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October 24, 2018

Attorney General Mike DeWine
Opinions Section
30 East Broad Street, 15th Floor
Columbus OH 43215

RE: Request for Opinion

Dear Attorney General DeWine:

On behalf of this office and the Trumbull County Board of Commissioners, I am respectfully requesting your opinion on the following questions, the facts of which will be more fully explained below.

1. Does transferring special levy funds collected by a county levy to the Trumbull County Transit Board, where it is then comingled with all other transit board revenues, comply with tax levy law and other applicable Ohio law?
2. If special levy funds are paid to the Trumbull County Transit Board, where the funds are then used as matching funds for grant purposes, are the matching funds treated as general revenue, or is the use of such funds restricted to the object of the levy?
3. If the Trumbull County Transit Board receives senior levy funds, then uses those funds to pay its contracted transit vendor, and the vendor uses this funding to provide services which includes transit services for non-senior citizens, does this violate tax levy law or other Ohio law?

These questions are taken directly from a request for legal opinion presented by the Board of Commissioners of Trumbull County, and have been submitted to you at the Board's request. The factual background and the legal analysis of my office will be outlined below and in the letter attached hereto and incorporated herein which has been shared with the permission of our client.

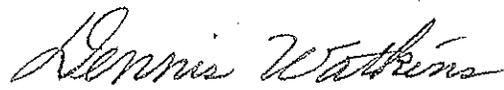
Trumbull County has a Transit Board created under Chapter 306 of the Revised Code and a levy for senior citizens' services and facilities pursuant to R.C. 5705.19(Y). For years, the

Board of Commissioners has contracted with Niles Trumbull Transit, and now the Trumbull County Transit Board, to provide senior transportation in exchange for a payment of money from the senior levy funds. This is essentially a three-step process. First, the Board of Commissioners contracts with the Transit Board for the Transit Board to provide senior transportation, and the Board of Commissioners pays the Transit Board from senior levy funds. Second, the Transit Board has independently procured a contract with a transit provider, and the Transit Board uses the senior levy funds and other funds to pay the contractor for transportation services. Third, the transit contractor provides senior transportation services, and other non-senior transportation, pursuant to its contract with the Transit Board. Once the funding is disbursed from the control of the Board of Commissioners, it is my understanding that it is commingled with other Transit Board funds, and further commingled with contractor funds when the transit contractor is paid.

The questions presented herein were originally sent to this office by the Board of Commissioners. In the attached letter, we recited what we believed to be the relevant factual background and answered the Board's questions to the best of our ability based on existing legal authority. However, it appeared to us that certain questions were not fully addressed by the existing legal authority (eg. Pages 4, 5 and 6 of the letter attached hereto and incorporated herein), and out of caution, the Board has accepted our suggestion of seeking an opinion from you.

We hope that our attached letter will provide you with the relevant background and give some insight into the research that has already been conducted. However, if you should have any questions regarding this matter, please do not hesitate to contact me or Chief Counsel of the Civil Division, William Danso, who may be able to provide additional information. As always, thank you for your cooperation in this matter.

Very Truly Yours,



Dennis Watkins
Trumbull County Prosecuting Attorney

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May 15, 2018

Trumbull County Board of Commissioners
160 High Street NW, 5th Floor Admin. Bldg.
Warren, Ohio 44481

RE: Senior Levy Funds and Transit Board Services

Dear Board of Commissioners:

I am in receipt of the Board's request for legal opinion "regarding the enclosed questions and concerns of the Senior Services Advisory Council members." The Board has enclosed with its request a number of documents, including a list of eleven questions, various sections of the Revised Code, a legal opinion previously issued by this office, and a copy of a memorandum of understanding from 2017. It is my understanding that the questions contained in this package were drafted by a concerned member of the Senior Services Advisory Council. This office has consistently reaffirmed its duty and commitment to protect public funds, and we want to be sure that the Board has the appropriate legal assistance to do the same. Therefore, we take these concerns seriously, and have taken the necessary time to fully research the questions presented. Moreover, while this letter will answer the questions presented from a legal perspective, the Board may wish to consider and review the present procedure and oversight from an administrative perspective. This office would encourage the Board to make any policy changes it believes necessary to be comfortable that senior levy funds are used in a proper manner.

As this Board is aware, this office generally represents its statutory clients through the authority of R.C. 309.09. However, because the Senior Services Advisory Council is an advisory body for the Board, we believe that there is some doubt that this office is permitted to provide advice to that Council. Therefore, because the Board has asked for this opinion, it has been provided to the Board. If the Board chooses to share it with the Senior Services Advisory Council, it may do so at its discretion. The questions posed by the Senior Services Advisory Council and the Board will be addressed individually below. However, the history of this payment of senior levy funds may be important to understanding the Board's participation in and oversight of this matter. Therefore, before proceeding to answer the specific questions, I will provide a brief overview of the history of these agreements and the payment of senior levy funds.

HISTORY

The eleven questions contained in the Board's package mainly center on the payment of senior levy funds to the Trumbull County Transit Board ("TCTB"). From the beginning, this office has urged caution in the creation, operation, and funding of the Board. A review of the numerous legal opinions to the Board as well as the requests to the Ohio Attorney General relative to the TCTB will refresh the Board's recollection as to the quantity and quality of legal advice this office has provided. The Board will also recall, however, that it has taken certain actions without the advice of this office, and has also hired other specialized counsel to assist in some transit-related matters.

Since at least 2007, the Board had contracted with the City of Niles and Niles Trumbull Transit to provide senior levy funds for senior transportation in Trumbull County. At the time, the Board also operated its own senior transportation through its Office of Elderly Affairs. In the summer of 2011, the City of Niles ceased to operate the Niles Trumbull Transit System, and the Board decided to take over the countywide transit system. As the Board is aware, on July 27, 2011, the Trumbull County Board of Commissioners created the Trumbull County Transit Board pursuant to 306.01 et seq., and around the same time, combined the Office of Elderly Affairs transportation with the new TCTB. At the time, the Board was in the middle of a three-year agreement with Niles Trumbull Transit, approved on July 28, 2010, to pay \$635,000.00 per year to Niles Trumbull Transit in exchange for senior transportation. That agreement specifically permitted Niles Trumbull Transit to use the senior levy funds to procure matching federal funds.

On March 21, 2012, the TCTB's Chairman sent this office a letter requesting the Board to simply amend its prior resolution with Niles Trumbull Transit to give the funding to the TCTB instead. The letter references the fact that this office requested "some type of commitment" before the funding could be provided. That comment was correct, as we had consistently advised that the TCTB needed to assume the Niles Trumbull Transit contract before the funds could be paid. The essence of this advice is reflected in the attached email to the Board from its Senior Levy Administrator dated March 22, 2012. That same day, this office sent a letter to the TCTB, copied to the Board, explaining that it was important that protections be in place to ensure senior levy money was spend properly. The letter explained the procedure that this office advised in order to have adequate legal assurance that the funds would be properly used. On March 23, 2012, Mr. Terry Thomas wrote an email to the Board stating that he was told that Niles Trumbull Transit "never had to send a letter in the past 6 years to the Commissioners to receive the \$635,000 from the Senior Services fund." The email went on to state that the Board's "Official Resolution was all that was needed in the past," and he "does not know why Atty. Danso is saying such a letter is necessary now." Clearly, the prior advice from this office was that a contract, not a letter, needed to be assumed by the TCTB.

On March 26, 2012, the Chairman of the TCTB again sent an email to the Board with an attached proposed resolution to provide the TCTB with senior levy funds. The email also stated that "there cannot be any restriction on these funds other than the fact that it is a contribution by the Trumbull County Commissioners to provide transportation services for Trumbull County. If the funds are restricted they cannot be utilized as a local match-contribution for the federal grant." By letter dated April 23, 2012, the Chairman of the TCTB continued to ask the Board for

the unrestricted transfer of \$635,000.00 by simple amendment of the resolution. The email again alleged that there was no prior "formal document or writing" relative to the transfer of this money. On April 25, 2012, this office responded to the Chairman with a letter and a copy of the agreement with the City of Niles from 2010, and thereafter, the TCTB did indeed enter into a funding agreement, or memorandum of understanding, with the Board outlining the duties of each party and the permissible use of senior levy funding. One of the terms has historically been a recognition that pursuant to Ohio Constitution Article XII Section 5, money collected through a tax levy may only be used on the specific object of that particular levy. Therefore, the MOU has required that the TCTB shall use any levy money provided by the Commissioners only for the specific object of that levy. While the form has been amended and simplified over the years, it is my understanding that such an agreement has been in effect for each year that senior levy money was provided to the TCTB. Throughout the time that these various agreements have been in place, Trumbull County has been audited by the Ohio Auditor of State numerous times, and there have never been any findings issued against Trumbull County relative to this agreement.

QUESTIONS

1. *Does transferring special levy funds collected by a county levy to a fund that is commingled with all other transit board revenues comply with tax levy and other applicable state law?*

The first question appears to require a discussion of the nature of the Board's "transfer" of funds to the TCTB before addressing the exact question asked. Transfers of funds by political subdivisions are generally governed by R.C. 5705.14 et seq., which set forth procedures for proper transfers. However, while certain language in the Memorandum of Understanding ("MOU") refers to a transfer of funds, the MOU is likely more accurately a contract for services. The Ohio Auditor of State's Office has recognized that GASB Cod. 1800.102 defines transfers as "flows of assets (such as cash or goods) without equivalent flows of assets in return and without a requirement for repayment." Essentially, the Auditor of State treats a transfer as a gift with no reciprocal exchange. On the other hand, "[i]nterfund services provided and used," as defined in GASB 1800.102, do not qualify as transfers. GASB classifies these interfund services provided and used as exchange transactions, related to services "purchased and sold" between funds. Clearly, senior levy funds are provided to the TCTB *in exchange* for senior transportation as set forth in the MOU. Therefore, legally speaking, this payment is not a "transfer," and the procedure set forth in R.C. 5705.14 et seq. would likely not apply. In fact, this payment has been made to the City of Niles and the to the TCTB for at least eleven years without invoking the procedure contained in R.C. 5705.14 et seq., and to the best of my knowledge there has never been an adverse audit finding relative to this practice.

As to whether the funds may be commingled with other TCTB revenue, the Board should again recall that, as explained above, this is likely not a "transfer" of money, but rather a payment for services. It is also important to note that the TCTB "shall have exclusive control over the county transit system's budgets, appropriations, collections, custody, and application of its revenues or other funds received by it and shall have jurisdiction of all purchases and contracts entered into in connection with the county transit system pursuant to sections 307.86 to 307.92 of the Revised Code." R.C. 306.11. Generally speaking, when the county pays other

vendors with tax levy funds, those vendors presumably commingle the levy fund payment with their general revenue. For example, senior levy money also funds meal programs through private sector vendors. Here, the TCTB is the transportation vendor for the Board's senior transit. Therefore, while I can find no specific legal authority addressing these particular facts, I believe it would be reasonable to argue that the TCTB is permitted to commingle this senior levy funding because it is ultimately lumped together with other revenue to pay its subcontracted vendor to provide transportation services. It is also my understanding that the TCTB has been subject to audit by the Ohio Auditor of State's Office, and this practice has not been subject to any findings of noncompliance or recovery. While we believe this position is reasonable and defensible, we recognize that there appears to be a lack of legal authority on this point. Therefore, we would be willing to consider a request for legal opinion from the Ohio Attorney General if the Board would like us to do so.

However, even though it is reasonable to argue that the TCTB may commingle this money with other funds, the Board has a contractual relationship with the TCTB which can be used to ensure that senior levy money is appropriately used. Specifically, the MOU between the Board and the TCTB, approved on March 28, 2018, contains a number of provisions that provide the Board with oversight and control over the funds paid to the TCTB. For example, Section 7 of the MOU provides that the Board "shall provide a target of 20,000 trips as a minimum performance requirement" and reserves the right to reduce the financial commitment if this target is not met. The MOU also contains various provisions that allow the Board to request reports and data from the TCTB to ensure that the performance standards are met. Presumably, when it entered into this MOU, the Board determined that the payment made to the TCTB was an appropriate cost for 20,000 trips. Ultimately, the Board may use these contractual provisions to ensure that the funding level matches the senior transportation services being provided by the TCTB. Pursuant to R.C. 306.06, a transit board may enter into contracts to provide transit services, and "[a]ny moneys so paid to the board shall be received by it and used solely for the purposes specified in the agreement." Therefore, the Board has statutory authority to enforce the requirements of the MOU.

As the Board is aware, the TCTB has also retained its own legal counsel pursuant to authority granted by R.C. 306.04(C)(6), and has contracted its own fiscal agent. As such it is possible that the TCTB's legal counsel has advised on this question as well. The Board could reach out to the TCTB and ask whether it would be willing to share any legal advice that it has been provided that would be helpful to answering this question. Likewise, the Board could also look to any existing audit reports to determine whether any audit has raised a concern about the handling of these funds. This office is not aware of any adverse findings, but perhaps the TCTB could share the audit reports with the Board.

- 2. If special levy funds are used as leverage funds for grant purposes, are the matching funds treated as revenue, and/or are they required to also be used for the object of the levy?*

As the Board is aware, Section 10 of the MOU contains a reference to opinion 1980-003 of the Ohio Attorney General, and states that interest derived from levy monies must be used in accordance with the object of that levy. Upon further research, the Ohio Attorney General has

overruled this opinion in part. Specifically, in opinion number 1985-072, the Ohio Attorney General recognized legislative changes and determined that "the interest earned on the bond retirement fund of a school district must be credited to the general fund of the school district." Obviously, the levy fund in question is not a bond retirement fund. However, it would be reasonable to conclude that the statutory authority applies to the senior levy funds. As the Board is aware, the revenue from the senior levy is placed in a special fund upon collection. See R.C. 5705.10(C). Thus, it follows that under R.C. 5705.10(D) that "all revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, *including interest earned on the principal of any special fund*, regardless of the source or purpose of the principal, *shall be paid into the general fund.*" (emphasis added). It should be noted that the additional money obtained through matching funds is not actually interest, but rather matching funds, so it is possible that this statute could ultimately be determined to be inapplicable. However, with the apparent lack of other specific legal authority, it is the best legal guidance available.

There is also an argument, in accordance with the discussion of a "transfer" above that once the funds are paid to the TCTB for services the money is free for any use by the TCTB as long as the terms of the MOU are fulfilled. Obviously, the goal of the MOU is to use the underlying funds for senior transportation, but the MOU clearly puts the parties on notice that the TCTB intends to "match Federal Transit Administration funding assistance for which the Board is eligible." It is my understanding that this practice has been in effect for much of the existence of the TCTB, and neither federal nor state audits have issued any adverse findings based on this practice. Therefore, based on the somewhat comparable legal authority and the lack of any adverse findings, we believe it would be reasonable to defend the Board's permitting the TCTB to use this match funding in any way it sees fit. However, because there appears to be no *specific* legal authority on this exact question, this is another question that could be presented to the Ohio Attorney General for direct clarification.

3. *If the vendor includes services for non-senior citizens with senior levy funds, does this violate tax levy law?*

The question of whether or not a particular service may be paid for from levy funds requires a factual determination on a case-by-case basis. Pursuant to the Board's most recent MOU with the TCTB, the TCTB is mandated to provide a target of 20,000 trips as a minimum performance requirement. The most recent version of the MOU requires that the Board provide "persons sixty (60) years of age or older" with trips at a maximum of cost of \$2.00 per one way trip. Another provision of the MOU requires that the TCTB submit monthly invoices that report the number of these riders, along with "personal care attendants." The authorizing language of the Board's senior levy, taken from R.C. 5705.19(Y), states that the purpose of the levy is "providing or maintaining senior citizens services or facilities." There does not appear to be any existing legal authority that discusses the scope of this language. Therefore, the Board must consider this language, and make a good faith determination as to whether any expenditure would reasonably fit within this definition.

Briefly touching on the examples given in the original question, there could be a reasonable argument that the cost of personal care aids and administrative costs may be included within the permissible uses of this levy. Essentially, the Board and the TCTB would argue that permitting the inclusion of personal care aids is essential for the transportation needs of seniors. Moreover, the Board could argue that at least a portion of the administrative costs are payable from senior levy funds because there is an actual reasonable administrative cost attributable to senior transportation. Obviously, without any analogous legal authority, we cannot be sure how a court would ultimately decide this question, but it appears that there have never been any adverse audit findings related to these expenditures. This is another question that could ultimately be presented to the Ohio Attorney General for conclusive guidance.

It is important to point out, however, that the Board could choose to more specifically describe the expenses it will permit under the MOU. By making changes to the language, the Board could attempt to ensure that any uses of the funding clearly match the statutory levy language. While this type of change may be helpful in ensuring the proper expenditure of levy funds, the MOU already includes a provision that the TCTB shall use any levy money provided by the Commissioners only for the specific object of that levy. As such, it is possible that the TCTB's legal counsel has already advised the TCTB on this matter. The Board may wish to reach out to the TCTB and ask whether it would be willing to share any legal advice that it has been provided that would be helpful to answering this question. Likewise, the Board could also look to any existing audit reports to determine whether any audit has raised a concern about these expenditures. As noted above, this office is not aware of any adverse findings, but perhaps the TCTB could share the audit reports with the Board.

4. *Does the MOU and its language, which states "Whereas, the Commissioners have provided to the (Transit) Board Senior Services Levy funds for several years for operation of the County's transit system" violate special tax levy law, as this includes a scope of services outside of the object of the levy?*

This preamble does not violate "special tax levy law." Simply on contractual language construction grounds, it is important to note that introductory provisions of a contract beginning with "whereas" are commonly referred to as preambles. As the First District Court of Appeals has explained:

"But because the preamble merely lays out the objectives of the policy, it is not itself an operative part of the policy. See *Cain Restaurant Co. v. Carrolls Corp.*, 273 Fed.Appx. 430, 434, (6th Cir.2008) (noting that "preambles in a contract generally serve to introduce the contract's subject matter rather than set forth the specific rights and obligations of the parties."); see also *Berg v. Berg*, 201 Minn. 179, 275 N.W. 836, 842 (Minn.1937) ("[I]n contracts where a preamble * * * is declaratory of the purposes and intentions of the parties, it will be looked to in construing the contract * * * but in no sense will it be the basis of a legal and binding obligation of the parties.")" *Groen v. Children's Hosp. Med. Ctr.*, 1st Dist. No. C-100835, 2012-Ohio-2815, 972 N.E.2d 648, ¶ 29.

However, even looking to the substance of preamble, the language neither requires nor permits expenditure outside the object of the levy. This preamble is merely recognition that, in prior

years, senior levy funding has been paid to the TCTB, and that this funding has helped to operate the TCTB. Read in conjunction with the other actual terms of the MOU, it is clear that the money is being paid with restrictions to be used for senior transportation.

From a financial perspective, the additional funding likely does support the operation of the TCTB even in a general way. For example, the additional funding and senior rides likely contribute to greater economies of scale in procuring transportation services. As such, this preamble does not set forth any substantive requirement, and the plain language does not require the Board to engage in any activity that would violate tax levy law or any other law. That being said, if the wording of the preamble is causing confusion it could be modified to be more clear or even removed completely from the MOU.

5. *If the Trumbull Transit Board failed to perform their obligations set forth in their Memorandum of Understanding, yet they still receive the funding, does this violate special tax levy law and R.C. 5705.16 & 5705.10?*

If the TCTB fails to perform its obligations set forth in the MOU, but the Board continues to provide funding, it could be theoretically possible that a person could allege a violation of Article XII Section 5 of the Ohio Constitution. Such a challenge would need to show that levy funds were not spent on the object of the levy. It is also possible that an audit could issue a finding for recovery if the audit determined that funds were not spent on the object of the levy. Again, as noted above, it is my understanding that no such findings have been issued against the Board or the TCTB in relation to senior levy funds.

However, if the Board believes that the TCTB is not complying with the terms of the MOU, the terms of the MOU itself contain enforcement mechanisms that the Board could use to ensure compliance with law. It should be noted that beyond the specific terms of the MOU related to senior transportation, the present form of the MOU contains a provision to withhold funding if performance requirements are not met, and contains provisions that require the TCTB to provide appropriate documentation to satisfy the Board that the money is being spent in accordance with law and in accordance with the terms of the MOU. The TCTB also agrees, by the plain terms of the MOU, to "use any levy money provided by the [Board] only for the specific object of that levy." The TCTB also agrees to "comply with all federal, state, and local laws, regulations, and rules in the administration of programs and the expenditure of funds transferred pursuant to this Agreement." If the TCTB fails to do so, the Board could potentially assert a breach of contract claim against the TCTB.

The Board should be aware that the indemnification provision contained in Section 12 of the MOU *may* ultimately be unenforceable. This type of indemnification provision is a holdover from many old contracts entered into by the Board and Trumbull County Generally. However, in opinion number 2005-007, the Ohio Attorney General laid out very specific requirements which must be met for an indemnification provision to be enforceable against a public entity. Specifically, the Attorney General explained that such indemnification provisions are valid and enforceable only if: (1) the contract specifies a maximum dollar amount for which the public entity is obligated under the indemnification clause and that amount is appropriated and certified as available in accordance with R.C. 5705.41(D)(1); and (2) the contract provides the public

entity consideration sufficient to support the financial obligation that the public entity assumes under the indemnification provision. The indemnification provision in the MOU does not meet these standards. In fact, because the requirements set forth by the Attorney General are financially and practically burdensome, Trumbull County's public entities generally no longer include any indemnification clauses in agreements. In future MOUs or contracts, we recommend that this type of indemnification provision either not be included in contract with public entities, or replaced with a provision that complies with the opinion of the Attorney General. Of course, this provision should still be used when contracting with private entities to best protect Trumbull County from potential liability.

6. *If instead of bidding out transportation, only one contractor is funded via MOU to Trumbull Transit for a County Transit Service vs. Senior Transit Service, and this process "causes injury" to the object of the levy because there are not enough or no alternative senior transportation options, there is no priority for seniors, the demand response time is longer than other providers, rides are refused or renegotiated to times that would cause them to miss appointments, ridership decreases because service is not user friendly, or other miscellaneous reasons, does this violate R.C. 5705.16?*

This question contains assumptions that do not appear to be factually true, and references inapplicable legal authority. First, the question assumes that the contract for transportation is not competitively bid. It is my understanding that the TCTB did in fact conduct a competitive bidding procedure to procure its contract with Community Bus service. Second, the question presumes that having only one vendor "causes injury" to the object of the levy. While the effects listed in the question may be troubling from a practical perspective, there is certainly a question as to whether these points necessarily mean money has been expended outside of the object of the levy. Third, R.C. 5705.16 is a statute regulating the proper procedure for a transfer of funds, and is not applicable to this situation. As explained above, this payment to the TCTB is not actually a transfer, but a payment for services. Therefore, the transfer procedure, and the language about "injury" would likely not apply to this payment to the TCTB.

Despite the assumptions made in this question, the concern appears to be that the level of service provided by the TCTB and its vendor Community Bus Service is inadequate. These claims, if true, are troubling. However, the correction of service-related problems is administrative in nature, not legal at this point. The Board should address any such concerns with the TCTB and Community Bus Service, to ensure that seniors are receiving appropriate services with the senior levy funding. If deficiencies are not corrected, the TCTB or the Board could look at their respective contracts to determine whether these documents contain any corrective measures that could be taken to improve services. Likewise, the TCTB could look to its contract with Community Bus Service to determine whether these alleged service-related problems would constitute a breach of contract. If not, the Board and the TCTB should consider changing the terms of future contracts to provide recourse in the event that services are not provided as agreed.

7. If any of the concerns herein mentioned could be construed as violating special tax levy law or misappropriation of special levy funds, could this open the county to legal risk?

This question is speculative, in that there is no indication that any of the actions discussed in the Board's questions violate Ohio law or constitute a misappropriation of special levy funds. Based on the legal authority and analysis set forth in this letter, there are reasonable legal arguments to support the actions of the Board relative to the MOU and the payment for senior transportation services. Moreover, as discussed numerous times herein, in the history of payments from senior levy funds to transportation providers like Niles Trumbull Transit and the TCTB, it is my understanding that no audits have ever issued findings for recovery or noncompliance relative to this financial activity, and no audit has ever found that this money was misappropriated.

With that in mind, if this office did believe that any money was misappropriated or spent in violation of law, this office would take action under R.C. 309.12 to prevent the expenditure or to recover the funds. Likewise, if an audit issued a finding for recovery, this office would review that finding for potential legal action and recovery pursuant to R.C. 117.28. If any of these actions were taken, or other challenges were made to this expenditure, there is a possibility that the county or individuals could face legal risk. Again, the answer to this question is purely speculative. If a situation should arise in the future which warrants review, this office will do so at that time.

8. Would placing transportation out to bid vs. continuing with an MOU be erring on the side of caution, and reduce potential county liability given the vendor non-compliance, and other concerns herein mentioned?

This office generally supports competitive bidding for county contracts in order to ensure that the county obtains the best service for the taxpayers' money. That being said, it is important to point out that it is my understanding that the TCTB does in fact competitively bid for its transportation services. Not only is this required by R.C. 306.11 and R.C. 307.86, but also by the terms of various grants and other funding that may be available to the TCTB. As such, there is a layer of competitive bidding to help ensure senior levy funds are spent appropriately.

This question, however, appears to focus on the concept of the Board competitively bidding the contract for senior transportation rather than paying the TCTB to procure this transportation. Legally speaking, the Ohio Attorney General has opined that "R.C. 307.86 does not require a county to use competitive bidding or competitive sealed proposals to acquire transportation services from its county transit board for the county department of job and family services." 2013 Ohio Atty.Gen.Ops. No. 2013-045. Essentially, the Attorney General concluded that a transit board is a county entity, and competitive bidding is not required because the transit services are not purchased from an outside source. *Id.* Here, the same legal analysis would apply to the procurement of senior transportation through the TCTB.

With that in mind, apart from its contractual obligations, the Board is not required to procure its senior transportation through the TCTB. If the Board believes that it could procure a better or less expensive service by bidding this contract on its own, I am not aware of any legal

authority that would prevent it from doing so. This decision, therefore, is not legal but administrative, and the Board must exercise its discretion to choose the best procurement method. In making that decision, the Board should consider the value to the taxpayers of the county, but should also consider that there may be certain savings through economies of scale or through federal matching funds that the TCTB can leverage that would be lost if the Board did not procure senior transportation through the TCTB. This decision should be made carefully after an investigation into all relevant facts and after thoughtful deliberation.

Apart from these preliminary matters, this question also asks whether competitively bidding for senior transportation instead of procurement through the TCTB would insulate the county from liability. This question is so speculative, that a complete answer cannot be given at this time. However, competitively bidding for this service directly would avoid many of the questions about the payments to the TCTB that have been addressed above. While I have indicated that I believe that the Board's actions could be reasonably defended, the Board could choose to avoid these questions by bidding for the service directly. Regarding the alleged vendor noncompliance, it is impossible to know whether the vendor that the Board would award a bid to would provide a better or worse service that is presently provided through the TCTB. Any liability to the Board through such a contract should be addressed on the front end by having appropriate contractual language to insulate the Board from liability, and on the back end by appropriate oversight over the chosen vendor's performance. In short, it is theoretically possible that liability could exist under any contract procured by the Board, so how the Board procures senior transportation is left to the Board's discretion.

9. *Would the SSAC placing transportation out to bid, pursuant to its bylaws "Ensure a public and fair process in compliance with appropriate laws, rules, and regulations for the selection of entities to deliver services using Trumbull County Senior Levy dollars and recommend those selections to the Trumbull County Commissioners," be more "fair" than transferring funds via MOU to be given to a contractor who has a monopoly, wants a franchise, and is the most expensive provider in Trumbull County?*

As an initial matter, it is the Board that engages in competitive bidding, not the Council. As briefly explained above, the Senior Services Advisory Council is a non-statutory creation of the Board that is advisory in nature. The actual bidding and award of such bids is the duty of the Board, and the Board may, legally speaking, accept or reject the advice of the Council. Likewise, it is within the Board's discretion as to which method of procurement is more "fair." It is worth noting that this question again describes Community Bus Service as having a monopoly and being the most expensive provider in Trumbull County. Again, it is my understanding that the TCTB has competitively bid its transportation contract, so the term monopoly is not necessarily accurate. It is possible however that Community Bus Service has been the only bidder for this contract at times. In the past, when there have been no bids or limited bids on a project, we have recommended widening the advertising scope to try to entice other bidders. While this may be helpful, it is not legally required when a valid bid is submitted. However, the Board and the TCTB should be careful to ensure that the bid specifications are not overly restrictive or tailored to any particular vendor. Relative to Community Bus Service wanting a franchise, I would suggest that the Board review our prior detailed letter explaining the statutes related to franchise agreements.

10. *If all contractors funded under special levy funds are required to adhere to a set of rules, guidelines, and sanctions as contractors, except one transportation provider, could this give rise to lawsuits from the other vendors under equal protection?*

This question is also speculative, and does not provide enough specific information to answer fully. However, each vendor will be bound by the terms of its own contracts with the Board or the TCTB. Because the actual contract for senior transportation services is between the TCTB and Community Bus Service, it is very likely that the terms and operation of that agreement are different from the terms and operation of other contracts with other vendors. It is not a violation of law to have different terms contained within contracts for different types of services, as long as the terms of the agreement do not violate law. Theoretically, there could be a challenge if two contracts, rules, guidelines, and sanctions were identical, but two vendors were treated differently under the same exact terms, but such a situation would be rare. Again, it is my understanding that the contract for senior transportation is not the same as other county contracts for senior services.

11. *Define "injury" as used in R.C. 5705.16.*

Pursuant to R.C. 5705.16, the Ohio Tax Commissioner shall approve a transfer of funds after making three determinations, the final being that "[n]o injury will result from the transfer of such funds." As an initial matter, it bears repeating that this statute is likely inapplicable to the payment to the TCTB, because the payment is one for services, not a transfer. Therefore, this question is rendered moot by the answers to the previous questions. That being said, R.C. 5705.01, the definitions section of Chapter 5705 of the Revised Code, does not define the term injury. Pursuant to R.C. 1.42, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." Using this logic, courts have turned to dictionary definitions to resolve the meaning of words. See *State v. Thomas*, 106 Ohio St.3d 133, 2005-Ohio-4106, 832 N.E.2d 1190 (2005). The online version of the Merriam Webster dictionary defines "injury" as "1a : an act that damages or hurts : wrong; b: violation of another's rights for which the law allows an action to recover damages; 2: hurt, damage, or loss sustained." Therefore, this definition and the common usage of the word may be relied upon to define this term.

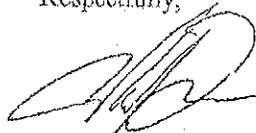
CONCLUSION

The answers set forth above are answers to the specific legal questions presented. While we have answered these questions to the best of our ability, the Board will note that there are some questions that were not able to be conclusively answered based on current legal authority. We believe that the Board's actions can be reasonable defended, but we cannot predict how a court would ultimately rule. If a challenge were to be made, we would defend the Board's good faith legal positions. As explained above, we would also be willing to ask for an opinion from the Ohio Attorney General if the Board would like. However, if the Board wants to continue as it has in the past, we would continue to defend the Board as provided herein.

Beyond the specific questions presented by the Board, it is clear that at least some members of the Senior Services Advisory Council have concerns about the payment of senior levy money to the TCTB and about the service provided by Community Bus Service. These concerns should be taken seriously and explored by the Board. While the questions presented with the Board's letter speak in terms of violations of law, the real issues appear to be more administrative in nature. As explained above, the Board has enforcement mechanisms within the MOU to require compliance with law. Ultimately, the contract with Community Bus Service is administered by the TCTB, so the Board should work closely with the TCTB in order to require Community Bus Service to meet the requirements of that contract for services. If the procurement of the contract is the root of these issues, perhaps the Board could work with the TCTB to modify the bid specifications and the advertising methods in upcoming bid so that additional competition is introduced into the process. If there is anything that this office can do to assist the Board in this endeavor, including obtaining an opinion of the Ohio Attorney General as mentioned above, we would be glad to do so.

I hope this legal opinion is helpful to the Board. As always, please feel free to contact this office with any additional questions or concerns.

Respectfully,



William J. Danso
Assistant Prosecuting Attorney

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(1915-2007)

HERBERT L. KERR

(1907-1989)

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MARY BETH HOUSER

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* OSBA Board Certified Specialist in
Estate Planning, Trust & Probate Law

March 21, 2012

William J. Danso, Esq.

Civil Division

Assistant Prosecuting Attorney

Trumbull County Prosecutor's Office

160 High Street NW

Warren, Ohio 44481

RE: Trumbull County Transit Board

Dear Prosecutor Danso:

In my capacity as the Chairman of the Trumbull County Transit Board I am providing you with this communication.

Diane Drawl, as to her involvement with the Senior levy, has indicated to me in conversation with your office that you require some type of a commitment from the Trumbull County Transit Board before the Trumbull County Transit board can be provided with the remaining portion of the award made to the "Niles Trumbull Transit System's (NITTS) Senior Levy Dollars For The Transportation Service For The Program Year 2010" as established by a Resolution passed on July 28, 2010, a copy of which is enclosed.

It is the understanding of our Board that the Resolution to which reference is made in the paragraph above would be amended so that the last three (3) year installment would be assigned to the statutory Trumbull County Transit Board as established by the Trumbull County Commissioners.

~~Prosecutor William Danso~~

Page 2

March 21, 2012

You may recall, the Trumbull County Commissioners established the Trumbull County Transit Board and made absolutely no provision for its funding.

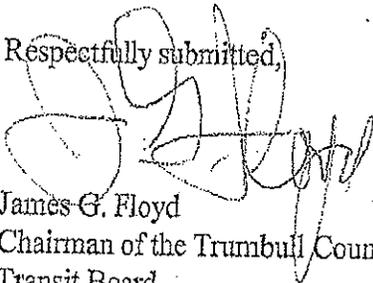
Therefore, it is the opinion of the Board that this action by amending the prior referenced Resolution to provide the final \$635,000 funding to the Trumbull County Transit Board as a statutory board is necessary for it to provide Trumbull County Transportation Services.

Also, Ms. Drawl indicates that you advised the County it is not permissible to amend and provide these senior levy monies to the Transit Board because of the Trumbull County Transit Board's failure to accept the transit responsibilities.

The Prosecutor's office's concern imputed to the County Commissioner's has not been communicated to me on behalf of the Trumbull County Transit Board. As Chairman, I will certainly address to the Transit Board those concerns you have on behalf of the County.

However, in the absence of the County's amendment and award of the \$635,000 to the Board, I would like to make the Board members aware of the situation since it will substantially change the Board's current understanding as to their responsibility as of January 1, 2012, for the Trumbull County Transit system.

Respectfully submitted,


James G. Floyd
Chairman of the Trumbull County
Transit Board

JGF/sjp

cc: Trumbull County Commissioners
Paulette Godfrey, Clerk
Trumbull County Transit Board members
Diane Drawl, CPA, Senior levy



TRUMBULL COUNTY COMMISSIONERS

160 HIGH STREET, N.W.
WARREN, OH 44481-1093
330-675-2451
fax: 330-675-2462

Commissioners
Frank S. Fuda
Paul E. Heltzel
Daniel E. Polivka

Clerk
Paulette A. Godfrey

July 28, 2010

The following action was taken by the Board of Trumbull County Commissioners on July 28, 2010, duly recorded in the Journal Volume 135, Page(s) 15284:

RE: AWARD NILES TRUMBULL TRANSIT SYSTEM (NITTS) SENIOR LEVY DOLLARS FOR TRANSPORTATION SERVICES FOR THE PROGRAM YEAR 2010

MOTION: Made by Mr. Polivka, seconded by Mr. Fuda, to award the NILES TRUMBULL TRANSIT SYSTEM (NITTS), 34 West State Street, Niles, OH 44446, \$635,000.00 of Senior Service Levy Dollars for Transportation Services for the program year 2010—*which amount shall be frozen for a three (3) year period with no additional increases allocated.* This action is being taken due to the fact that the NILES TRUMBULL TRANSIT SYSTEM (NITTS) is the only federally designated transportation agency in Trumbull County and is the only agency eligible for federal grant funds.

Yeas: Polivka, Fuda, Heltzel
Nays: None

CERTIFICATION

I, Paulette A. Godfrey, Clerk of the Board of County Commissioners, Trumbull County, Ohio, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Trumbull County Commissioners on July 28, 2010, and is duly recorded in their Journal Volume 135 Page(s) 15284.

Paulette A. Godfrey, Clerk/Interim Administrator
Board of County Commissioners

/pjvk

cc: Niles Trumbull Transit System
Senior Services Advisory Council
Commissioners' A/P Clerk
County Auditor

Fw: Trumbull County Transit Board
Commissioners to: William Danso
Sent by: Paulette Godfrey

03/22/2012 11:20 AM

----- Forwarded by Paulette Godfrey/CE/TCO on 03/22/2012 11:20 AM -----



Diane Drawl/CE/TCO

03/22/2012 10:45 AM

To Commissioners/CE/TCO@TCO

cc jfloyd@noklaw.com

Subject Re: Fw: Trumbull County Transit Board

I am thoroughly confused. In simplicity terms:

- 1) Senior Levy has/had a contract with the City of Niles/NITTS through December 31, 2012,
- 2) City of Niles announces that as of 12/31/2011, they no longer want to be the designated transportation system for the county.
- 3) Senior Levy had one more year in contract with City of Niles/NITTS totaling \$635,000 dollars
- 4) Senior Levy funds can not pay "another vendor" the \$635,000 instead of City of Niles/NITTS as a resolution is needed to change/amend the City of Niles/NITTS contract. The state auditor's office would have issue with that as we do not have a contract with Trumbull Transit Board. "How" this is done is not my duty.

At the last transportation meeting, I heard Mr. Floyd speak of the county prosecutor's office's need of paperwork before the money can be transferred. I thought I was attending the meeting because the transit board was going to ask for their first installment of the \$635,000 dollars. I thought all paperwork/resolutions/contractual obligations were finished but, much to my surprise, I find that not to be the case. I spoke to Mr. Floyd after the meeting asking him why the sudden hold up for the funds transfer and I received confusing information and I told him I would find out what the prosecutor's office needed. I talked to Bill Danso and he reported that all they need is the resolution as made by the transit board to assume the City of Niles/NITTS contract of which I then reported to Mr. Floyd.

I guess in simple words, Senior Levy funds need a contract with Trumbull Transit Board before we can pay Trumbull Transit Board. That's my only concern. It's the accountant in me. How that is done, who needs to pass a resolution, and when that is completed, is a dispute between the legal personnel/boards. I'm sorry I tried to assist. I will await direction/correspondence as to beginning the payment process of \$635,000 dollars.

Mr. Floyd, once the legal paperwork is completed, and your board wishes to request funds, I will need your board to submit to me: a copy of the Niles Transit Invoice and a request for the dollar amount with the proper name of the contractual vendor and address, on the letterhead of the contracting vendor (transit board I assume). My process is then to retrieve "ride reports" from Niles Transit System for the total of senior rides and to submit my request along with the various required documents to the county commissioner's office to begin the disbursement process. This typically is a one to two week process at the commissioner's office.

Diane M. Drawl, CPA
Trumbull County Senior Levy Administrator
2931A Youngstown Rd., SE
Warren, Ohio 44484
Phone: (330) 675-7846 Fax: (330) 675-7865

----- Forwarded by Paulette Godfrey/CE/TCO on...

03/22/2012 09:48:00 AM

From: Commissioners/CE/TCO
To: Diane Drawl/CE/TCO@TCO
Date: 03/22/2012 09:48 AM
Subject: Fw: Trumbull County Transit Board
Sent by: Paulette Godfrey

----- Forwarded by Paulette Godfrey/CE/TCO on 03/22/2012 09:48 AM -----



"James G. Floyd"
<jfloyd@noklaw.com>
03/21/2012 04:56 PM

To "Diane Drawl" <sldrawl@co.trumbull.oh.us>, "Paulette
Godfrey" <commissioners@co.trumbull.oh.us>
cc

Subject Trumbull County Transit Board

To all:

See attached letter. Thank you.

James G. Floyd, Esq.
NEWMAN, OLSON & KERR
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Youngstown, OH 44503
(330) 747-4404
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jfloyd@noklaw.com

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JAMES T. SAKER

Chief - Criminal Division
CHARLES L. MORROW

Chief - Appellate Division
LAWAYNE ANNOS

Chief - Juvenile Division
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DENNIS WATKINS

Trumbull County Prosecuting Attorney

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DAVID E. BOKER, CHIEF
MATTHEW J. BLAIR

March 22, 2012

James G. Floyd, Esq.
Newman, Olson & Kerr
11 Federal Plaza Central, Suite 1200
Youngstown, Ohio 44503

RE: Trumbull County Transit Board

Dear Attorney Floyd:

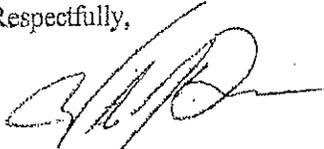
I am in receipt of your letter, dated March 21, 2012, regarding the funding of the Trumbull County Transit Board. Specifically, you seem to take issue with the process involved in transferring \$635,000.00 in Trumbull County Senior Levy funds to the Transit Board.

As I am sure you are aware, pursuant to Ohio Constitution Article XII Section 5, money collected through a tax levy may only be used on the specific object of that particular levy. In 1980 Ohio Op. Atty. Gen. No. 80-003, the Ohio Attorney General stated that not only is the money raised from a tax to be used only for the object of such tax, but also the interest on such money is similarly restricted. "Accordingly, since money placed in a voted bond retirement account is money that is required by law to be used only for the purpose for which the levy was imposed, it is my opinion that Ohio Const. art. XII, § 5 requires that any interest earned from the use of such money must also be applied to the purpose for which the levy was passed." *Id.* In the past, Niles Trumbull Transit received senior levy funds pursuant to a contract, which mandated these funds only be used for the object of this levy. Now that the Transit Board desires to receive this money, it is imperative that the Trumbull County Commissioners have the same assurance from the Transit Board.

Therefore, it has been, and continues to be, my opinion and my advice that the following simple steps must be taken to ensure compliance with the Ohio Constitution and to satisfy future audits. First, the Transit Board must pass a resolution assuming the existing contract between Trumbull County and Niles Transit, and agreeing to use the senior levy money only for the object of the levy. Second, the Transit Board must send that resolution to the Board of Commissioners. Third, and finally, the Board of Commissioners can place an item on their agenda to consider the approval of this money transfer.

Without the above resolution, adopted at a public meeting pursuant to R.C. 121.22, I cannot advise the Board of Commissioners to transfer \$635,000 in public money without adequate legal assurance.

Respectfully,

A handwritten signature in black ink, appearing to read 'W. J. Danso', written over a horizontal line.

William J. Danso
Assistant Prosecuting Attorney

CC: Trumbull County Commissioners
Diane Drawl, CPA, Senior Levy Administrator
Mark Hess, City of Niles



"Thomas, Terry"
<tthomas@com-bus.com>
03/23/2012 10:17 AM

To: "ceterlec@co.trumbull.oh.us" <ceterlec@co.trumbull.oh.us>
cc
bcc
Subject: Fw: Trum Co Transit

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Thomas, Terry
To: 'cegodfre@co.trumbull.oh.us'
CC: 'mhess@thecityofniles.com'; 'jffloyd@noklaw.com'; Binaut, Tom; Richley, Joe; 'mayor@thecityofniles.com'
Sent: Fri Mar 23 07:57:32 2012
Subject: Trum Co Transit

Mr. Fuda,

Mark Hess told me that NITTS never had to send a letter in the past 6 years to the Commissioners to receive the \$635,000 from the Senior Services fund. He said the Commissioner's Official Resolution was all that was needed in the past. Mark said he does not know why Atty. Danso is saying that such a letter is necessary now.

In speaking with Atty. Jim Floyd yesterday, he was unaware such a letter was necessary and has already sent a letter to Atty Danso qualifying that the Transit Board is legally eligible to receive Senior Levy funds.

Thank you for checking into this. Please let me know when the funds will be released.

Thank you.

Terry Thomas

Sent from my BlackBerry Wireless Handheld

Fw: Amendment to Award for NITTS funds
Commissioners to: William Danso
Sent by: Paulette Godfrey

03/26/2012 01:09 PM

----- Forwarded by Paulette Godfrey/CE/TCO on 03/26/2012 01:09 PM -----



"James G. Floyd"
<jfloyd@noklaw.com>
03/23/2012 04:12 PM

To <commissioners@co.trumbull.oh.us>, "Diane Drawl"
<sdrawl@co.trumbull.oh.us>, <Pheltzel@aol.com>
cc

Subject Amendment to Award for NITTS funds

Gentlemen:

This is the type of amendment of the Resolution I suggest to your prior action awarding the Senior Service Levy monies as a contribution for transportation services in Trumbull County.

I have indicated there cannot be any restriction on these funds other than the fact that it is a contribution by the Trumbull County Commissioners to provide transportation services for Trumbull County. If the funds are restricted they cannot be utilized as a local match-contribution for the federal grant.

Respectfully submitted,

James G. Floyd, Esq.
NEWMAN, OLSON & KERR
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jfloyd@noklaw.com

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TCTB Amendment of Award for NITTS.pdf

TRUMBULL COUNTY COMMISSIONERS

AMENDMENT TO AWARD NILES
TRUMBULL TRANSIT SYSTEM (NITTS) SENIOR
LEVY DOLLARS FOR TRANSPORTATION SERVICES
FOR THE PROGRAM YEAR 2010 ENTERED BY THE
TRUMBULL COUNTY COMMISSIONERS ON
JULY 28, 2010 RECORDED IN ITS JOURNAL
VOLUME 135, PAGE(S) 15284

AMENDMENT TO THE BOARD'S RESOLUTION
ENTERED JULY 28, 2010 AWARD NILES TRUMBULL
TRANSIT SYSTEM (NITTS) SENIOR LEVY DOLLARS
FOR TRANSPORTATION SERVICES FOR THE
PROGRAM YEAR 2010

The Trumbull County Commissioners hereby amend the prior action by which the Niles Trumbull Transit System (NITTS), 34 West State Street, Niles, OH 44446, [was] awarded \$635,000.00 of Senior Service Levy Dollars for Transportation Services for the program year 2010 - *"which amount shall be frozen for a three (3) year period with no additional increases allocated"*.

By an action taken by the Trumbull County Commissioners on the _____ day of August, 2010, it established pursuant to Ohio Revised Code §306.01 et seq. a statutory Transit Board, designed as the Trumbull County Transit Board. The Trumbull County Transit Board was formed for the specific purpose of assuming the responsibility for transportation services for Trumbull County, Ohio, which as of the date establishing the Trumbull County Transit Board was being provided by the Niles Trumbull Transit System (NITTS).

THEREFORE, by the Board establishing the statutory Trumbull County Transit Board it amends the award provided to Niles Trumbull

Transit System (NITTS) as set forth in the July 28, 2010, action as follows:

BE IT RESOLVED that the Board of the Trumbull County Commissioners does hereby amend its July 28, 2010, action by which it awarded the NILES TRUMBULL TRANSIT SYSTEM (NITTS) for the program year 2010, \$635,000.00 for three (3) years by awarding to the statutory Trumbull Transit Board the last yearly installment of \$635,000.00 of Senior Service Levy Dollars as a contribution for ^{senior} transportation services for program year 2012 to the Trumbull County Transit Board, 160 High Street, Warren, OH 44481.

FURTHER, to this Resolution the statutory Trumbull County Transit Board is in the process of completing its application and designation as a recipient for the Federal Transit Administration grant for which it has received an initial designation as a grant recipient.

NEWMAN, OLSON & KERR

A Legal Professional Corporation

First National Tower, 12th Floor
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JOHN M. NEWMAN
(1915-2007)
HERBERT L. KERR
(1907-1989)

COPY
RETTED
DONALD P. HERRIOTT

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JAMES G. FLOYD
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WILLIAM J. KISH

* OSBA Board Certified Specialist in
Estate Planning, Trust & Probate Law

April 23, 2012

Trumbull County Commissioners
Daniel E. Polivka, President
Paul E. Heltzel
Frank S. Fuda
160 High Street NW, 5th Floor
Warren, OH 44481

Ms. Diane Drawl
Trumbull County Senior Levy Admin.
2931 Youngstown Road S.E.
Warren, OH 44484

City of Niles Engineering Dept.
Mr. Mark Hess
34 West State Street
Niles, OH 44446

RE: Trumbull County Commissioner's 2010 grant of \$635,000.00 per year (for three (3) years) from the Senior Levy funds to be paid to the Niles Trumbull Transit System (NITTS).

Lady and Gentlemen:

On behalf of the Trumbull County Transit Board ("TCTB") established by the Trumbull County Commissioners I respectfully advise and forward to you a Resolution the Board passed at its April 20th meeting specifically directed to all three addressees by which the TCTB is requesting an acknowledgment that the last \$635,000.00 from the Senior Levy funds be directed to the TCTB.

The TCTB believes it has complied with all of the requirements set forth by the Trumbull County Prosecutor's office to be the recipient for the last three (3) year payment of \$635,000.00.

The TCTB cannot function without receiving that contribution from the Senior Levy. The TCTB has processed with the Federal Transit Administration utilizing Mark Hess as its grant writer its application for a Federal Transit reimbursement grant which is based upon receiving the \$635,000.00 as the local match required for the grant.

COPY

Trumbull County Commissioners

Ms. Diane Drawl

Mr. Mark Hess

Page 2

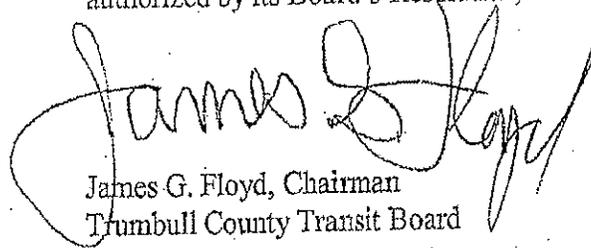
April 23, 2012

The TCTB Resolution clearly states, which was never before in any formal document or writing, that in consideration of the grant from the Trumbull County Commissioners from the Senior Levy funds of \$635,000.00 that the now TCTB will provide \$2.00 fares for seniors - seniors being defined as those individuals over the age of 60.

Therefore, the TCTB would like an acknowledgment directed to me, as its Chairman, no later than May 15, 2012, acknowledging the contribution of \$635,000.00.

In the event there is not a positive response to the award of \$635,000.00 to the TCTB then the TCTB will be presented with a very difficult situation as to its existence and in particular to its application for the Federal Transit Administration grant.

Respectfully submitted after being so
authorized by its Board's Resolution,



James G. Floyd, Chairman
Trumbull County Transit Board

JGF/sjp

cc: Trumbull County Prosecutor's office

First Assistant
CHRISTOPHER D. BECKER

Chief - Civil Division
JAMES T. SAKER

Chief - Criminal Division
CHARLES L. MORROW

Chief - Appellate Division
LUWAYNE ANNOS

Chief - Juvenile Division
STANLEY A. ELKINS

Investigators
GARY S. HETZEL
ROY ANNE RUDOLPH



DENNIS WATKINS

Trumbull County Prosecuting Attorney

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Child Assault Division
DIANE L. BARBER, CHIEF
GABRIEL M. WILDMAN

Child Support Division
DAVID E. BOKER, CHIEF
MATTHEW J. BLAIR

April 25, 2012

James G. Floyd, Esq.
Newman, Olson & Kerr
11 Federal Plaza Central, Suite 1200
Youngstown, Ohio 44503

RE: Trumbull County Transit Board

Dear Chairman Floyd:

During yesterday's meeting, you indicated that you were not aware of any contract between the Trumbull County Commissioners and City of Niles. You have been led to believe that senior levy money was given to the City of Niles with a simple resolution of the Board of Commissioners. I am confused as to why the City of Niles would not forward a copy of this contract to you as part of the ongoing transportation transition, particularly when such a large sum of money is involved.

In order that you might have an opportunity to review the contract that I have referenced in previously letters, I have enclosed a copy of the Project Funding Agreement, originally executed in 2010, between the Trumbull County Commissioners and the City of Niles. This agreement outlined the permissible uses of the senior levy funds. I hope you and the Transit Board find this information helpful.

Respectfully,

A handwritten signature in black ink, appearing to read "W. Danso".

William J. Danso
Assistant Prosecuting Attorney



TRUMBULL COUNTY COMMISSIONERS

160 HIGH STREET, N.W.
WARREN, OH 44481-1093
330-675-2451
fax: 330-675-2462

Commissioners
Frank S. Fuda
Paul E. Heltzel
Daniel E. Polivka

Clerk
Paulette A. Godfrey

July 28, 2010

The following action was taken by the Board of Trumbull County Commissioners on July 28, 2010, duly recorded in the Journal Volume 135, Page(s) 15284:

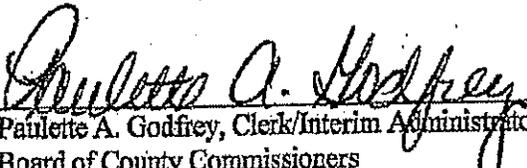
**RE: AWARD NILES TRUMBULL TRANSIT
SYSTEM (NITTS) SENIOR LEVY DOLLARS
FOR TRANSPORTATION SERVICES FOR
THE PROGRAM YEAR 2010**

MOTION: Made by Mr. Polivka, seconded by Mr. Fuda, to award the NILES TRUMBULL TRANSIT SYSTEM (NITTS), 34 West State Street, Niles, OH 44446, \$635,000.00 of Senior Service Levy Dollars for Transportation Services for the program year 2010—*which amount shall be frozen for a three (3) year period with no additional increases allocated.* This action is being taken due to the fact that the NILES TRUMBULL TRANSIT SYSTEM (NITTS) is the only federally designated transportation agency in Trumbull County and is the only agency eligible for federal grant funds.

Yeas: Polivka, Fuda, Heltzel
Nays: None

CERTIFICATION

I, Paulette A. Godfrey, Clerk of the Board of County Commissioners, Trumbull County, Ohio, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Trumbull County Commissioners on July 28, 2010, and is duly recorded in their Journal Volume 135 Page(s) 15284.


Paulette A. Godfrey, Clerk/Interim Administrator
Board of County Commissioners

/pjk

cc: Niles Trumbull Transit System
Senior Services Advisory Council
Commissioners' A/P Clerk
County Auditor

PROJECT FUNDING AGREEMENT

This **PROJECT FUNDING AGREEMENT** ("Agreement"), made this 28th day of July 2010, is by and between the Board of County Commissioners of Trumbull County, Ohio (hereinafter called "Grantor") and the City of Niles, Ohio (hereinafter referred to as "Grantee").

- I. Grantee agrees, in accordance with current ridership requirements of its' public transportation system Niles Trumbull Transit System (hereinafter "NiTTS") and the Federal Transit Administration, to provide persons sixty years of age or older living in Trumbull County with demand-response curb-to-curb transportation service(s) for any trip purpose during NiTTS's normal hours of operation at a maximum rider cost not to exceed \$2.00 per one-way trip per senior, in cooperation with Trumbull County, the State of Ohio, and the United States of America, and in-conformity with the programs instituted and funded by them for the benefit of older Americans.
- II. Grantee had submitted its proposal dated April 10, 2007 (the "Proposal") to provide curb to curb transportation service(s), which programs were reviewed and approved by the Grantor, and an agreement dated April 27, 2007 was entered into by Grantor and Grantee, with additional clarifications per a Memorandum of Understanding dated December 10, 2007 in which Grantor and Grantee mutually agreed for the periods through December 2009. For the 2010 Calendar year, the Grantee submits the following updated figures and information:
 - A. Grantee and Grantor understand that award of Trumbull County Senior Levy funds (hereinafter, the "Grant") under the Agreement shall be used by Grantee to leverage the total available \$565,148 to Grantee in Federal Transit Administration Section 5307 grant funding for 2010 to cover that portion of the program cost not funded by the Grant, utilizing the \$635,000 allocated to the Grantee by the Commissioners as the required match to such Federal Transit Administration funding, and thus assure that persons sixty years of age or older in Trumbull County are provided with demand response curb to curb public transportation service(s) at a maximum rider cost of \$2.00 per one-way trip.
 - B. Grantee shall receive the maximum amount, \$635,000 Grant, annually through 2012 without an increase. Receipt of Senior Levy funds by Grantee does not constitute "earning" of such funds. Grantee shall present monthly reports to the Grantor demonstrating the number of one-way trips provided to riders sixty (60) years of age and older. Grantee shall further include all management, administrative, trip coordination, customer relations and marketing activities and efforts necessary to providing the service, including, but not limited to, identifying and qualifying riders as sixty and over and as Trumbull County residents, and other activities as approved by Grantor. Grantee shall establish a target goal for the number of monthly trips provided to seniors, reviewed and adjusted if needed.
- III. A. The Grantor, pursuant to provisions of the Older Americans Act, as the same has been or may be amended from time to time, and subject to receipt of funds from

Trumbull County provide funding (the "Grant") to the Grantee for the Project upon the terms and conditions as set forth herein, Grantee to utilize the Grant to match and drawdown Federal Transit Administration funding, calculated as follows:

Computation of Grant

| | |
|----------------------------|---------------------|
| Senior Levy Funds | \$635,000.00 |
| Title III-B | 0.00 |
| Title III-D | 0.00 |
| Title III-F | 0.00 |
| Local Cash | 0.00 |
| Local In-Kind | 0.00 |
| Program Income/Cost Share | \$217,721.00 |
| Block Grant AIL | 0.00 |
| Block Grant/Home Repair | 0.00 |
| Block Grant/Transportation | 0.00 |
| Other State | 0.00 |
| Other Resources | 0.00 |
| Other Federal | <u>\$565,148.00</u> |
| Total | \$1,417,869.00 |

Grantee is a designated recipient of Federal Transit Administration Section 5307 transit funding assistance. Grantee's Proposal demonstrated that it shall leverage receipt of \$565,148 in additional Federal Transit Administration Section 5307 grant funding to cover that portion of the program cost not funded by the Grant by utilizing the \$635,000 allocated to the Grantee by the Commissioners as the required match to such Federal Transit Administration funding (60% Local, 40% Federal), and thus assure that persons sixty years of age or older in Trumbull County are provided with demand response curb to curb transportation service(s) at a maximum rider cost of \$2.00 per one-way trip.

B. The Grant, and all parts thereof, shall be expended in conformity with Grantee's submitted Assurance of Compliance, Form AOA-441, and related documents

outlining the program proposal, the performance and execution which is the consideration for the grant. The program shall be implemented according to the procedures and guidelines as stated in the Older Americans Act and its comprehensive amendments of 1978 and subsequent amendments thereto, and further in conformity with and according to, such other applicable laws, rules, regulations, policies, procedures, food service specifications, and directive enacted or promulgated by the United States, Trumbull County, or Grantor, all of which shall be considered to be incorporated herein, and made a part thereof. Notwithstanding the foregoing, no term or condition of this Agreement shall require Grantee to fail to comply with 49 USC 5307, as amended, and other applicable Federal Transit Administration requirements, or jeopardize grantee's ability to receive Federal Transit assistance for which Grantee is otherwise qualified to receive. Should Grantee become aware of any such situation, Grantee shall notify Grantor and the Commissioners in writing of the required amendment to our modification of this Agreement assuring Grantee's continued compliance with such Federal transit assistance requirements, and Grantor shall work cooperatively with Grantee to resolve the matter to assure Grantee's compliance with Federal Transit Administration requirements.

- IV. During the Program Period, Grantee shall provide the following services and activities.
- A. Complete Individualized Transportation Plans for medically fragile passengers. In such cases, NiTTS trip schedulers shall contact riders identified to NiTTS as being so to remind them of scheduled rides for medical appointments. NiTTS shall confirm whether trip reservations are needed by the rider based on information given to NiTTS by the rider or other party as to previously arranged or regular ongoing appointments that such a passenger may have require transportation.
 - B. Serve as Mobility Manager for senior transportation services funded by the Grantor in Trumbull County. Mobility Manager activities may include coordinating transportation services, supporting local partnerships that coordinate transportation services, providing travel training and trip planning activities for customers, and developing and operating a traveler call centers to co-ordinate travel information, manage eligibility requirements, and arrange customer travel. NiTTS shall identify the senior transportation services provider most appropriate to transport a rider based on the rider's particular needs and destinations and the scope of a grantee's program as to the nature of the transportation services they provide. This includes acting as the Call Center for trip reservations by riders and coordinating with other grantees of senior levy funding as to which grantee provides the trip, and documenting and tracking of that coordination activity so that the grantee providing the trip is identified.
 - C. Displaying on NiTTS vehicles a sign developed by the Trumbull Senior Services Levy Advisory Council or developed by NiTTS and approved by the Trumbull Senior Services Levy Advisory Council for placement on NiTTS vehicles that transport seniors. These signs shall state that NiTTS is funded in part by the Senior Services Levy.

- D. Develop a Marketing Program targeted to seniors to raise awareness of the service provided by NITTS to seniors and increase the number of seniors riding NITTS to reach targeted goals. Grantee shall produce and distribute NITTS service information to publications and organization identified by the Trumbull Senior Services Levy Advisory Council and the Grantor.
- E. NITTS service (curb to curb demand response) will not be sought by Grantor through use of a Request for Proposal. Grantor shall seek other senior transportation services (limited out-of-county, door to door/through the door requiring assistance) through the use of a Request for Proposal (RFP). As NITTS is to serve as Mobility Manager, Grantee shall be included in the development of the RFP and review of proposals.

V. IT IS FURTHER UNDERSTOOD AND AGREED BY THE GRANTEE THAT:

- A. Definitions, as used in this Agreement, the following capitalized terms shall have the meaning set forth below

"EFFECTIVE DATE" means January 1, 2010

"PROGRAM PERIOD" means the period commencing on the Effective Date and ending on the Termination Date.

"NON COUNTY SHARE" means, for any Program, the portion of the total Program budget which must be funded by the Grantee.

"PROJECT INCOME" means income earned by the Grantee from county activities.

"TERMINATION DATE" means December 31, 2010.

- B. Grantee shall, at all times, comply fully with the requirements of Section 504 of the Rehabilitation Act of 1973, as the same shall be amended from time to time, both as to employment of and services to the handicapped.
- C. All funds received by Grantee, including the Grant, Project income and Grantee's Share are to be expended by Grantee in accordance with the Proposal and amendments therein, and with all applicable laws, rules, regulations, policies and procedures of the United States, the Administration on Aging in the U.S. Department of Health and Human Services, Trumbull County, and Grantor, all of which are incorporated herein by reference and made a part hereof. All Project Income, grant award funds, receipts from other sources, including the in-kind resources, must be accounted for and used or expended in compliance with all federal, state, county, and Grantor guidelines.
- D. Any proposed changes or modifications in the Proposal as approved, or the Approved Program Budget for each Program, including, but not limited to, deletions, transfers, or additions, shall be submitted in writing by Grantee to Grantor, C/O Fiscal Officer. Upon notification by Grantor, in writing, of its approval of such changes or modifications, in the Proposal as approved, the

same shall be deemed incorporated in and become part of this Agreement. Grantor may, in its sole discretion, transfer funds between sources for each Grant. In the event of any discrepancy between the terms, conditions, and provisions in the Proposal and the terms, conditions, and provisions in this Agreement, it is understood and agreed that the terms, conditions, and provisions contained in the Agreement shall control.

- E. No term, covenant or condition of this Agreement shall be waived except in a writing signed by a duly authorized representative of Grantor, and such waiver shall not affect Grantee's obligation to subsequently comply with said term, covenant, or condition, or any other term, covenant or condition of this Agreement. Any forbearance or indulgences by grantor in any respect whatsoever, shall not constitute a waiver of any other term, covenant, or condition to be performed by Grantee. Grantor shall be entitled to invoke any remedy available to it under this agreement, or by law, despite any such forbearance or indulgence.
- F. Grantee shall submit to Grantor and/or Trumbull County complete and accurate reports, records, documents, information and data pertaining to fiscal matters, Program objectives and activities which each may request. All such documents, information, data, reports and records shall be filed with Grantor and/or Trumbull County on or before their due dates. Grantee shall also file with Grantor a Monthly Fiscal Report. The Monthly Fiscal Report for each calendar month of the Project Period shall be submitted on or before the fifth (5th) day of the following month.
- G. The Grant awarded herein may be terminated, in whole or in part, at any time for violation by Grantee of any term or requirements of this Agreement, including, but not limited to, fraud, non-compliance with reporting requirements, or unauthorized deviation from the terms of the Proposal.
- H. Grantee shall accomplish the intent and purpose of this Agreement and provide the service hereunder through its current contractor for operating public transit service, Community Bus Services, Inc. Grantee may enter into any new or additional third-party contracts to accomplish the intent and purpose of this Agreement only after the proposal third-party contract has been approved by Grantor in writing. After approval, Grantor shall be furnished a copy of any such third-party contract within ten (10) days of execution of such contract and such contract shall be the same as that approved by Grantor.
- I. Grantor shall monitor Grantee's program, its objectives and implementation, all in accordance with the guidelines and directives of the Ohio Department of Aging and in conformity with federal regulations and guidelines established under the Older Americans Act, as amended. To help facilitate such monitoring, Grantee must enter client data into and otherwise use the Social Agency Management System (SAMS) for tracking and other informational purposes. Further, as part of its monitoring activities, the Grantor will provide procedures to correct non-compliance with this Agreement or any applicable law, rule, or regulation with the intent of ensuring that the Program accomplishes the goals set forth and as incorporated in the Area Plan developed by the Grantor. The Grantee shall comply with such corrective measures that may be required and/or directed by Grantor to fully and completely carry out the intent and purpose of the Older Americans Act, as amended and regulations

- and provisions issued by the Administration on Aging; Department of Health and Human Services, to implement Title III of the Older Americans Act, as amended. Failure to comply will result in termination of this Agreement.
- J. Grant Funds shall be forwarded in their entirety to the Grantee from Trumbull County by means of a check payable to the Grantee in the full amount of the Grant.
- K. Grantee assumes sole responsibility for any and all liability which may occur in connection with any of the services, operations, or activities which it performs or provides in connection with the Programs, and further agrees to defend, indemnify and to save harmless Grantor, Trumbull County and their respective trustees, officers, directors, employees and agents, and all of their respective successors and assigns, from any and all claims, demands, damages, including reasonable attorney fees, causes of action or liability which may, directly or indirectly, arise out of or occur in connection with such services, operations, or activities performed by or on behalf of Grantee, performed by or on behalf of grantee including, but not limited to, the services, operations or activities set forth in the Proposal.
- L. The parties hereto mutually agree not to discriminate against any recipient, participant or potential beneficiary of the program because of age, race, color, religion, sex, national origin or physical handicap. Grantee shall develop and implement an affirmative action plan to ensure that applicants are employed, and the employees are treated, during employment, without regard to age, race, color, religion, sex, national origin or physical handicap and further agree to conform to all existing and forthcoming enactments of laws governing fair employment practices, wages and employee benefits. In addition, the grantee agrees to comply with Senate Bill 160, the Criminal Background Check law.
- M. No officer, trustee, employee, agent or representative of Grantor or of Grantee, and no other public official of the governing body of the locality or localities where the Project is being carried out, or who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Project, shall participate in any decision relating to the Agreement which affects his or her personal interest, or the interest of any corporations, partnership or association in which he or she is directly or indirectly interested, nor shall any such person have any personal or pecuniary interest, directly or indirectly, in the Agreement of any of the proceeds or grants issued pursuant to this Agreement.
- N. At any time during normal business hours, Grantor and/or Trumbull County, or any of their duly designated representatives, or the General Accounting Offices of the United States, or any of the designated representatives, may audit and/or examine the books, records, accounts, and reports of the Grantee Excerpts of transcriptions may be taken of such books, accounts, reports, including but not limited to records, contracts, invoices, materials, property, payrolls, records of personnel, condition of employment and other data relating to any or all matters covered by the Agreement or arising therefrom. In any event, an independent audit shall be conducted for each grant period in accordance with Trumbull County and Grantor audit procedures. Receipt of such audit report by Grantor is a condition of continuation funding.

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- O. It is mutually agreed that any property, real, personal, or mixed, tangible or intangible, or however acquired as a result of any county dollars, in whole or in part, and used directly or indirectly in the operation of this Project or related federal, state, regional or local projects shall be subject to continuing inventory control by Grantee and public property management procedures during its existence, as authorized by federal, state, and county statutes, or by the rules and regulations of the respective agencies of each, touching and concerning the management of public property; such property shall be subject to continuing indefeasible equitable interest, right of title, vested in the initial source or agency, its successors and assigns. Any property of any kind used in the direct operation of this Project that is acquired by Grantee through purchase or lease using Grant funds shall be subject to continuing inventory control by Grantee, compliant with Federal Transit Administration requirements. Any interest in such property is subject to any interest that the Federal Transit Administration may have in such property if Federal transit assistance is expended by Grantee in its acquisition.
- P. Either of the parties shall have the right to terminate the Agreement in whole or in part, at any time prior to the Termination Date, by giving the other party sixty (60) days written notice of such desire to terminate. An independent audit (the Audit) shall be conducted by the Trumbull County Auditor's Office or the Ohio State Auditor's Office at the termination of the Grant, and as a condition of funding for future Program Periods. Upon termination of this Agreement, all finished and unfinished reports required to be prepared by Grantee shall, at the option and direction of Grantor, be delivered to it. Grantee shall not be relieved of liability to the Grantor for damages or obligations sustained by it by virtue of any breach of this Agreement by Grantee as the result of the termination of this Agreement. Grantor may, at its sole discretion at any time during the Program Period, withhold any payments due to Grantee hereunder for the purpose of insuring complete and timely satisfaction of Grantee's obligations hereunder, and to insure sufficient funds are available to fulfill Grantee's obligation hereunder until such time as the exact amount due Grantor from Grantee is determined and paid by Grantee.
- Q. The Audit will be performed by the Ohio State Auditor's Office as part of its normal annual auditing of Grantee for which Grantee retains the State Auditor's services, and shall be performed in accordance with the General Accounting Office, circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations" if applicable. If not applicable, Grantee agrees to comply with the audit procedures established by Trumbull County and Grantor.
- R. It is mutually agreed by the parties hereto that this Agreement may be modified, revised or amended only by a written Agreement signed by both the Grantor and Grantee. Such modification, revisions, or amendment shall be incorporated into this Agreement by reference and made a part hereof.
- S. Grantee agrees to comply with Grantor and Trumbull County conditions of participation, service specifications, and any documentation requirements.
- T. At any time during normal business hours, Grantor and/or Trumbull County, or designated representatives may review provider records to determine compliance with conditions of participation and/or service requirements. If the Grantee fails to maintain appropriate records as determined by Grantor