

EXPERIENCE  
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**MEMORANDUM**

TO: Lake County Budget Commission,  
Charles E. Coulson, Lake County Prosecutor  
Christopher A. Galloway, Lake County Auditor  
Michael Zuren, Lake County Treasurer

FROM: Stephen L. Byron,  
Law Director  
Villages of Kirtland Hills and Waite Hill

RE: Local Government Fund Distribution

DATE: August 7, 2023

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**INTRODUCTION**

The Villages of Kirtland Hills and Waite Hill want to put their joint legal position in front of the Lake County Budget Commission regarding the proposed use of the statutory formula, set forth in R.C. 5747.51, as opposed to the agreed-upon “Alternate Formula” of allocation that is authorized pursuant to R.C. 5747.53, and has been used in Lake County since 1982.

As law director for both villages, I am tasked with researching, interpreting, and applying the law to various fact patterns, then advising my clients of my opinion. I perform a role similar to the role the county prosecutor plays for county officials. I am also authorized to represent my communities in court, when necessary, and before administrative bodies such as the Lake County Budget Commission (“Commission”).

While I greatly respect Prosecutor Coulson’s legal skills, which are outshone only by his honesty, integrity, and sense of justice, I must respectfully disagree with the opinion that his office has provided to this Commission (the “Opinion”). The points of our disagreement are:

1. Whether the Alternate Formula, adopted by the Commission in 1982, must still be used by the Commission in 2023; and
2. What occurred in 2012, and what the legal effect of those events was; and

3. Whether the absence of any action to properly invoke the “Sunset Clause” of the Alternate Formula during the current “five-year period”, precludes the Commission from commencing a process for changing the Alternate Formula for the 2024 budget year.

The answers to these questions are as follows:

1. The Alternate Formula is still valid, and must be used by the Commission, because no action has been taken pursuant to R.C. 5747.53 that “revised, amended or repealed” the Alternate Formula.

2. A committee met in 2012, in accordance with the Sunset Clause (See “Exhibit A”, “Exhibit B”, and “Exhibit C” appended to this memorandum). No action was taken under R.C. Section 5747.53 to revise, amend, or abolish the Alternate Formula, and no appeal was taken from the Budget Commission’s action in 2012. The absence of any appeal terminated the 2012 process and eliminated any issue of consent being withdrawn for the budget years 2013-2017.

3. Neither the county commissioners, nor the largest city, nor 50% of the remaining participants in the local government fund vested this Commission with the authority to revisit the Alternate Formula by timely taking an appropriate action in 2022. Consequently, this Commission is bound by the Alternate Formula and R.C. 5747.53. The Commission must apply the Alternate Formula in budget years 2024, 2025, 2026 and 2027. The earliest this issue may be revisited is between 1/1/2027 and 8/1/2027, for budget year 2028.

### THE SUNSET CLAUSE

The 1982 action which enacted the Alternate Formula had a “Sunset Clause” in it. The Sunset Clause provides:

Sunset Clause: The alternate formula shall continue for successive periods of five years unless either the County, or the largest city, or 50% of the remaining participants by motion of their legislative bodies prior to January 31 of each fifth year of distribution, request that the alternative formula be amended or abolished. When such action is certified to the Budget Commission, the Budget Commission shall appoint a committee to recommend an alternative formula to be adopted by the same procedure as specified in present Section 5747.53 R.C. If approval of an amended alternative formula is not possible, the provisions of present Section 5747.53 shall apply to the allocation and distribution of the Local Government Fund.” Lake County Board of Commissioners’ Resolution Adopting the Alternate Local Government Fund Formula for Lake County (Jul. 6, 1982).

This provision allows Lake County, the city of Mentor, or 50% of the remaining participants in the local government fund to trigger a formal reconsideration of the Alternate

Formula prior to January 31 of every fifth year (e.g., 1987, 1992, 1997, 2002, etc.). This limits the authority of the Commission to revisit the Alternate Formula except every fifth year.

If the review of the Alternate Formula is properly triggered, the Commission “shall appoint a committee to recommend an alternate formula to be adopted by the same procedure as specified in present Section 5747.53.” This language is clear that if there is going to be a replacement of the Alternate Formula that was adopted in 1982, there would need to be approval enacted as required by R.C. 5747.53 (i.e., by the county commissioners, the largest city and 50% of the remaining participants).

The Sunset Clause also provides that “If approval of an amended alternative formula is not possible, the provisions of the present Section 5747.53 R.C. shall apply to the allocation of the and distribution of the Local Government Fund.”

The Opinion takes the position that there is a “typographical error” in the Sunset Clause, and that R.C. 5747.51 was intended. **It is respectfully suggested that this is a mistaken interpretation.** While the sentence is not as clear as it could have been, the sentence incorporates R.C. 5747.53 to provide that the Alternate Formula will remain in effect unless it is “revised, amended or repealed \*\*\*”. This is precisely what is stated in R.C. 5747.53(B), the relevant portion of which states:

Any alternative method of apportionment adopted and approved under this division **may be revised, amended, or repealed in the same manner as it may be adopted and approved.** If an alternative method of apportionment adopted and approved under this division is repealed, the undivided local government fund of the county shall be apportioned among the subdivisions eligible to participate in the fund, commencing in the ensuing calendar year, under the apportionment provided in section 5747.52 of the Revised Code, (Emphasis added.)

In order to revise, amend or repeal the alternative method, pursuant to statute, there must be consent of the county commissioners, the largest municipality in the county and 50% of the remaining participants in the local government. That is “the same manner” by which such alternate method was approved. This reflects the legislature’s strong preference that an agreed alternative method must be used, once it has been enacted. Given the amount of litigation that previously occurred, when the statutory method was used, the strong support of an agreed alternative method is understandable.

This provision of the statute also makes clear that only if an alternative method is **repealed** will the statutory formula be applied. There is no authority to revert to the statutory method if the alternative method is not “repealed in the same manner as it may be adopted and approved.”

There is also no statutory provision that permits the county commissioners, the largest city or 50% of the remaining political subdivisions to terminate, unilaterally, an alternative method, once it has been adopted.

## 2012

In 2012, the Lake County Commissioners invoked their authority to revisit the Alternate Formula, pursuant to the Sunset Clause. The resolution requested that Mentor and the municipalities in Lake County revisit the Alternate Formula and replace it with another formula. The 2012 resolution also purported to unilaterally abolish the Alternate Formula, but did not cite any statutory authority by which county commissioners are vested with authority to take such unilateral action.

The Opinion identifies a gap in the Budget Commission's records and states it is unknown whether the Budget Commission formed a committee ("Committee"), and whether such Committee took any action. My clients are able to fill that knowledge gap. In 2012, Lake County, the City of Mentor, and 50% of the political subdivisions **did NOT** agree to "revise, amend or repeal" the Alternate Formula. Consequently, pursuant to R.C. 5747.53, the Alternate Formula remains binding upon this Commission.

Attached to this memorandum are records maintained by the Village of Waite Hill in the ordinary course of business. These records are:

A. Correspondence from then Lake County Auditor Ed Zupancic to Mayor Robert A. Ranallo of the Village of Waite Hill calling a meeting of a committee ("Committee") to study the Alternate Formula and requesting that a representative of the political subdivision be authorized to attend such Committee meeting ("Exhibit A"); and

B. Correspondence from then Lake County Auditor Ed Zupancic to Mayor Robert A. Ranallo of the Village of Waite Hill notifying the Mayor that the Commission had received notice from every political subdivision that representatives had been duly appointed to the Committee. The notice also set the first meeting of the Committee for April 24, 2012, at 2:00 p.m. ("Exhibit B"); and

C. Correspondence from the Alternate Local Government Fund Committee to the Lake County Budget Commission notifying the Budget Commission that the Committee voted not to change the Alternate Formula. The minutes of the meeting and the attendance sheet were also transmitted ("Exhibit C").

What happened after the Budget Commission received the Committee's report? Pursuant to R.C. 5747.53 and the Sunset Clause, the Alternate Formula remained in effect because it had not been "revised, amended or repealed in the same manner" as it had been approved.

There was no appeal of the Budget Commission's decision where the Opinion's creative argument that there was a "typo" in the Sunset Clause might have been litigated. There was no appeal of the Budget Commission's decision where the Opinion's argument that the Lake County Commissioner's unilateral withdrawal of consent was sufficient, under R.C. 5747.53, to repeal the Alternate Formula. Thus, pursuant to state statute and the Sunset Clause, the Alternate Formula was to remain in effect for the next five-year period (2013-2017). In the absence of action pursuant to R.C. 5747.53, the Alternate Formula remains in effect today.

### 2023

We are currently in the first year of current five-year period that the Alternate Formula may be in effect without further study. No political subdivision took any action in 2022 such that the Sunset Clause was invoked last year. Had that happened, the Commission would have had the authority to form another committee to study the issue of revising, amending, or repealing the Alternate Formula. The only authority this Commission has in 2023, pursuant to R.C. 5747.53 and the terms of the Alternate Formula, is to apply the Alternate Formula for fiscal year 2024. A failure to do so would give rise to an appeal to the Board of Tax Appeals pursuant to R.C. 5747.53(G).

As the Alternate Formula has not been repealed pursuant to R.C. 5747.53, this Commission has no authority to apply the statutory formula contained in R.C. 5747.52, pursuant to the process identified in R.C. 5747.51.

### CONCLUSION

The Budget Commission is respectfully requested to comply with R.C. 5747.53 and apply the 1982 Alternate Formula for fiscal year 2024, then continue to apply the Alternate Formula until such time when a valid request to amend or abolish said Formula is made in compliance with the Sunset Clause of the 1982 Agreement and said Formula is subsequently, legally revised, amended, or repealed in the same manner as it was enacted.