

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF FACTS AND PROCEDURE OF THE CASE.....	1
A. Defiance County Landfill is a not a Solid Waste Management District.	2
B. Defiance County Landfill Fund is a voluntary fund that was created to ensure better bookkeeping for the County.	2
C. The Defiance County Landfill is not owned or controlled by the Four County Solid Waste District and remits separate fees to the District.	2
D. Defiance County properly filed its proposed transfer with the Tax Commissioner and the Tax Commissioner erred when he denied the transfer of funds.	3
E. The Board of Tax Appeals erred in upholding the Tax Commissioner’s Final Determination.	4
ARGUMENT.....	4
<u>Proposition of Law #1:</u>	
<i>Transfer restrictions imposed by Revised Code 343.08 do not apply to the Defiance County Landfill Fund, because it is a County Fund not a Solid Waste Management District Fund.....</i>	4
A. Revised Code 343.08 applies only to Solid Waste Management District Funds.	5
B. Defiance County is not a Solid Waste Management District, therefore, restrictions on Solid Waste Management Districts do not apply.....	5
<u>Proposition of Law #2:</u>	
<i>Defiance County complied with all statutory requirements in order to transfer funds under Revised Code Chapter 5705</i>	7
A. Revised Code Chapter 5705 establishes certain public funds and creates a framework for the transfer of funds.	7

B. Defiance County Landfill Fund is not one of the eight funds required to be established under Revised Code 5705.09.7

C. Revised Code 5705.16 provides the framework for the transfer of funds, Defiance County did everything required under the Revised Code 5705.16, and the proposed transfer of funds should have been approved.8

Proposition of Law #3:

The Board of Tax Appeal’s Decision was unlawful and unreasonable because it was contrary to Revised Code 343.08 and 5705.16.....9

A. The Board of Tax Appeals Decision was unlawful because it was not in accordance with Revised Code 343.08 and 5705.16.9

Proposition of Law #4:

The correct standard of review is whether the Tax Commissioner’s Decision was lawful or reasonable11

A. The Board of Tax Appeals erred when it determined that the appropriate standard of review was abuse of discretion.11

CONCLUSION.....14

PROOF OF SERVICE.....15

APPENDIX

Appx. Page

Appx. A - Notice of Appeal to the Ohio Supreme Court (March 25, 2015)	A-1
Appx. B - Decision and Order of the Board of Tax Appeals (February 27, 2015).....	B-1
Appx. C - Final Decision of the Tax Commissioner (March 26, 2014)	C-1
Appx. D - Resolution: In the Matter of Transfer of Funds from the Landfill Fund (#073) to the Capital Improvements Fund (#072).....	D-1
Appx. E - Transfer of Funds for Defiance County Board of Commissioners from Landfill Fund to Capital Improvement Fund	E-1
Appx. F - R.C. 5705.14	F-1
Appx. G - R.C. 5705.15	G-1
Appx. H - R.C. 5705.16	H-1
Appx. I - R.C. 343.08.....	I-1

TABLE OF AUTHORITIES

Cases

<i>Buck Township: Hardin County Fiscal Officer v. Levin</i> , Board of Tax Appeals, Case No. 2010-2106, 2013 WL 6833211 (October 2, 2013).....	12
<i>Buckley v. Wilkins</i> , 105 Ohio St.3d 350, 2005-Ohio-2166, 355 826 N.E.2d 81	12
<i>City of Niles v. Union Ice Corp.</i> , 133 Ohio St. 169, 178, 12 N.E.2d 483 (1938)	7, 8
<i>Deercreek Township Board of Trustees v. Testa</i> , Board of Tax Appeals, Case No. 2012-1357, 2014 WL 5406660 (September 19, 2014).....	12
<i>Global Knowledge Training, L.L.C. v. Levin</i> , 127 Ohio St.3d 34, 2010-Ohio-4411, 936 N.E.2d 463.....	9, 11
<i>J.M. Smucker, L.L.C. v. Levin</i> , 113 Ohio St.3d 337, 340 2007-Ohio-2073, 865 N.E.2d 866.....	12
<i>Lake Township of Stark County v. Kinney</i> , Board of Tax Appeals, Case No. 82-F-525 (March 27, 1984)	12
<i>Lincoln Township Board of Trustees v. Levin</i> , Board of Tax Appeals, Case No. 2009-M-693, 2011 WL 5039829 (October 18, 2011).....	12, 13
<i>Manfredi Motor Transit Co. v. Limbach</i> , Board of Tax Appeals, No. 87-F-279, 1990 WL 175596 (August 17, 1990)	12
<i>Ohio Truckload Carriers, Inc. v Limbach</i> , Board of Tax Appeals, No. 87-B-272, 1990 WL 208368 (June 29, 1990).....	11, 12
<i>Powelson v. Limbach</i> , Board of Tax Appeals, No. 87-B-823, 1989 WL 162962 (December 22, 1989)	12
<i>Stark-Tuscarawas-Wayne Joint Solid Waste Management District v. Republic Services of Ohio</i> , 5th Dist. Stark No. 2004-CA-00099, 2004-Ohio-5710.....	5
<i>State ex rel. Caley v. Tax Commission of Ohio</i> , 129 Ohio St. 83 (1934).....	10, 11
<i>State ex rel. Herman v. Klopfleisch</i> , 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995)	13
<i>State v. Cole</i> , 94 Ohio App.3d 629, 634, 641 N.E.2d 732, 735 (1st Dist.1994)	13
<i>State v. Moaning</i> , 76 Ohio St. 3d 126, 129, 666 N.E. 1115 (1996)	13
<i>Wheeling Steel Corp. v. Porterfield</i> , 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970) ..	6, 10

Statutes

R.C. 343.08 passim

R.C. 3754.57 3

R.C. 5705.09 2, 7, 8

R.C. 5705.14 7, 13

R.C. 5705.15 passim

R.C. 5705.16 passim

R.C. 5747.15 12

R.C. Chapter 5705..... 7

Other Authorities

2013 Op. Att’y Gen. No. 2013-044 5

I. INTRODUCTION

Defiance County proposed to transfer \$2,500,000 from its Landfill Fund to its Capital Improvement Fund. This transfer was unlawfully denied by the Tax Commissioner for two reasons. First, the Tax Commissioner erroneously treated Defiance County like a Solid Waste Management District. The Defiance County Landfill is not Solid Waste Management District and, for this reason, laws governing Solid Waste Management Districts do not apply. Second, the Tax Commissioner improperly inserted additional legal requirements on the proposed transfer that were not authorized pursuant to Revised Code 5705.15 and R.C. 5705.16. Finally, the Board of Tax Appeals wrongly upheld the Tax Commissioner's unlawful denial after reviewing the decision for an abuse of discretion. The Tax Commissioner's denial of the proposed transfer must be overturned.

II. STATEMENT OF FACTS AND PROCEDURE OF THE CASE

Defiance County filed a proposed transfer of funds with the Tax Commissioner on March 3, 2014. *See Defiance County BTA Case No. 2014-2059 Hearing Transcript, 25:19-21*, Exhibits A and B to the Hearing Transcript ("Hearing Tr.") attached to the Appendix of this Brief for the Court's convenience, *Statutory Transcript, 00012-00020* ("Statutory Tr."). The County proposed to transfer \$2,500,000 from the Defiance County Landfill Fund to the Defiance County Capital Improvement Fund. *Id.* The \$2,500,000 to be transferred came from tipping fees collected by the County and held in the Defiance County Landfill Fund. Hearing Tr. 47:20-24; Statutory Tr. 00012-00020. The transfer was necessary to help pay for emergency repairs to the Defiance County courthouse and for federally required Americans with Disabilities Act renovations. *See* Hearing Tr. 25:19-21, Exhibit B to the Hearing Transcript, Statutory Tr. 00012-00020. The Tax Commissioner denied this transfer stating that "funds garnered by a county that

owns a landfill must...be limited to the purposes identified in R.C. 323.08(A)(2)¹ (sic).” *See* Hearing Tr. 26:23-27:2, Exhibit C to the Hearing Transcript.

A. Defiance County Landfill is a not a Solid Waste Management District.

Defiance County owns and operates the Defiance County Sanitary Landfill, located in Defiance Township, Defiance, Ohio. Hearing Tr. 47:17-18. The Defiance County Landfill was established as a solid waste disposal facility in 1969. *See* Hearing Tr. 33:1-021. A separately created Solid Waste Management District, the Four County Solid Waste District serves Defiance, Fulton, Paulding, and Williams Counties. *See* Hearing Tr. 50:21-51:2.

B. Defiance County Landfill Fund is a voluntary fund that was created to ensure better bookkeeping for the County.

Defiance County collects tipping fees from customers in exchange for the disposal of solid waste. *See* Hearing Tr. 47:20-48:-7. These fees do not go to a Solid Waste Management District Fund. *Id.* at 48:15-17. Instead, the tipping fees are placed in a County Fund, specifically, the Defiance County Landfill Fund. *Id.* at 43:6-44:14 and 48:11-14. This fund was created voluntarily by the Defiance County Commissioners on March 19, 1987 for the express purpose of creating a better bookkeeping system. *See* Hearing Tr. 29:16-30:6 and Hearing Tr. 19:10-20:3, Exhibit F to the Hearing Transcript. As a voluntarily created fund, the Defiance County Landfill Fund is not one of the eight funds that political subdivisions are required to create under R.C. 5705.09.

C. The Defiance County Landfill is not owned or controlled by the Four County Solid Waste District and remits separate fees to the District.

A possible source of confusion resulted from the fact that in addition to the tipping fees collected by the Defiance County Landfill, the Defiance County collects separate “solid waste disposal fees” which are remitted to the Four County Joint Solid Waste District, Ohio EPA, and

¹ It appears the Tax Commissioner intended to cite to R.C. 343.08(A)(2).

the appropriate township. *See* Hearing Tr. 49:9-16; Statutory Tr. 00008-00011. These “solid waste disposal fees” fees are “a tax...on waste...to support the operations of the solid waste district” and are subject to R.C. 3754.57 and its corresponding restrictions. *See* Hearing Tr. 49:13-16. Defiance County attempted to correct this confusion in its March 13, 2014 response to the Tax Commissioner’s request for additional information. *See* Statutory Tr. at 00011. Defiance County provided the Tax Commissioner with a breakdown of its landfill rates delineating: (1) its tipping fees, \$6.00 per cubic yard and \$9.00 per cubic yard for very dense waste, (2) State [Ohio EPA] fees, (3) District [Four County Joint Solid Waste Management District] fees, and (4) township fees. *See* Statutory Tr. at 00008. This breakdown makes clear that tipping fees held in the Landfill Fund are separate and distinct from Solid Waste Management District fees.

D. Defiance County properly filed its proposed transfer with the Tax Commissioner and the Tax Commissioner erred when he denied the transfer of funds.

On February 20, 2014, the Defiance County Commissioners passed a Resolution transferring \$2,500,000 from the Landfill Fund to the Capital Improvement Fund. *See* Hearing Tr. 21:21:8-19, Exhibit A; Statutory Tr. 00016. On March 3, 2014, Defiance County filed an application, pursuant to R.C. 5705.15 and R.C. 5705.16, with the Court of Common Pleas and Tax Commissioner, seeking authorization to transfer these funds. *See* Hearing Tr. 25:19-22, Exhibit B to the Hearing Transcript; Statutory Tr. 00012-00015.

On March 26, 2014, the Tax Commissioner issued a "Final Determination" that 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). 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). See Hearing Tr. 26:23-27:2, Exhibit C to the Hearing Transcript.

On May 27, 2014, Defiance County filed a Notice of Appeal with the Ohio Board of Tax Appeals. See Hearing Tr. 27:11-15, Exhibit D to the Hearing Transcript.

E. The Board of Tax Appeals erred in upholding the Tax Commissioner’s Final Determination.

The Board of Tax Appeals upheld the Tax Commissioner’s Final Determination denying the transfer on February 27, 2015. See *Defiance County v. Testa*, Ohio Board of Tax Appeals, Case No. 2014-2059, Decision and Order, February 27, 2015. The Board reviewed the Determination for an abuse of discretion and found that the Tax Commissioner’s Final Determination which denied the transfer of funds was not “unreasonable, arbitrary, or unconscionable”. *Id.* citing *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87. On March 25, 2015, Defiance County filed a Notice of Appeal requesting review by this Court.

III. ARGUMENT

Proposition of Law #1:

*Transfer restrictions imposed by Revised Code 343.08 do not apply to the Defiance County Landfill Fund, because it is a County Fund not a Solid Waste Management District Fund.*²

² Proposition of Law #2 corresponds with the March 25, 2015 Notice of Appeal, Exhibit C, Assignment of Error #4. Defiance County will not be arguing Notice of Appeal, Assignments of Error #1 and #3.

A. Revised Code 343.08 applies only to Solid Waste Management District Funds.

A Solid Waste Management District “is an autonomous legal entity distinguishable from the individual counties” that participate in its creation. *Stark-Tuscarawas-Wayne Joint Solid Waste Management District v. Republic Services of Ohio*, 5th Dist. Stark No. 2004-CA-00099, 2004-Ohio-5710. Solid Waste Management Districts are creatures of statute and as creatures of statute are bound by statutory restrictions. 2013 Op. Att’y Gen. No. 2013-044 citing 2002 Op. Att’y Gen. No. 2002-031 at 2-206. Unlike County funds, the use of Solid Waste Management District Funds is restricted by statute. R.C. 343.08(A)(2)(“[i]n no case shall money so collected be expended otherwise than for the use and benefit of the district”).

B. Defiance County is not a Solid Waste Management District, therefore, restrictions on Solid Waste Management Districts do not apply.

Defiance County charges a fee for disposing waste in the Defiance County Landfill. This tipping fee is not required to be collected under R.C. 343.08(A) because is it not collected by a Solid Waste Management District and therefore, is not subject to the use restrictions of R.C. 343.08(B). The Tax Commissioner erred when he held that these “funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2).” *See* Final Determination, Ohio Tax Commissioner, March 26, 2014.

When a Solid Waste Management District owns a landfill, fees charged by the District are subject the restrictions outlined in R.C. 343.08(A)(2). *See* R.C. 343.01(C) (providing that Solid Waste Management Districts may own such landfills “as are necessary for the protection of the public health”) and R.C. 343.08(B) and (C) (establishing fee use restrictions). However, private corporations, counties, and municipalities may also own landfills. *See Stark-Tuscarawas-Wayne Joint Solid Waste Management District v. Republic Services of Ohio*, 5th Dist. Stark No. 2004-CA-00099, 2004-Ohio-5710. The fact that these entities can own landfills

does not mean they are subject to the same restrictions under R.C. 343.08(A)(2) that are applicable to Solid Waste Management Districts. For example, no one would argue that Republic Services, Inc.—the owner of the Williams County Landfill—cannot use or transfer its tipping fees as it sees fit. This is because any tipping fees charged by Republic are separate fees, charged by the landfill in exchange for the privilege of disposing of solid waste at its facility. Like the Defiance County Landfill, the Williams County Landfill, owned and operated by Republic Services, Inc., is required to remit certain “solid waste disposal fees” to the Four County Solid Waste District, and, like Defiance, Republic Services, Inc. may retain its tipping fees collected from its customers and use these fees as their entity requires.

The Tax Commissioner opined that “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.” But the Tax Commissioner cannot create a new legal requirement for counties—only the General Assembly has this authority. Revised Code 343.08 does not restrict the use of funds collected by county landfills, just as it does not restrict the use of funds collected by privately owned landfills. The Tax Commissioner cannot insert a requirement into law where none exists. *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970). If the General Assembly had wished to place a similar restriction on county owned landfills, it knew how to do so. *See* R.C. 343.08. The General Assembly did not choose to place such a restriction on county owned landfills and the Tax Commissioner cannot artificially create one.

For this reason, the Court should overturn the Tax Commissioner’s Final Determination.

Proposition of Law #2:

*Defiance County complied with all statutory requirements in order to transfer funds under Revised Code Chapter 5705.*³

A. Revised Code Chapter 5705 establishes certain public funds and creates a framework for the transfer of funds.

Political subdivisions are required to create eight funds under R.C. 5705.09. All other funds created by political subdivisions are created voluntarily. Revised Code Chapter 5705 also regulates the transfer of these funds. *See* R.C. 5705.14 through R.C. 5705.16. In general, a political subdivision has the authority to transfer *any* public funds under its supervision. R.C. 5705.15; *City of Niles v. Union Ice Corp.*, 133 Ohio St. 169, 178, 12 N.E.2d 483 (1938) (upholding the transfer of surplus funds from the electric light and power department to the Mahoning Valley Sanitary District Fund). The only funds not included in this general authorization are those funds specifically excepted in R.C. 5705.14 and 5705.15. *Id.* Tipping fees collected by a political subdivision and placed in a designated landfill fund are not among the funds specifically excepted from the general authorization of R.C. 5705.15 and thus transfers of these fees are authorized as long as the funds are transferred in accordance with the requirements set forth in R.C. 5705.16.

B. Defiance County Landfill Fund is not one of the eight funds required to be established under Revised Code 5705.09.

Chapter 5705 of the Revised Code sets forth a framework for the establishment, levying, use, and transfer of public funds. *See* R.C. Chapter 5705. Under R.C. 5705.09 eight funds are required to be established:

1. A general fund;
2. A sinking fund whenever the subdivision has outstanding bonds other than serial bonds;

³ Proposition of Law #2 corresponds with the March 25, 2015 Notice of Appeal, Exhibit C, Assignment of Error #2.

3. A bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
4. A special fund for each special levy;
5. A special bond fund for each bond issue;
6. A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
7. A special fund for each public utility operated by a subdivision;
8. A trust fund for any amount received by a subdivision in trust.

See R.C. 5705.09.

Other funds created by political subdivisions while permitted, are not required, and therefore are subject only to limited procedural requirements under R.C. 5705.16.

C. Revised Code 5705.16 provides the framework for the transfer of funds, Defiance County did everything required under the Revised Code 5705.16, and the proposed transfer of funds should have been approved.

The permissive framework of R.C. Section 5705.16 is supported by long standing Supreme Court case law. In *City of Niles v. Union Ice Corp.*, the City of Niles sought to transfer surplus funds from its electric light and power department to the Mahoning Valley Sanitary District Fund. *City of Niles v. Union Ice Corp.*, 133 Ohio St. 169, 170, 12 N.E.2d 483, 484 (1938). Union Ice Corp. opposed this transfer and intervened in the transfer action. *Id.* Union Ice argued that the surplus funds derived from a municipally-owned electric light and power plant were held by the municipality in trust for the benefit of electric current consumers and, therefore, could not be transferred. *Id.* The Supreme Court disagreed, finding that the power to transfer public funds was expressly granted and the City of Niles did not hold the surplus funds in trust for the benefit of its consumers. *Id.* at 180. For this reason, the Supreme Court upheld the transfer of funds. Defiance County had general authorization under R.C. 5705.15 and

5705.16 to transfer funds between its Landfill Fund and Capital Improvement Fund, the decision by the Tax Commissioner artificially restricted this authority and has no basis in law or reason.

Proposition of Law #3:

*The Board of Tax Appeal's Decision was unlawful and unreasonable because it was contrary to Revised Code 343.08 and 5705.16.*⁴

A. The Board of Tax Appeals Decision was unlawful because it was not in accordance with Revised Code 343.08 and 5705.16.

The standard of review from a decision of the Board of Tax Appeals is whether the decision was “reasonable and lawful”. *Global Knowledge Training, L.L.C. v. Levin*, 127 Ohio St.3d 34, 2010-Ohio-4411, 936 N.E.2d 463, ¶ 12. This Court has stated that it “will not hesitate to reverse a Board of Tax Appeals decision that is based on an incorrect legal conclusion.” *Id.* citing *Gahanna-Jefferson Local School Dist. Bd. Of Edn. v. Zaino*, 93 Ohio St.3d 231, 232, 754 N.E.2d 789 (2001).

The Board of Tax Appeals Decision was predicated on a mistake of law—that Defiance County should be held to the same legal restrictions applicable to Solid Waste Management Districts. The BTA decision upholding the Tax Commissioner’s Final Determination was unlawful for at least two reasons. First, it was not in accordance with Revised Code 343.08 which only limits transfers for Solid Waste Management Districts. Second, it was not in accordance with Revised Code 5705.16 because it inserted additional requirements into the fund transfer analysis where none exist.

As the Tax Commissioner acknowledges in his Final Determination, Revised Code 343.08 is applicable to Solid Waste Management Districts, not county owned landfills. *See* Hearing Tr. 26:23-27:2, Exhibit C to the Hearing Transcript; *see also* R.C. 343.08 (providing “in no case shall money so collected by expended otherwise than for the use and benefit of the

⁴ Proposition of Law #3 corresponds with the March 25, 2015 Notice of Appeal, Exhibit C, Assignment of Error #6.

district”). Defiance County is not a Solid Waste Management District and can only be subjected to laws governing it as a County.

Neither the Tax Commissioner nor the Board of Tax Appeals may legislate to add a requirement to a statute enacted by the General Assembly. *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970). Rather, the duty of the Tax Commissioner and Board of Tax Appeals is “to give effect to the words used (in the statute), not to delete words used or to insert words not used” *Id.* citing *Columbus-Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St.2d 125, 127, 254 N.E.2d 8 (1969). The limitations established in R.C. 343.08 are applicable only to Solid Waste Management Districts and the Defiance County Landfill is not owned by a Solid Waste Management District. Therefore, the restrictions on transfers of funds imposed by R.C. 343.08 cannot be interpreted to apply to the County.

Additionally, Revised Code 5705.16 sets forth the procedure for transfer of funds. Defiance County complied with this procedure and nothing in this section allows the Tax Commissioner to disapprove a transfer of funds otherwise authorized by law. R.C. 5705.16. Again, the Tax Commissioner cannot insert additional legal requirements into R.C. 5705.16 where none exist. *Wheeling Steel Corp. v. Porterfield*, 24 Ohio St.2d 24, 27-28, 263 N.E.2d 249, 251 (1970).

Defiance County forwarded a copy of the petition for transfer of funds to the Tax Commissioner for examination pursuant to R.C. 5705.16. Under R.C. 5705.16, if the Tax Commissioner disapproves of the transfer, it is returned to the petitioner with a memorandum specifying the Tax Commissioners objections. *See State ex rel. Caley v. Tax Commission of*

Ohio, 129 Ohio St. 83 (1934) (review by the Tax Commissioner “is more in the nature of an expert opinion than a judicial pronouncement”).

Any determination of the Tax Commissioner purportedly preventing a request to file a petition for transfer with the Court of Common Pleas exceeds the Tax Commissioner’s authority. The plain language of R.C. 5705.16 provides that the Tax Commissioner’s “disapproval shall not prejudice a later application for approval” making clear that the Court of Common Pleas—not the Tax Commissioner—is given the ultimate authority to determine whether a transfer of funds may occur. R.C. 5705.16; *see also State ex rel. Caley v. Tax Commission of Ohio*, 129 Ohio St. 83, 87, 193 N.E. 751 (1934). For this reason, as well, it was unlawful for the Tax Commissioner to enter a final determination, purportedly preventing further consideration of the proposed transfer by the Court of Common Pleas.

Proposition of Law #4:

*The correct standard of review is whether the Tax Commissioner’s Decision was lawful or reasonable.*⁵

A. The Board of Tax Appeals erred when it determined that the appropriate standard of review was abuse of discretion.

The Board of Tax Appeals, relying on its own precedent, held that a final determination of the Tax Commissioner regarding the transfer of funds pursuant to R.C. 5705.15 is to be reviewed under an abuse of discretion standard. *See Defiance County v. Testa*, Case No. 2014-2059, February 27, 2015. This decision was in error. The Tax Commissioner’s findings are presumptively valid, absent a demonstration those findings are clearly unreasonable or unlawful. *Global Knowledge Training, L.L.C. v. Levin*, 127 Ohio St.3d 34, 36, 2010-Ohio-4411, 936 N.E.2d 463, ¶ 12 citing *Nusseibeh v. Zaino*, 98 Ohio St.3d 292, 2003-Ohio-855, 785 N.E.2d 93, ¶ 10; *see also Ohio Truckload Carriers, Inc. v Limbach*, Board of Tax Appeals, No. 87-B-272,

⁵ Proposition of Law #4 corresponds with the March 25, 2015 Notice of Appeal, Exhibit C, Assignment of Error #5.

1990 WL 208368 (June 29, 1990) (reviewing appellant's challenge to the Commissioner's motor vehicle fuel tax assessment); *see Manfredi Motor Transit Co. v. Limbach*, Board of Tax Appeals, No. 87-F-279, 1990 WL 175596 (August 17, 1990) (reviewing the Commissioner's highway use tax assessment); *Powelson v. Limbach*, Board of Tax Appeals, No. 87-B-823, 1989 WL 162962 (December 22, 1989) (reviewing the Commissioner's use tax assessment and penalty).

The Board of Tax Appeals erred when it employed an abuse of discretion standard in its decision. The abuse of discretion standard in Board of Tax Appeals cases has been reserved for circumstances when the Tax Commissioner's discretion is clear. In those cases, affording the Tax Commissioner discretion was logical. For example, the Tax Commissioner has been held to have the discretion to decide when to abate late filing penalties. *J.M. Smucker, L.L.C. v. Levin*, 113 Ohio St.3d 337, 340 2007-Ohio-2073, 865 N.E.2d 866, ¶ 15. Similarly, R.C. 5747.15 gives the Tax Commissioner the discretion to impose a fee of frivolous filings. *Buckley v. Wilkins*, 105 Ohio St.3d 350, 2005-Ohio-2166, 355 826 N.E.2d 81, ¶ 25. In both of these cases, discretion was clearly placed in the hands of the Tax Commissioner and review by the Board of Tax Appeals under an abuse of discretion standard is appropriate. This is not the case for a decision under R.C. 5705.15 and 5705.16.

The Board of Tax Appeals decisions have improperly reviewed Tax Commissioner determinations under R.C. 5705.15 and 5705.16 for an abuse of discretion. *See Lake Township of Stark County v. Kinney*, Board of Tax Appeals, Case No. 82-F-525 (March 27, 1984); *Deercreek Township Board of Trustees v. Testa*, Board of Tax Appeals, Case No. 2012-1357, 2014 WL 5406660 (September 19, 2014); *Buck Township: Hardin County Fiscal Officer v. Levin*, Board of Tax Appeals, Case No. 2010-2106, 2013 WL 6833211 (October 2, 2013); *Lincoln Township Board of Trustees v. Levin*, Board of Tax Appeals, Case No. 2009-M-693, 2011 WL 5039829

(October 18, 2011). In each of these decisions, the Board of Tax Appeals found that, because R.C. 5705.16 does not state specific criteria which the Commissioner must use when he examines proposed transfers, the Tax Commissioner should be given broad discretion to either approve or disapprove transfers, and therefore decisions by the Tax Commissioner must be reviewed under an abuse of discretion standard. *Id.*

Decisions under R.C. 5705.15 and 5705.16 should be reviewed for lawfulness and reasonableness. While R.C. 5705.15 and 5705.16 are permissive—providing a general authorization of public fund transfers—they should not be found to vest the Tax Commissioner with broad discretion to approve or deny the transfer. R.C. 5705.15 and 5705.16 must be read *in pari materia* with R.C. 5705.14. *State v. Moaning*, 76 Ohio St. 3d 126, 129, 666 N.E. 1115 (1996) (“it is a well-settled rule of statutory interpretation that statutory provisions be construed together”); *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995) (“all statutes relating to the same general subject matter must be read *in pari materia*, and in constructing these statutes *in pari materia*, this court must give them a reasonable construction...”).

R.C. 5705.14 is restrictive, explicitly outlining how certain transfers may occur. R.C. 5705.14 specifies the location to which monies from eight specific funds can be transferred. For example, the unexpended balance in a bond fund can only be transferred to sinking fund or bond retirement fund from which such bonds are payable. R.C. 5705.14(A). In contrast, R.C. 5705.15 is permissive, generally allowing the transfer of funds in accordance with the procedure outlined in R.C. 5705.16. *State v. Cole*, 94 Ohio App.3d 629, 634, 641 N.E.2d 732, 735 (1st Dist.1994) (“when the legislature has not used restrictive language in a statute, the court will presume that it intended the general meaning of the words” citing *Thompson Elec., Inc. v. Bank One, Akron*,

N.A., 37 Ohio St.3d 259, 264, 525 N.E.2d 761, 767 (1988); *Waltco Truck Equip. Co. v. Tallmadge Bd. of Zoning Appeals*, 40 Ohio St.3d 41, 42–43, 531 N.E.2d 685, 687 (1988)). Instead of vesting the Tax Commissioner with discretion to deny approvals, the Ohio General Assembly, by passing R.C. 5705.15 and 5705.16, intended to provide a general transfer authorization by excluding specific requirements for transfers. The Board of Tax Appeals erred when it interpreted these sections as having a different meaning.

Determinations rendered by the Tax Commissioner under R.C. 5705.15 and 5705.16 should be evaluated based upon whether the determination was lawful and reasonable. The Board of Tax Appeals erred by reviewing the Tax Commissioner’s determination under an abuse of discretion standard.

IV. CONCLUSION

For the reasons outlined above, the decision by the Ohio Board of Tax Appeals upholding the Tax Commissioner’s denial of Defiance County’s proposed transfer of funds should be reversed.

Respectfully submitted,

/s/ Frank J. Reed, Jr.
Frank J. Reed, Jr. (0055234)
Stephen E. Chappellear (0012205)
Alana R. Shockey (0085234)
Frost Brown Todd LLC
10 West Broad St., Suite 2300
Columbus, Ohio 43215-3484
Phone: (614) 464-1211
Facsimile: (614) 464-1737
FReed@fbtlaw.com
SChappellear@fbtlaw.com
AShockey@fbtlaw.com

*Counsel for Appellant,
Defiance County, Ohio*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Merit Brief of Appellant Defiance County, Ohio was served by ordinary U.S. mail, postage prepaid, on June 30th, 2015 on the counsel listed below:

Melissa W. Baldwin
Sophia Hussain
Assistant Attorneys General
Ohio Attorney General's Office
30 E. Broad St., 25th Floor
Columbus, Ohio 43215
Phone: (614) 466-4986
Melissa.Baldwin@ohioattorneygeneral.gov
Sophia.Hussain@ohioattorneygeneral.gov

*Counsel for Appellee,
Joseph W. Testa,
Tax Commissioner of Ohio*

/s/ Frank J. Reed, Jr.
Frank J. Reed, Jr.

Counsel for Defiance County, Ohio

FILED/RECEIVED
BOARD OF TAX APPEALS
2015 MAR 25 PM 2:41

IN THE SUPREME COURT OF OHIO

DEFIANCE COUNTY, OHIO,

Appellant,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO,

Appellee.

Case No. **15-0484**

Appeal from the Ohio Board of Tax
Appeals BTA Case No. 2014-2059

RECEIVED

FD
MAR 25 2015

OHIO DEPARTMENT OF TAXATION
OFFICE OF THE TAX COMMISSIONER

NOTICE OF APPEAL OF DEFIANCE COUNTY

Melissa W. Baldwin (0066681)
Sophia Hussain (0081326)
The Honorable R. Mike DeWine (0009181)
Ohio Attorney General's office
30 E. Broad Street, 25th floor
Columbus, Ohio 43215
Tel: (614) 466-4986
Melissa.Baldwin@ohioattorneygeneral.gov
Sophia.Hussain@ohioattorneygeneral.gov

Frank J. Reed, Jr. (0055234)
Stephen E. Chappellear (0012205)
Susan Jahangiri (0089586)
FROST BROWN TODD LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215-3484
Tel.: 614-464-1211 Fax: 614-464-1737
FReed@fbtlaw.com
SChappellear@fbtlaw.com
SJahangiri@fbtlaw.com

*Counsel for Appellee,
Joseph W. Testa,
Tax Commissioner of Ohio*

*Counsel for Appellant,
Defiance County, Ohio*

FILED
MAR 25 2015
CLERK OF COURT
SUPREME COURT OF OHIO

FILED/RECEIVED
BOARD OF TAX APPEALS
2015 MAR 27 AM 10:26

IN THE SUPREME COURT OF OHIO

DEFIANCE COUNTY, OHIO,

Appellant,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO,

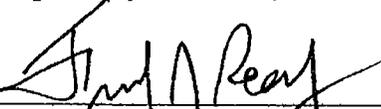
Appellee.

:
:
:
: Case No. _____
:
: Appeal from the Ohio Board of Tax
: Appeals BTA Case No. 2014-2059
:
:
:

NOTICE OF APPEAL OF DEFIANCE COUNTY

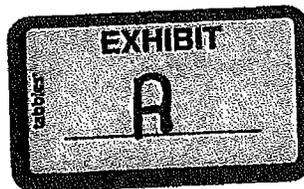
Now comes Appellant, Defiance County, and gives their Notice of Appeal to the Ohio Supreme Court from a decision of the Ohio Board of Tax Appeals in the case of *Defiance County v. Tax Commissioner*, BTA Case No. 2014-2059, rendered on February 27, 2015, a copy of which is attached hereto as Exhibit "B¹." 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)
FROST BROWN TODD LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215-3484
Tel.: 614-464-1211 Fax: 614-464-1737
freed@fbtlaw.com
schappellear@fbtlaw.com
sjahangiri@fbtlaw.com
Counsel for Appellant, Defiance County, Ohio

¹ 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.



000000163



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:

0000000000
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

MAR 26 2014

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."

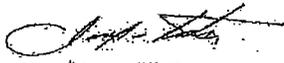
Based upon the limited use of funds garnered by a solid waste management district that owns a landfill, the Tax Commissioner concludes that the funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2). Differing use of funds based upon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

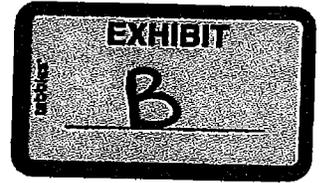
I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL


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 FL00R
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.; *Cassetty 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	<i>[Handwritten Signature]</i>	
Mr. Harbarger	<i>[Handwritten Signature]</i>	

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.

[Handwritten Signature]

Kathleen M. Crowley, Board Secretary

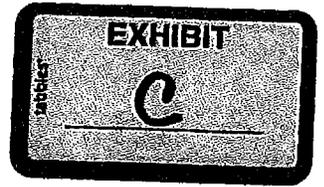


Exhibit C-Statement of Errors

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)² 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).

² 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

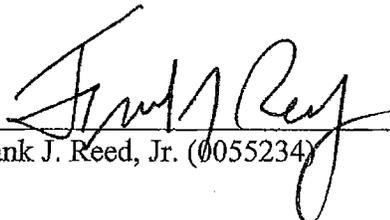
I hereby certify that a true copy of the foregoing document was served via ^{certified U.S.} ~~ordinary~~ mail

JRN

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

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

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

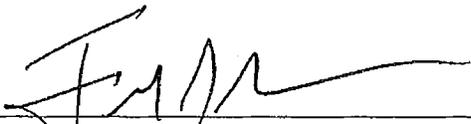


Frank J. Reed, Jr. (0055234)

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)

0124188.0617459 4841-4807-4018v1

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."

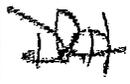
This board has previously concluded that in any appeal from a final determination of the Tax Commissioner regarding a transfer of funds pursuant to R.C. 5705.15, the standard to be considered is whether an abuse of discretion by the commissioner, in making his determination, has occurred. *Lincoln Twp. 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.; *Cassetty 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.)

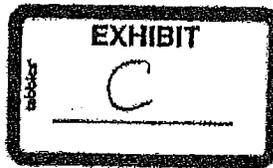
Thus, we find the record does not demonstrate that the commissioner's determination created an "unreasonable, arbitrary, or unconscionable" outcome. Accordingly, as this board cannot conclude, based upon the instant record, that an abuse of discretion occurred, the Tax Commissioner's final determination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



000000163

FINAL DETERMINATION

Date: **MAR 26 2014**

Russell R. Herrman
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:

17000001.66

MAR 2 8 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

000000665

MAR 26 2014

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."

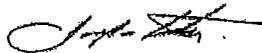
Based upon the limited use of funds garnered by a solid waste management district that owns a landfill, the Tax Commissioner concludes that the funds garnered by a county that owns a landfill must, similarly, be limited to the purposes identified in R.C. 323.08(A)(2). Differing use of funds based upon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

EXHIBIT

A

BOARD OF DEFIANCE COUNTY COMMISSIONERS

RESOLUTION: IN THE MATTER OF: TRANSFER OF FUNDS FROM THE LANDFILL FUND (#073) TO THE CAPITAL IMPROVEMENTS FUND (#072)

DATE: THURSDAY, FEBRUARY 20, 2014

The Board of Commissioners, County of Defiance, State of Ohio, met in regular session on Thursday, the 20th day of February, 2014, in the Conference Room of the Board with the following members present:

Otto L. Nicely: PRESENT Thomas L. Kime: ABSENT James E. Harris, Jr.: PRESENT

Mr. JAMES E. HARRIS, JR. moved the adoption of the following Resolution:

WHEREAS, the Defiance County Board of Commissioners met in open session, to discuss the possible transfer of funds from the LANDFILL FUND (#073) to the CAPITAL IMPROVEMENTS FUND (#072), pursuant to Revised Code Sections 5705.15 and 5705.16. Said proposed transfer of funds is necessary as Defiance county has for several years been holding back funds to cover costs for expansion projects. The County has not used all of the funds and needs to utilize some of these unencumbered funds in the LANDFILL FUND (#073) 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.

The funds subject to this Application for Transfer of Funds do not include the proceeds or balances of tax levies, 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/or the proceeds or balances of any license fees imposed by law for a specified purpose. More specifically, the funds subject to this request to transfer funds are excess funds in the LANDFILL FUND (#073) that are derived from costs paid by customers utilizing the Defiance County Landfill, and are not otherwise encumbered; and

WHEREAS, the LANDFILL FUND (#073), currently has a present balance of present balance of \$9,531,984.30, of which, \$2,635,620.22 is encumbered. The CAPITAL IMPROVEMENTS FUND (#072), currently has a present balance of \$3,386,151.99, of which, \$3,436,151.99 is encumbered; and

WEREAS, this Application for Transfer of Funds does not include the proceeds or balances of tax levies, 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/or the proceeds or balances of any license fees imposed by law for a specified purpose. This Application for Transfer of Funds includes the proceeds from interest income earned.

WHEREAS, after review and discussion in open session, the Defiance County Board of Commissioners desires to transfer \$2,500,000.00 from the LANDFILL FUND (#073) to the CAPITAL IMPROVEMENTS FUND (#072).

BOARD OF DEFIANCE COUNTY COMMISSIONERS

RESOLUTION: IN THE MATTER OF: TRANSFER OF FUNDS FROM THE LANDFILL FUND (#073) TO THE CAPITAL IMPROVEMENTS FUND (#072)

THEREFORE, BE IT RESOLVED, that the Defiance County Board of Commissioners does hereby seek to institute proceedings to transfer \$2,500,000.00 from the LANDFILL FUND (#073) to the CAPITAL IMPROVEMENTS FUND (#072).

THEREFORE, BE IT FURTHER RESOLVED, that it is found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were so adopted in an open meeting of this Board and that all deliberations of this Board and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Mr. OTTO L. NICELY seconded the above Resolution and the roll being called upon the question of its adoption, the vote resulted as follows:

OTTO L. NICELY *Otto L. Nicely* yes
THOMAS L. KIME ABSENT
JAMES E. HARRIS, JR. *James E. Harris, Jr.* yes

MOTION CARRIED

ATTEST *Stephanie M. Metz* CLERK
STEPHANIE M. METZ



MORRIS J. MURRAY
DEFIANCE COUNTY PROSECUTING ATTORNEY

500 Court Street - Suite C ~ Defiance, Ohio 43512

Russell R. Herman
Joy O'Donnell
Carson L. Slade
ASSISTANT PROSECUTING ATTORNEYS

Phone: (419) 782-2402
Fax: (419) 782-6374
Email: mjmpros@defiance-county.com

MONDAY, FEBRUARY 24, 2014

DEPARTMENT OF TAXATION
DIVISION OF TAX EQUALIZATION
30 E. Broad Street ~ 21st Floor
Columbus, Ohio 43215

**RE: TRANSFER OF FUNDS FOR THE DEFIANCE COUNTY BOARD OF COMMISSIONERS FROM
LANDFILL FUND TO CAPITAL IMPROVEMENTS FUND.**

DEAR SIR/MADAM:

Please find enclosed a Certified copy of a Resolution from the Defiance County Board of Commissioners and a proposed Application to the Court of Common Pleas to transfer funds in the amount of \$2,500,000.00 from the LANDFILL FUND (#073) to the CAPITAL IMPROVEMENTS FUND (#072). These documents are for your review and approval pursuant to Revised Code Sections 5705.15 and 5705.16.

Said proposed transfer of funds is necessary as Defiance county has for several years been holding back funds to cover costs for expansion projects and need to utilize some of these unencumbered funds in the LANDFILL FUND (#073) 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.

The funds subject to this Application for Transfer of Funds do not include the proceeds or balances of tax levies, 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/or the proceeds or balances of any license fees imposed by law for a specified purpose. More specifically, the funds subject to this request to transfer funds are excess funds in the LANDFILL FUND (#073) that are derived from costs paid by customers utilizing the Defiance County Landfill, and are not otherwise encumbered.

Please send your certification/approval or comments back to this office for further action.

If you have any questions, comments or concerns, in reference to this letter, please feel free to contact me at my office.

SINCERELY YOURS,

RUSSELL R. HERMAN
Assistant Prosecuting Attorney
Defiance County, Ohio
RRH

Enclosures.

CC: DEFIANCE COUNTY BOARD OF COMMISSIONERS; 500 Court Street ~ Suite A, Defiance, Ohio
43512.

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5705. Tax Levy Law (Refs & Annos)
Establishment and Transfer of Funds; Distribution of Revenues

R.C. § 5705.14

5705.14 Transfer of funds

Effective: September 29, 2011

Currentness

No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

(A) The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

(B) The unexpended balance in any specific permanent improvement fund, other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of permanent improvements, or, with the approval of the court of common pleas of the county in which such subdivision is located, to the general fund of the subdivision.

(C) (1) Except as provided in division (C)(2) of this section, the unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred, in the case of the sinking fund, to the bond retirement fund, and in the case of the bond retirement fund, to the sinking fund; provided that if such transfer is impossible by reason of the nonexistence of the fund to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county in which such division is located, may be transferred to any other fund of the subdivision.

(2) Money in a bond fund or bond retirement fund of a city, local, exempted village, cooperative education, or joint vocational school district may be transferred to a specific permanent improvement fund provided that the county budget commission of the county in which the school district is located approves the transfer upon its determination that the money transferred will not be required to meet the obligations payable from the bond fund or bond retirement fund. In arriving at such a determination, the county budget commission shall consider the balance of the bond fund or bond retirement fund, the outstanding obligations payable from the fund, and the sources and timing of the fund's revenue.

(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with division (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.

(E) Money may be transferred from the general fund to any other fund of the subdivision.

(F) Moneys retained or received by a county under section 4501.04 or division (A)(3) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

(G) Moneys retained or received by a municipal corporation under section 4501.04 or division (A)(1) or (2) of section 5735.27 of the Revised Code may be transferred from the fund into which they were deposited to the sinking fund or bond retirement fund from which any principal, interest, or charges for which such moneys may be used is payable.

(H)(1) Money may be transferred from the county developmental disabilities general fund to the county developmental disabilities capital fund established under section 5705.091 of the Revised Code or to any other fund created for the purposes of the county board of developmental disabilities, so long as money in the fund to which the money is transferred can be spent for the particular purpose of the transferred money. The county board of developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer. Money transferred to a fund shall be credited to an account appropriate to its particular purpose.

(2) An unexpended balance in an account in the county developmental disabilities capital fund or any other fund created for the purposes of the county board of developmental disabilities may be transferred back to the county developmental disabilities general fund. The transfer may be made if the unexpended balance is no longer needed for its particular purpose and all outstanding obligations have been paid. Money transferred back to the county developmental disabilities general fund shall be credited to an account for current expenses within that fund. The county board of developmental disabilities may request, by resolution, that the board of county commissioners make the transfer. The county board of developmental disabilities shall transmit a certified copy of the resolution to the board of county commissioners. Upon receiving the resolution, the board of county commissioners may make the transfer.

(I) Money may be transferred from the public assistance fund established under section 5101.161 of the Revised Code to either of the following funds, so long as the money to be transferred from the public assistance fund may be spent for the purposes for which money in the receiving fund may be used:

(1) The children services fund established under section 5101.144 of the Revised Code;

(2) The child support enforcement administrative fund established, as authorized under rules adopted by the director of job and family services, in the county treasury for use by any county family services agency.

Except in the case of transfer pursuant to division (E) of this section, transfers authorized by this section shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members.

CREDIT(S)

(2011 H 153, eff. 9-29-11; 2009 S 79, eff. 10-6-09; 1992 S 156, eff. 1-10-92; 1990 H 455; 1988 S 293; 1986 H 4; 1953 H 1; GC 5625-13)

Notes of Decisions (70)

5705.14 Transfer of funds, OH ST § 5705.14

R.C. § 5705.14, OH ST § 5705.14

Current through 2015 Files 1 to 7 of the 131st GA (2015-2016).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

5705.15 Transfer of public funds; exceptions, OH ST § 5705.15

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5705. Tax Levy Law (Refs & Annos)
Establishment and Transfer of Funds; Distribution of Revenues

R.C. § 5705.15

5705.15 Transfer of public funds; exceptions

Currentness

In addition to the transfers authorized in section 5705.14 of the Revised Code, the 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.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 5625-13a)

Notes of Decisions (34)

R.C. § 5705.15, OH ST § 5705.15

Current through 2015 Files 1 to 7 of the 131st GA (2015-2016).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5705. Tax Levy Law (Refs & Annos)
Establishment and Transfer of Funds; Distribution of Revenues

R.C. § 5705.16

5705.16 Resolution for transfer of funds; petition; approval by tax commissioner; hearing; certification

Effective: September 29, 2011

Currentness

A resolution of the taxing authority of any political subdivision shall be passed by a majority of all the members thereof, declaring the necessity for the transfer of funds authorized by section 5705.15 of the Revised Code, and such taxing authority shall prepare a petition addressed to the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer. A duplicate copy of said petition shall be forwarded to the tax commissioner for the commissioner's examination and approval.

If the petition is disapproved by the commissioner, it shall be returned within ten days of its receipt to the officers who submitted it, with a memorandum of the commissioner's objections. This disapproval shall not prejudice a later application for approval. If the petition is approved by the commissioner, it shall be forwarded within ten days of its receipt to the clerk of the court of common pleas of the county to whose court of common pleas the petition is addressed, marked with the approval of the commissioner. If the commissioner approves the petition, the commissioner shall notify immediately the officers who submitted the petition, who then may file the petition in the court to which it is addressed.

The petitioner shall give notice of the filing, object, and prayer of the petition, and of the time when it will be heard. The notice shall be given by one publication in a newspaper of general circulation in the territory to be affected by such transfer of funds. If there is no such newspaper, the notice shall be posted in ten conspicuous places within the territory for a period of four weeks.

The petition may be heard at the time stated in the notice, or as soon thereafter as convenient for the court. Any person who objects to the prayer of such petition shall file the person's objections in such cause on or before the time fixed in the notice for hearing, and that person shall be entitled to be heard.

If, upon hearing, the court finds that the notice has been given as required by this section, that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer.

A copy of the findings, orders, and judgments of the court shall be certified by the clerk and entered on the records of the petitioning officers or board, and thereupon the petitioners may make the transfer of funds as directed by the court. All costs of such proceedings shall be paid by the petitioners, except that if objections are filed the court may order such objectors to pay all or a portion of the costs.

CREDIT(S)

(2011 H 153, eff. 9-29-11; 1983 H 260, eff. 9-27-83; 1976 H 920; 1953 H 1; GC 5625-13b to 5625-13g)

Notes of Decisions (16)

R.C. § 5705.16, OH ST § 5705.16

Current through 2015 Files 1 to 7 of the 131st GA (2015-2016).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

Baldwin's Ohio Revised Code Annotated
Title III. Counties
Chapter 343. Solid Waste Management Districts (Refs & Annos)

R.C. § 343.08

343.08 Rates and charges; contract with municipal corporation

Effective: September 29, 2011

Currentness

(A) The board of county commissioners of a county solid waste management district and the board of directors of a joint solid waste management district may fix reasonable rates or charges to be paid by every person, municipal corporation, township, or other political subdivision that owns premises to which solid waste collection, storage, transfer, disposal, recycling, processing, or resource recovery service is provided by the district and may change the rates or charges whenever it considers it advisable. Charges for collection, storage, transfer, disposal, recycling, processing, or resource recovery service shall be made only against lots or parcels that are improved, or in the process of being improved, with at least one permanent, portable, or temporary building. The rates or charges may be collected by either of the following means:

(1) Periodic billings made by the district directly or in conjunction with billings for public utility rates or charges by a county water district established under section 6103.02 of the Revised Code, a county sewer district established under section 6117.02 of the Revised Code, or a municipal corporation or other political subdivision authorized by law to provide public utility service. When any such charges that are so billed are not paid, the board shall certify them to the county auditor of the county where the lots or parcels are located, who shall place them upon the real property duplicate against the property served by the collection, storage, transfer, disposal, recycling, processing, or resource recovery service. The charges shall be a lien on the property from the date they are placed upon the real property duplicate by the auditor and shall be collected in the same manner as other taxes.

(2) Certifying the rates or charges to the county auditor of the county where the lots or parcels are located, who shall place them on the real property duplicate against the lots or parcels. The rates or charges are a lien on the property from the date they are placed upon the real property duplicate by the auditor and shall be collected in the same manner as other taxes.

The county or joint district need not fix a rate or charge against property if the district does not operate a collection system.

Where a county or joint district owns or operates a solid waste facility, either without a collection system or in conjunction therewith, the board of county commissioners or board of directors may fix reasonable rates or charges for the use of the facility by persons, municipal corporations, townships, and other political subdivisions, may contract with any public authority or person for the collection of solid wastes in any part of any district for collection, storage, disposal, transfer, recycling, processing, or resource recovery in any solid waste facility, or may lease the facility to any public authority or person. The cost of collection, storage, transfer, disposal, recycling, processing, or resource recovery under such contracts may be paid by rates or charges fixed and collected under this section or by rates and charges fixed under those contracts and collected by the contractors.

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.

A board of county commissioners or directors, instead of operating and maintaining solid waste collection or other solid waste facilities of the district with county or joint district personnel, may enter into a contract with a municipal corporation having territory within the district pursuant to which the operation and maintenance of the facilities will be performed by the municipal corporation.

The products of any solid waste collection or other solid waste facility owned under this chapter shall be sold through competitive bidding in accordance with section 307.12 of the Revised Code, except when a board of county commissioners or directors determines by resolution that it is in the public interest to sell those products in a commercially reasonable manner without competitive bidding.

(B) A board of county commissioners or directors may adopt a cost allocation plan that identifies, accumulates, and distributes allowable direct and indirect costs that may be paid from the fund of the district created in division (A) of this section and prescribes methods for allocating those costs. The plan shall authorize payment from the fund for only those costs incurred by the district, the sanitary engineer or sanitary engineering department, or a federal or state grant program, and those costs incurred by the general and other funds of the county for a common or joint purpose, that are necessary and reasonable for the proper and efficient administration of the district under this chapter and sections 3734.52 to 3734.572 of the Revised Code. The plan shall not authorize payment from the fund of any general government expense required to carry out the overall governmental responsibilities of a county. The plan shall conform to United States office of management and budget Circular A-87 "Cost Principles for State and Local Governments," published January 15, 1983.

(C) 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 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.

CREDIT(S)

343.08 Rates and charges; contract with municipal corporation, OH ST § 343.08

(2011 H 153, eff. 9-29-11; 1996 H 122, eff. 10-31-96; 1993 S 165, eff. 10-29-93; 1992 H 723; 1988 H 592; 1986 H 243; 1983 H 13; 1977 S 303; 1976 H 993; 131 v H 161; 130 v H 425; 128 v 773; 1953 H 1; GC 6600-7)

Notes of Decisions (6)

R.C. § 343.08, OH ST § 343.08

Current through 2015 Files 1 to 7 of the 131st GA (2015-2016).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.