



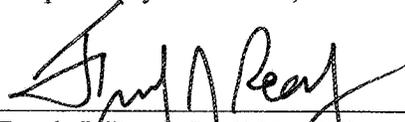
**IN THE SUPREME COURT OF OHIO**

DEFIANCE COUNTY, OHIO, :  
 :  
 :  
 Appellant, :  
 :  
 : Case No. \_\_\_\_\_  
 v. :  
 :  
 : Appeal from the Ohio Board of Tax  
 : Appeals BTA Case No. 2014-2059  
 JOSEPH W. TESTA, :  
 :  
 :  
 TAX COMMISSIONER OF OHIO, :  
 :  
 :  
 Appellee.

**NOTICE OF APPEAL OF DEFIANCE COUNTY**

Now comes Appellant, Defiance County, and gives their Notice of Appeal to the Ohio Supreme Court from a decision of the Ohio Board of Tax Appeals in the case of *Defiance County v. Tax Commissioner*, BTA Case No. 2014-2059, rendered on February 27, 2015, a copy of which is attached hereto as Exhibit “B<sup>1</sup>.” This decision was the result of an appeal from a Final Order issued by Tax Commission Joseph Testa, on March 26, 2014, a copy of which is attached hereto as Exhibit “A.” The Errors complained of are set forth in Exhibit “C”.

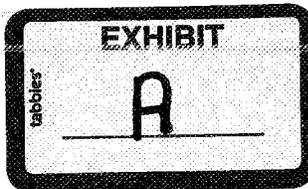
Respectfully submitted,



Frank J. Reed, Jr. (0055234)  
Stephen E. Chappellear (0012205)  
Susan Jahangiri (0089586)  
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*Counsel for Appellant, Defiance County, Ohio*

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<sup>1</sup> The decision indicates at the beginning that “Mr. [James] Williamson and Mr. [David] Harbarger concur” and both of their names appear again at the end of the decision showing that they both voted yes to accept the decision, however, nothing on the face of the decision indicates how Board Member Michael Johrendt voted.



000000663



# FINAL DETERMINATION

Date: **MAR 26 2014**

Russell R. Herman  
Assistant Prosecuting Attorney  
Defiance County, Ohio  
500 Court Street, Suite C  
Defiance, Ohio 43512

Entry Number: 14-03-0125

Re: Denial of a Transfer of Funds for Defiance County, from the Landfill Fund (#073) to the Capital Improvements Fund (#072)

Defiance County, through its counsel, has filed an application on March 3, 2014 with the Tax Commissioner for authority to transfer funds from the Landfill Fund (Fund #073) to the Capital Improvements Fund (Fund #072) of the County pursuant to R.C. 5705.15 and 5705.16. The amount requested to be transferred is Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00). Additional information was sought from the county and that information was provided on March 13, 2014.

According to information provided from the county, the source of moneys in the transferor fund is fees received from the users of the Defiance County Landfill. The landfill is solely owned by Defiance County and is not a part of the Four County Solid Waste District. Before the Landfill Fund was created, the moneys received from landfill operations were deposited in the General Fund. According to the information received, the separate fund was created for better tracking purposes.

Effective June 24, 1988, Am. Sub. H.B. No. 592, 142 Ohio Laws, Part III, 4418, established statewide policies for the management of solid and hazardous waste. *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgt. Dist.* (1995), 73 Ohio St.3d 590. The bill enacted R.C. 3734.52, which requires each county in Ohio to either form a single-county solid-waste-management district or participate in a joint solid-waste-management district for the purpose of "orderly development of the solid waste management planning." Section 6(C)(1), Am. Sub. H.B. No. 592. A solid waste management district may identify both publicly and privately owned landfills as receiving entities for the district's solid waste. R.C. 343.01(H) (a joint solid waste management district board of directors may enter into a contract with any person, municipal corporation, township, or other political subdivision for the operation and maintenance of any solid waste disposal recycling or resource recovery facilities.). As a result, in Ohio, sanitary landfills may be publically or privately owned.

A solid waste management district may itself own a landfill, and if ownership resides with the district, the funds earned by the landfill are limited as to their uses. R.C. 343.08(A)(2) provides:

MAR 26 2014

"All moneys collected by or on behalf of a county or joint district as rates or charges for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery service in any district shall be paid to the county treasurer in a county district or to the county treasurer or other official designated by the board of directors in a joint district and kept in a separate and distinct fund to the credit of the district. The fund shall be used for the payment of the cost of the management, maintenance, and operation of the solid waste collection or other solid waste facilities of the district and, if applicable, the payment of the cost of collecting the rates or charges of the district pursuant to division (A)(1) or (2) of this section. Prior to the approval of the district's initial solid waste management plan under section 3734.55 of the Revised Code or the issuance of an order under that section requiring the district to implement an initial plan prepared by the director, as appropriate, the fund also may be used for the purposes of division (G)(1) or (3) of section 3734.57 of the Revised Code. On and after the approval of the district's initial plan under section 3734.521 or 3734.55 of the Revised Code or the issuance of an order under either of those sections, as appropriate, requiring the district to implement an initial plan prepared by the director, the fund also may be used for the purposes of divisions (G)(1) to (10) of section 3734.57 of the Revised Code. Those uses may include, in accordance with a cost allocation plan adopted under division (B) of this section, the payment of all allowable direct and indirect costs of the district, the sanitary engineer or sanitary engineering department, or a federal or state grant program, incurred for the purposes of this chapter and sections 3734.52 to 3734.572 of the Revised Code. Any surplus remaining after those uses of the fund may be used for the enlargement, modification, or replacement of such facilities and for the payment of the interest and principal on bonds and bond anticipation notes issued pursuant to section 343.07 of the Revised Code. *In no case shall money so collected be expended otherwise than for the use and benefit of the district.*" (Emphasis added.)

Moreover, R.C. 343.08(C) contemplates the ownership of a solid waste facility by a county when it allows a board of county commissioners to fix rates for solid waste disposal. These rates must be subjected to at least three public hearings, and be publicized in the counties that would be affected by the proposed rates. That section provides:

A board of county commissioners or directors shall fix rates or charges, or enter into contracts fixing the rates or charges to be collected by the contractor, for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery services at a public meeting held in accordance with section 121.22 of the Revised Code. In addition to fulfilling the requirements of section 121.22 of the Revised Code, the board, before fixing or changing rates or charges for solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery services, or before entering into a contract that fixes rates or charges to be collected by the contractor providing the services, shall hold at least three public hearings on the proposed rates, charges, or contract. Prior to the first public hearing, the board shall publish notice of the public hearings as provided in section 7.16 of the Revised Code or once a week for three consecutive weeks in a newspaper of general circulation in the county or counties that would be affected by the proposed rates, charges, or contract. The notice shall include a listing of the

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proposed rates or charges to be fixed and collected by the board or fixed pursuant to the contract and collected by the contractor, and the dates, time, and place of each of the three hearings thereon. The board shall hear any person who wishes to testify on the proposed rates, charges, or contract.

A county is created as a body politic with limited statutory authority. R.C. 301.22 ("Every county adopting a charter or an alternative form of government is a body politic and corporate for the purpose of enjoying and exercising the rights and privileges conveyed under it by the constitution and the laws of this state."). The limited powers authorized to a county include the police power to protect the health and well-being of the citizens of the county. However, the expenditure of public funds is generally limited to the purposes defined by statute. See R.C. 5705.10(D) ("Except as otherwise provided by resolution adopted pursuant to section 3315.01 of the Revised Code, 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."). Moreover, R.C. 5705.10(I) provides, "Money paid into any fund shall be used only for the purposes for which such fund is established."

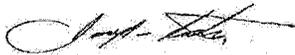
Based upon the limited use of funds garnered by a solid waste management district that owns a landfill, the Tax Commissioner concludes that the funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2). Differing use of funds based upon the ownership of a landfill by a solid waste management district as opposed to the county itself is both illogical and inconsistent.

Therefore, the Tax Commissioner finds, after examining the County Resolution adopted February 20, 2014, and the Petition addressed to the Court of Common Pleas of Defiance County, Ohio, that this request for a transfer of funds in the amount of Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00) does not comply with the provisions of R.C. 5705.15 and 5705.16 and hereby denies the request to file that petition in the Court of Common Pleas of Defiance County, Ohio.

A copy of this entry will also be mailed to the Clerk of Courts of Defiance County.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL



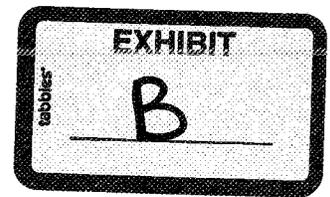
JOSEPH W. TESTA  
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa  
Tax Commissioner

RRL

OHIO BOARD OF TAX APPEALS



DEFIANCE COUNTY, (et. al.),

CASE NO(S). 2014-2059

Appellant(s),

( MISCELLANEOUS / OTHER )

vs.

DECISION AND ORDER

JOSEPH W. TESTA, TAX COMMISSIONER OF  
OHIO, (et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

- DEFIANCE COUNTY  
Represented by:  
FRANK J. REED, ESQ.  
ONE COLUMBUS SUITE 2300  
10 WEST BROAD ST.  
COLUMBUS, OH 43215

For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO  
Represented by:  
MELISSA W. BALDWIN  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF OHIO ATTORNEY GENERAL  
30 EAST BROAD STREET, 25TH FLOOR  
COLUMBUS, OH 43215

Entered Friday, February 27, 2015

Mr. Williamson and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon a notice of appeal filed by the appellant Defiance County ("the county") from a final determination of the Tax Commissioner in which the commissioner denied the county's request to file a petition in the court of common pleas seeking authority to transfer funds from the Landfill Fund to the Capital Improvements Fund. We make our determination herein based upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner ("S.T."), and the record of the board's hearing.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Kern v. Tracy* (1995), 72 Ohio St.3d 347; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213. Where no competent and probative evidence is presented to this board by the appellant to show that the Tax Commissioner's findings

are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner's findings. *Kern, supra; Kroger Co. v. Limbach* (1990), 53 Ohio St.3d 245; *Alcan, supra*.

Specifically herein, the county sought to transfer \$2,500,000 from its Landfill Fund to the Capital Improvements Fund, pursuant to R.C. 5705.15 and R.C. 5705.16. The county contends that the transfer is necessary "to help pay for emergency repairs of the Defiance County courthouse and federally required Americans with Disabilities Act renovations, and there is currently not enough funds in the CAPITAL IMPROVEMENTS FUND (#072) to cover the entire cost of the anticipated necessary repairs and renovations." S.T. at 12. R.C. 5705.15 provides in pertinent part:

"[T]he taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except 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 county, in its notice of appeal, claims:

"The Tax Commissioner's decision \*\*\* wrongfully denied the transfer of money from Landfill Fund (Fund 073) to the Capital Improvement Fund (Fund 072), on the erroneous conclusion that Landfill Fund 073 contains 'solid waste fees' paid pursuant to R.C. 3734.57, and subject to restriction under R.C. 343.08. Specifically, the Defiance County landfill, like all landfills in the solid waste district, collects certain fees or a 'tax,' and then sends those fees to the Four County Solid Waste District. Specifically, \$4.75 per ton of solid waste is sent to Ohio EPA, plus \$1.00 or \$2.00 per ton of solid waste, depending on whether the waste originates from inside or outside a 4-county area to the Four County Solid Waste District, is sent to the local solid waste district, plus \$0.25 per ton of solid waste is sent to Defiance Township. The Four County Joint Solid Waste District fund is managed by the Williams County Auditor, Deborah Nestor. The solid waste district funds are held in the First Federal Bank located in Bryan, Ohio. Landfill Fund 073 is managed by the Defiance County Treasurer, Vickie Meyer. The operating funds for the Defiance County landfill are held in the Huntington National Bank, located in Defiance, Ohio. These two funds are separate and distinct. On this basis, the Tax Commissioner's decision, which denied the Defiance County Commissioners permission to transfer monies from Landfill Fund (Fund 073) to Capital Improvement Fund (Fund 072) was unlawful, unreasonable, and not supported by the manifest weight of the evidence."

This board has previously concluded that in any appeal from a final determination of the Tax Commissioner regarding a transfer of funds pursuant to R.C. 5705.15, the standard to be considered is whether an abuse of discretion by the commissioner, in making his determination, has occurred. *Lincoln Twp. Bd. of Trustees v. Levin* (Oct. 18, 2011), BTA No. 2009-M-693,

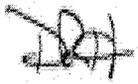
unreported. See, also, *Lake Twp. of Stark Cty. v. Kinney* (Mar. 27, 1984), BTA No 1982-F-525, unreported, affirmed sub nom.; *Cassettey v. Kinney* (Sept. 24, 1984) Stark Cty. App. Ct. No. CA-6378, unreported. "[A]s this board noted in *Lake Twp. of Stark Cty.*, supra, R.C. 5705.16 does not state the specific criteria which the Tax Commissioner must use in making his determination. The absence of such statutory criteria connotes a legislative intent to afford the Tax Commissioner broad grounds upon which to permit or reject the transfer of moneys from one fund to another, limited only by an abuse standard." *Lincoln Twp.*, supra at 5. In *J.M. Smucker, L.L.C. v. Levin*, 113 Ohio St.3d 337, 2007-Ohio-2073, the court held that "[u]nder that standard of review [i.e., an abuse of discretion], it is [an appellant's] burden to show 'more than an error of law or judgment;' the appellant must show that \*\*\* the Tax Commissioner's 'attitude is unreasonable, arbitrary or unconscionable.'" Id. at ¶16.

In his determination, the commissioner concluded that the county's attempt to transfer landfill funds pursuant to the general provisions of R.C. 5705.15 was improper, reasoning that "[b]ased upon the limited use of funds garnered by a solid waste management district that owns a landfill, \*\*\* the funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2) [sic]. Differing use of funds based upon the ownership of a landfill by a solid waste management district as opposed to the county itself is both illogical and inconsistent." S.T. at 3. Under the abuse of discretion standard set out by the court in *Smucker*, supra, regardless of the commissioner's interpretation and/or application of the aforementioned statutes, we cannot conclude that his determination was "unreasonable, arbitrary or unconscionable;" on the contrary, we find his determination attempts to bring uniformity under the law and in practice, and, as such, is not grounded in "passion or bias," *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, but is logical and well-reasoned. In this conclusion, we are guided not only by the court's pronouncement in *Smucker*, supra, but also by the direction provided in *Huffman*, supra:

““The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an ‘abuse’ in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias. \*\*\*” *State v. Jenkins* (1984), 15 Ohio St.3d 164, 222.” Id. at 87. (Quoting *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.)

Thus, we find the record does not demonstrate that the commissioner's determination created an "unreasonable, arbitrary, or unconscionable" outcome. Accordingly, as this board cannot conclude, based upon the instant record, that an abuse of discretion occurred, the Tax Commissioner's final determination must be affirmed.

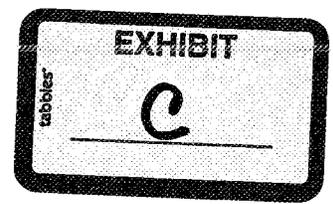
**BOARD OF TAX APPEALS**

RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary



### Exhibit C-Statement of Errors

On March 26, 2014, the Tax Commissioner issued a “Final Determination” (Exhibit “A”) which denied the transfer of funds. The “Final Determination” concluded:

Based upon the limited use of funds garnered by a solid waste management district that owns a landfill, the Tax Commissioner concludes that funds garnered by a county that owns a landfill must, similarly, be limited to the purpose identified in R.C. 323.08(A)(2).(sic)<sup>2</sup> Differing use of funds based upon the ownership of landfill by a solid waste district, as opposed to the county itself is both illogical and inconsistent.

Therefore, the Tax Commissioner finds that after examining the County Resolution adopted February 20, 2014, the Petition addressed to the Court of Common Pleas of Defiance County, Ohio, that this request for transfer of funds in the amount of Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000) does not comply with the provisions of R.C. 5705.15 and 5705.16, and hereby denies the request to file that petition in the Court of Common Pleas of Defiance County, Ohio.

(Emphasis added).

The decision of the Ohio Board of Tax Appeals, dated February 28, 2015, was unreasonable and unlawful for the following reasons:

1. The Board of Tax Appeals decision affirmed the Order of the Tax Commissioner on the basis that Defiance County Landfill (073) is subject to Ohio Revised Code Chapter 5705, which governs tax levies, not solid waste disposal fees collected by a county-owned landfill and paid to a Joint Solid Waste District.

2. The Board of Tax Appeals decision affirmed the Order of the Tax Commissioner on the basis that Defiance County Landfill (073) is subject to Ohio Revised Code Section 5705.09 provides that each “subdivision” shall establish eight different funds, however, the Defiance County landfill (073) does not fit into one of these eight funds. As such, under Ohio law, there are no restrictions on the use or transfer of monies held in Defiance County Landfill 073.

3. The Board of Tax Appeals decision affirmed the Order of the Tax Commissioner on the basis that R.C. 5705.16 requires a County must follow the statutory criteria (including submission of a petition to the Tax Commissioner for the Commissioner’s examination and approval”) prior to transferring the funds from Defiance County Landfill Fund (073) to Defiance County Capital Improvement Fund (#072).

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<sup>2</sup> It appears the Tax Commissioner meant to cite R.C. 343.08(A)(2).

4. The Board of Tax Appeals decision affirmed the Order of the Tax Commissioner on the basis that the law governing Joint Solid Waste Districts and which requires that the "solid waste disposal fees" only be spent on projects to benefit the Joint Solid District, R.C. 343.08, also applies to Defiance County Landfill Fund 073, despite the fact that the Defiance County Landfill is owned and operated by the Defiance County Commissioner, not the Four County Joint Solid Waste District.

5. Without any analysis of the specific facts or the law presented in this case, the Ohio Board of Tax Appeals utilized an "abuse of discretion" and held that the Appellant had a burden to show "more than an error of law or judgment," instead of examining whether the Tax Commissioner's Order was "unlawful and unreasonable" pursuant to R.C. 5717.04.

6. The Board of Tax Appeals failed to find that Tax Commissioner's Order was "unlawful and unreasonable" pursuant to R.C. 5717.04.

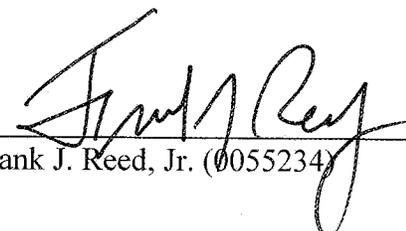
**PROOF OF SERVICE ON THE OHIO BOARD OF TAX APPEALS AND UPON**  
**JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO**

I hereby certify that a true copy of the foregoing document was served via ~~ordinary~~ <sup>certified U.S.</sup> mail 

this 25th day of March, 2015 upon the following:

Ohio Board of Tax Appeals  
30 E. Broad Street, 24<sup>th</sup> floor  
Columbus, Ohio 43215

Joseph W. Testa, Tax Commissioner  
30 E. Broad Street, 22nd floor  
Columbus, Ohio 43215

  
\_\_\_\_\_  
Frank J. Reed, Jr. (0055234)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document was served via ordinary mail  
this 25th day of March, 2015 upon the following:

Melissa W. Baldwin (0066681)  
Sophia Hussain (0081326)  
Assistant Attorneys General  
Ohio Attorney General's office  
Taxation Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215  
*Counsel for Appellee, Joseph W. Testa,  
Tax Commissioner of Ohio*

  
\_\_\_\_\_  
Frank J. Reed, Jr. (0055234)