addition to the possibility of a county's providing financial assistance to school systems, we have also discussed how the City might provide such assistance. As I noted above, the *Hubbard* case and

similar early cases prohibited the use of funds by a political subdivision to assist another governmental entity (in that case the State). Later cases, however, seem to relax this rule somewhat if it can be shown that the subdivision received something in return for its expenditure (State ex rel Clemmer & Johnson Co. v. Turner, 93 Ohio St. 379 (1916) – an Akron case, and City of Cleveland v. Public Library Board, 94 Ohio St. 311 (1916) and that the subdivision authorized such assistance under its charter (Green v. Thomas, 37 Ohio App. 489 (1930)). The case for “consideration” could be developed.

In fact, we have worked with a number of cities and school districts on various programs through which the city assists the school system by paying for all or most of a program for which the school may otherwise have responsibility. One example is recreation programs. Some cities also provide the schools with free snow removal or garbage collection and disposal. Adjustment of sewer and water service charges might also be considered, as well as adjustments of certain payments under tax abatement programs. There are other examples of this cost sharing by cities and school districts. You will note that these programs require the city to expend money from its existing funds. They do not create a new source of revenue as would the county sales tax proposal.

There has also been mention of the possibility of increasing the City’s income tax to provide assistance to the Akron City School District and, presumably, the other school districts that overlap the territory of the City. As we have discussed, the General Assembly actually provided for such a program in Section 718.09 of the Revised Code. That Section, however, was amended in December 2000 to limit its effectiveness to actions taken before January 1, 2001. Thus, there is no longer statutory authority for a city to levy a municipal income tax to provide financial assistance to a school district. One solution is to request the General Assembly to again amend that section to remove the limitation. I believe that additional amendments to that section should be made to better fit the City’s situation. For example, Section 718.09 “applies to a municipal corporation that shares the same territory as a city, local, or exempted village school district, to the extent that not more than five per cent of the territory of the municipal corporation is located outside the school district and not more than five per cent of the territory of the school district is located outside the municipal corporation.” The City overlaps primarily the territory of the Akron City School District, but also the territories of the Copley-Fairlawn City School District, the Revere Local School District and the Woodridge Local School District. The statute should be revised to accommodate this situation.

Finally, there remains the question of whether the City needs such statutory authority or whether it could amend its Charter to provide for an increase in the municipal income tax to provide financial assistance to the school systems (or parts thereof) within its territory.

The power of local self-government of municipal corporations provided by Ohio Constitution Article XVIII, Section 3, includes the authority to impose taxes (Towne Properties, Inc. v. Fairfield, 50 Ohio St. (2d) 356 (1977)). But that authority is subject to the limitation imposed by Ohio Constitution XVIII, Section 13: “Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes. . . .” In addition, Ohio Constitution Article XIII, Section 6 provides “The

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general assembly shall provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power." (See, for example, East Ohio Gas Co. v. Akron, 2 App.(2d) 267, affirmed by 7 Ohio St. (2d) 73 (1966).)

The General Assembly has enacted Chapter 718 of the Revised Code to provide additional authorization, procedures and limitations on municipal income taxes. Section 718.09 contains such a limitation. If the General Assembly had simply repealed that Section in December 2000, one could argue that there no longer was any statutory provision relating to the levy of a municipal income tax to provide financial assistance to a school system. A city would then be free to exercise its power of self-government to authorize such a tax, subject, of course, to the requirement for an election if the total income tax rate exceeded 1%. Section 718.09, however, was not repealed but rather was amended to restrict its effectiveness to actions taken before January 1, 2001. This limitation creates a formidable barrier to any attempt by a city to levy an income tax for school system assistance. Without quite exhaustive research (and maybe even with), it would be only speculation whether a city could structure such a tax to try to avoid that limitation. The better solution is to amend or at least repeal Section 718.09.

As you know, this is a rather complication area of the law. Additional research may be required. Please call me if you wish to pursue this matter further or if you have questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry", enclosed within a hand-drawn heart shape.

Francis Barry Keefe/mck  
cc: Catherine G. Watson, Director of Finance  
399140v1

## OPINION NO. 88-018

## Syllabus:

A county has no authority to deposit revenues derived from county sales and use taxes pursuant to R.C. 5739.021, 5739.026, 5739.211, 5741.023, and 5741.031 into a revenue sharing fund from which moneys are to be distributed, according to a stated formula of entitlement, to townships and municipalities within the county, for such purposes as the recipients determine.

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To: William L. Thomas, Belmont County Prosecuting Attorney, St. Clairsville, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988

I have before me your letter requesting an opinion, as follows:

This will request an opinion as to whether a county may establish a separate fund from income derived from the so-called "piggyback" sales tax which may be imposed by the county commissioners. Part of said fund, however it may be designated, would be distributed to townships, cities and villages on a formula to be decided upon.

You have informed me that the proposal in question is for the board of county commissioners to use revenues from county sales and use taxes pursuant to R.C. 5739.021, 5739.026, 5739.211, 5741.023, and 5741.031, or other applicable sections, to establish a "Local Government Revenue Sharing Fund" to be used for distribution to townships and municipalities within the county. The moneys in the Local Government Revenue Sharing Fund would remain separate from other general fund moneys at all times. A distribution formula would be established, so that each township or municipality would be entitled to a certain amount from the Fund, to be used for such purposes as the recipient might determine. Warrants would be issued to the townships and municipalities from the Fund.

It is firmly established that a board of county commissioners is a creature of statute and, as such, has only such powers, express or implied, as it is granted by statute. See, e.g., *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); 1987 Op. Att'y Gen. No. 87-048. Particularly in financial transactions, county commissioners may act only where their authority is clear and

is distinctly granted. See, e.g., *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916); 1983 Op. Att'y Gen. No. 83-042; 1982 Op. Att'y Gen. No. 82-024. I have examined the arrangement that you have proposed, and I am unable to find statutory authority which would permit its implementation.

R.C. 5739.021 authorizes a county to levy a sales tax "[f]or the purpose of providing additional general revenues for the county and paying the expenses of administering such levy." R.C. 5739.211(A) specifies that moneys derived under R.C. 5739.021 may be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements. R.C. 5739.211(A) states:

The moneys received by a county levying an additional sales tax pursuant to section 5739.021 of the Revised Code shall be deposited in the county general fund to be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements or in the bond retirement fund for the payment of debt service charges on notes or bonds of the county issued for the acquisition or construction or [sic] permanent improvements. The amounts to be deposited in each of such funds shall be determined by the board of county commissioners.

R.C. 5739.026(A) authorizes a board of county commissioners to levy a sales tax:

to pay the expenses of administering the tax and for any one or more of the following purposes:

(1) To provide additional revenues for the payment of bonds or notes issued in anticipation of bonds issued by a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code and to provide additional operating revenues for the convention facilities authority;

(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 133.312 of the Revised Code;

(5) To provide additional revenue to a county with a population of one hundred seventy-five thousand or less... for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements, which improvement or class or group of improvements shall be enumerated in the resolution required by division (D) of this section and to pay principal, interest, premium, and other costs associated with the issuance of bonds or notes in anticipation of bonds issued pursuant to Chapter 133. of the Revised Code for the acquisition, construction, equipping, or repair of the specific permanent improvement or class or group of permanent improvements.

R.C. 5741.023 authorizes a county to levy use taxes "[f]or the same purposes for which it has imposed a tax under section 5739.026 of the Revised Code."

R.C. 5739.211 and R.C. 5741.031 govern the manner in which funds derived under R.C. 5739.026 and R.C. 5741.023 are to be deposited and distributed. R.C. 5739.211(B) states, in part:

The moneys received by a county levying an additional sales tax pursuant to section 5739.026 of the Revised Code shall be deposited in a separate fund, which shall be allocated and distributed in accordance with the resolution adopted under such section. Moneys allocated for

the purpose of division (A)(4) of section 5739.026 of the Revised Code shall be transferred to and disbursed from the community improvements fund in the county treasury.

R.C. 5741.031(B) states, in part:

The moneys received by a county levying an additional use tax pursuant to section 5741.023 of the Revised Code shall be deposited in a separate fund, which shall be allocated, distributed, and used in accordance with the resolution adopted under section 5739.026 of the Revised Code. Moneys allocated for the purpose of division (A)(4) of section 5739.026 of the Revised Code shall be transferred to and disbursed from the community improvements fund in the county treasury.

The General Assembly has, thus, specified the purposes for which the taxes in question are to be used and the manner in which the proceeds are to be deposited and distributed. Under the Constitution of Ohio, the proceeds of a tax may be used only for the purposes for which the tax was imposed. See Ohio Const. art. XII, §5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"). See generally, e.g., Op. No. 87-048; 1965 Op. Att'y Gen. No. 65-50. R.C. 5739.021, R.C. 5739.026, R.C. 5739.211, R.C. 5741.023, and R.C. 5741.031 set forth certain purposes for which taxes may be levied. These statutes do not, however, authorize a county to levy a tax for the purpose of distributing the proceeds to townships and municipalities for such purposes as the recipients may determine.

It might be argued that the provision of moneys to townships and municipalities, to permit them to carry out their statutory functions, in itself constitutes a proper county purpose, so that county general fund moneys may be expended for such a purpose. I cannot, however, accept that argument as a basis for the establishment by a county of a Local Government Revenue Sharing Fund. It is clear that a county may have a legitimate concern about the financial status of subdivisions within its boundaries. Indeed, the General Assembly has provided various means by which a county may assist its townships and municipalities with respect to specific projects or needs. See, e.g., R.C. 307.10(B) ("[t]he board [of county commissioners], by resolution, may transfer real property in fee simple belonging to the county and not needed for public use...to municipal corporations or other governmental subdivisions of the state for public purposes upon the terms and in the manner that it may determine to be in the best interests of the county, without advertising for bids"); R.C. 307.692 ("[t]he legislative authority of a county may appropriate moneys from its general fund to be expended...by joint agreement with one or more other political subdivisions...for the public purpose of encouraging economic development of the county or area through promotion of tourism"); R.C. 307.77 ("[t]he board of county commissioners of any county may give aid to any of the units of government set forth in division (A) of this section [including municipal corporations and other political subdivisions of this state] by the appropriation of money or by the issuance of bonds and payment of proceeds as provided by section 307.771 of the Revised Code" for certain public improvements related to water management, where the general public benefit to the county will be in an amount at least as great as the amount of aid which the county will contribute); R.C. 307.85(A) ("[t]he board of county commissioners of any county may...give financial assistance to...other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States..."); R.C. 307.85(B) ("[t]he board [of county commissioners] may...give financial assistance to...public...agencies and organizations in establishing and operating programs to provide necessary social services to meet the needs of older persons or to provide emergency food to needy persons..."); R.C. 5535.01(C) ("[t]he board of county commissioners may assist the board of township trustees in maintaining all [township] roads"); R.C. 5535.08 ("[t]he...county...may, by agreement, expend any funds available for road construction, improvement, or repair upon roads inside a village"); Op. No. 87-048 at 2-315 n. 1. The General Assembly has not, however, identified responsibility for the general financial needs of townships and

municipalities as a county purpose.<sup>1</sup> In the absence of statutory language indicating that a county may levy taxes to which its townships and municipalities are entitled, I must decline to recognize that as a proper expenditure for county funds. *See generally, e.g.*, 1981 Op. Att'y Gen. No. 81-035; 1979 Op. Att'y Gen. No. 79-045 (syllabus, paragraph 2) ("[a]bsent express statutory authorization, county commissioners may not make contributions to, or share proceeds of a road levy with, township trustees for the purpose of any construction, improvement, or repair, of county roads"); 1949 Op. Att'y Gen. No. 948, p. 587; 1928 Op. Att'y Gen. No. 1826, vol. I, p. 627; 1921 Op. Att'y Gen. No. 1929, vol. I, p. 258 (syllabus) ("[c]ounty commissioners are without authority to adopt a general plan of returning to one or more of the townships of the county the amount of money raised and procured in such township or townships by [certain] county levies..."). *See also* Op. No. 82-024; 1982 Op. Att'y Gen. No. 82-006; 1966 Op. Att'y Gen. No. 66-160; Op. No. 65-50.

The statutory provisions discussed above do permit the use of tax proceeds for various purposes that may result in benefits to townships and municipalities within the county. For example, R.C. 5739.211 permits proceeds derived under R.C. 5739.021 "to be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements." Similarly, R.C. 5739.026(A)(3) and R.C. 5741.023 authorize the levy of taxes to provide revenues for the county's general fund. The use of such proceeds for certain types of permanent improvements may have the practical effect of benefiting townships and municipalities. Alternatively, such proceeds may be expended directly for a project within a township or municipality pursuant to a statute that authorizes such an expenditure. *See, e.g.*, R.C. 307.692; R.C. 5535.01(C); R.C. 5535.08. In addition, R.C. 5739.026(A)(4) and R.C. 5741.023 authorize the use of tax proceeds to "provide additional revenue for permanent improvements within the county to be distributed by the community improvements board." R.C. 5739.026(A)(4). Under R.C. 307.283, a community improvements board created under R.C. 307.282 may award grants for permanent improvement projects to be undertaken by political subdivisions within the county.

You have indicated that your county is not interested in these indirect methods of applying county tax proceeds to the needs of townships and municipalities, but, seeks, instead, a means of entitling the townships and municipalities to certain proceeds from county sales and use taxes, to be expended by the recipients for such purposes as they determine. The Ohio Revised Code provides no means for depositing the proceeds of county sales and use taxes into a fund for such purpose.

Materials supplied with your request present the proposal that the county auditor establish, for revenue sharing purposes, a separate general fund account similar to that permitted for bridge construction under Op. No. 81-035. Op. No. 81-035 concluded that county general fund moneys could be used for the construction of bridges in the county, provided that the particular moneys used were not precluded by law from being expended for such purpose, and provided that the

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<sup>1</sup> Certain revenues derived from state taxes are made available to political subdivisions within the state. *See, e.g.*, R.C. 5735.23 and .27 (motor vehicle fuel excise taxes); R.C. 5747.46-.49 (library and local government support fund, to be distributed among the county, boards of public library trustees, municipal corporations, and boards of township park commissioners in accordance with R.C. 5705.32); R.C. 5747.50-.55 (local government fund, to be distributed among the county, townships, municipal corporations, and park districts). *See generally* R.C. 5707.03; R.C. 5725.18; R.C. 5725.24; R.C. 5739.21; R.C. 5747.01(Q); R.C. 5747.02-.03. *See also* Am. Sub. H.B. 171, 117th Gen. A. (1987) (eff., in part, July 1, 1987) (Sec. 3.03-.05) (enacting R.C. 5747.61 and amending related provisions, effective July 1, 1989, to create, in the state treasury, the local government revenue assistance fund, to be allocated among the counties for distribution to political subdivisions).

particular moneys used had not been commingled with moneys that were precluded from being used for such purpose. Op. No. 81-035 also concluded that moneys derived from county sales and use taxes pursuant to R.C. 5739.211 and 5741.031 and deposited in the general fund could be used for bridge construction, provided that they had not been commingled with moneys that were precluded from being used for such purpose. With respect to the creation of a separate account, Op. No. 81-035 described a procedure that "would permit certain moneys which are ordinarily accounted for in the general fund to be used for road and bridge purposes while avoiding the difficulties entailed with segregating moneys within the general fund or attempting to establish the origin of particular moneys once they have been commingled with other general fund moneys." Op. No. 81-035 at 2-138. Op. No. 81-035 states:

R.C. 5705.12 provides that, with the approval of the Bureau of Inspection and Supervision of Public Offices, the taxing authority of a subdivision may set up special funds directly into which moneys from sources other than the general property tax may be paid. See 1956 Op. No. 6183. Such a procedure would prevent such moneys, for example, those derived from sales and use taxes, from becoming commingled with other restricted moneys within the general fund, and would thus alleviate the potential problem with distinguishing sources.

*Id.* at 2-138. See R.C. 5705.12. See generally 1981 Op. Att'y Gen. No. 81-037. It is clear that a special fund may be established under R.C. 5705.12 only for a purpose for which the moneys placed into the fund may properly be used. In the situation that you have described, there is no authority to expend the moneys for the desired purpose. Accordingly, there is no basis upon which to create a fund for that purpose.

It is, therefore, my opinion, and you are hereby advised, that a county has no authority to deposit revenues derived from county sales and use taxes pursuant to R.C. 5739.021, 5739.026, 5739.211, 5741.023, and 5741.031 into a revenue sharing fund from which moneys are to be distributed, according to a stated formula of entitlement, to townships and municipalities within the county, for such purposes as the recipients determine.

B

**BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP**  
Attorneys & Counselors at Law

50 S. Main Street P.O. Box 1500 Akron, Ohio 44309-1500  
330.376.3300 Fax 330.258.6559 www.bdblaw.com

Thomas E. Trotter  
330.258.4083  
TTrotter@bdblaw.com

Akron  
Boca Raton  
Canton  
Cleveland  
Columbus

March 20, 2002

Dr. Sylvester Small  
Superintendent  
Akron Public Schools  
Administration Building  
70 North Broadway Street  
Akron, Ohio 44308-1999

Dear Dr. Small:

You have asked our advice about the possibility of using an extension of Summit County's sales tax to assist in financing school facilities in conjunction with the Ohio Schools Facilities Commission.

Summit County currently levies a 0.5% sales and use tax. The County uses the money from this sales tax levy to pay its operating expenses. In addition, the Metro Regional Transit Authority levies a 0.25% sales tax, that it uses for operating purposes. The County tax, together with the RTA tax, and the state sales tax of 5.0% produces a total of 5.75% sales tax in Summit County. It has been suggested that the County might levy an additional sales tax and use the proceeds to help pay for the local share of the Akron Public Schools capital projects. The revenue from a 0.5% sales tax would bring in approximately \$30 million per year based on recent collections. Presumably, that money would be used either to pay debt service on bonds or used to directly pay construction costs.

We have examined the question and these are our conclusions:

1. The only political subdivisions authorized to levy sales taxes in Summit County are the County itself and the Regional Transit Authority.
2. The County is authorized to levy a sales tax for the following purposes:
  - (a) Providing additional general revenue for the County
  - (b) Supporting criminal and administrative justice services in the County
  - (c) Paying operating expenses and debt service for a convention facilities authority
  - (d) Providing additional revenue for a transit authority
  - (e) Providing additional revenue for the County's general fund
  - (f) Funding grants to be distributed by a community improvements board or paying debt service on bonds issued to provide money for those grants

- (g) Paying costs of specific permanent improvements or paying debt service on bonds issued for those permanent improvements
- (h) For a 9-1-1 system in the County
- (i) Operating a detention facility
- (j) Constructing a sports facility for major league professional athletic teams

None of the purposes noted above could be used for capital improvements for the Akron Public Schools, except (f). While (g)—paying costs of specific permanent improvements—might be a possibility, absent more specific statutory language, it must mean specific permanent improvements that the County is authorized to acquire and construct. The County is not authorized to acquire and construct facilities for use by the School District.

3. Under current state law, Summit County is not authorized to do any of the following:
- (a) Construct improvements for use as school facilities by a school district.
  - (b) Issue bonds, the proceeds of which would be used by a school district to construct school facilities, except as described under Community Improvements Board below.
4. The fact that Summit County is a charter county does not make a difference in the foregoing analysis. The authority to issue bonds and levy taxes is based solely on state law. We do not believe the County can expand that authority by acting under its Charter.

#### Community Improvements Board

The purpose noted in 2(f) above—grants to be distributed by a community improvements board—could be a vehicle to assist in financing capital improvements for the Akron Public Schools. Such a sales tax levy must be submitted to the voters, both because the state law requires it and the County's charter requires it. Briefly, the timing and structure of the tax and the financing would be as follows:

- A community improvements board would be created by County Council under Section 307.282, Revised Code.
  - It would consist of nine members: three appointed by the Mayor of Akron and six appointed by Summit County.
  - The six appointed by the County must be from specific categories: mayors, township trustees, business trade associations, and labor organizations.
- The County Council would adopt a resolution to place the sales tax levy on the ballot.
  - The sales tax levy would be for any period of time or for a continuing period of time. It would be for 0.25% or 0.5%.
  - The tax may be submitted to the voters at any authorized election date: the first Tuesday after the first Monday in February, May, August, and November.
- Within 15 days after County Council adopts the resolution to put the sales tax on the ballot, the County and the Mayor of Akron must make the appointments to the community improvements board.

- The resolution putting the sales tax question on the ballot must be certified to the County Board of Elections at least 75 days before the election. The filing deadlines are as follows:

<b>Election Date</b>	<b>Filing Deadline</b>
August 6, 2002	May 23, 2002
November 5, 2002	August 22, 2002
February 4, 2003	November 21, 2002
May 6, 2003	February 20, 2003
August 5, 2003	May 22, 2003
November 4, 2003	August 21, 2003

- A majority vote is required to pass the sales tax.
- The sales tax would be distributed annually by the community improvements board to make grants to government agencies for permanent improvements.
  - The Akron Public Schools is a government agency for this purpose.
  - Grants may only be used by government agencies for permanent improvements
- The County could also issue bonds for the purpose of providing additional revenue for grants.
  - Those bonds would be secured by the sales tax and would not be general obligations of the County.
  - The term of the bonds would be the lesser of the term of the sales tax levy or 10 years.
- A grant from the community improvements board could be used to by the Akron Public Schools as part of the local share of the Ohio School Facilities Commission projects.

#### **Alternate Sales Tax Financing**

If the community improvements board concept proves not to be an acceptable vehicle, nonetheless, with appropriate changes to the state law, a county sales tax could still be a vehicle for school financing. Those changes could include the following:

- Counties be given the authority to do any of the following:
  - Construct improvements for use by school districts as school facilities.
  - Issue bonds, payable solely from the sales tax, to pay costs of those improvements.
  - Distribute sales tax revenues to school districts in the county for operating and capital purposes.
- Counties be given the authority to levy sales taxes for any of those purposes.
- School districts be given the authority to do any of the following:
  - Lease or otherwise enter into use agreements for facilities constructed by the county.
  - Issue bonds payable solely from sales taxes distributed by the county to the school district.

Dr. Sylvester Small  
March 20, 2002  
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I hope the foregoing provides you the information you need. Please let us know if we can expand on this analysis.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Trotter", written in a cursive style.

Thomas R. Trotter

TRT/lmm  
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