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**OPINION**

**To:** John R. Hamercheck, President, Lake County Board of Commissioners  
**CC:** John Plecnik, Richard Regovich, Christopher Galloway, Michael Zuren  
**From:** Charles E. Coulson, Prosecuting Attorney  
**Re:** Local Government Fund for Lake County  
**Date:** July 24, 2023

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You have requested an opinion questioning whether or not the apportionment of local government funds pursuant to the alternative method as originally adopted in 1982 is proper. Specifically, you ask:

Should the Budget Commission continue to apply the alternative method of apportionment of the local government fund after the Board of County Commissioners adopted the January 26, 2012 resolution requesting that the alternate formula approved in 1982 for the distribution of local government funds be abolished?

**I. ANSWER**

No. The January 26, 2012 resolution of the Lake County Board of Commissioners timely terminated the Board's consent to continue to use the 1982 alternative formula. Without the Lake County Board of Commissioners' consent, no alternative formula may be used. Only the statutory formula (R.C. 5747.51) for the allocation of the local government funds to subdivisions may be used by the Budget Commission.

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In 1982, the Budget Commission properly adopted an alternative method to apportion the undivided local government fund pursuant to R.C. 5747.53. To distribute the undivided local government fund pursuant to an alternative method, the county budget commission must have the approval of the board of county commissioners, the legislative authority of the most populous city in the county, and a majority of the rest of the boards of township trustees and legislative authorities of municipal corporations located in the county. The Lake County Budget Commission had the necessary approval from 1983 through 2012. Beginning in 2013, the Budget Commission no longer had the necessary approval to distribute the undivided local government fund pursuant to the alternative method because the Lake County Board of Commissioners, by way of a resolution adopted on January 26, 2012, timely revoked the automatic renewal of its approval of the alternative method.

The 1982 alternate local government fund formula states in part:

“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<sup>st</sup> 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 R.C. [sic] shall apply to the allocation and distribution of the Local Government Fund.” Lake County Board of Commissioners’ Resolution Adopting the Alternate Local Government Formula for Lake County (Jul. 6, 1982), Exhibit A, attached hereto.

Procedurally, the Budget Commission should appoint a committee to recommend an alternative method to be adopted by the same procedure as specified in R.C. 5747.53, and if timely approval from the necessary political subdivisions is not obtained, the Budget Commission should apply the statutory formula (R.C. 5747.51) for calculating subdivision shares.

## **II. LAW AND DISCUSSION**

### **A. Methods of apportioning the undivided local government fund**

The local government fund is a mechanism through which the state of Ohio shares revenue with local governments. R.C. 5747.51(A) provides that the tax commissioner shall make and certify to the county auditor an estimate of the amount of the local government fund to be allocated to each county on or before the twenty-fifth day of July each year. The county budget commission must then determine “the amount of the undivided local government fund needed by and to be apportioned to each subdivision for current operating expenses, as shown in the tax budget of the subdivision.” R.C. 5747.51(B). This determination must be made pursuant to R.C. 5747.51(C) to (I) (the statutory method) unless the budget commission has adopted an alternative method of apportioning pursuant to R.C. 5747.53. R.C. 5747.51(B). R.C. 5747.52 prescribes the form to be used by the budget

commission to calculate subdivision shares of the undivided local government fund as apportioned pursuant to the statutory method.

The budget commission may determine the amount of the undivided local government fund to be apportioned to each subdivision pursuant to a method or formula other than the statutory method if this alternative method is first approved by: (1) the board of county commissioners; (2) the legislative authority of the most populous city in the county; and (3) a majority of the boards of township trustees and legislative authorities of municipal corporations located in the county, excluding the most populous city. R.C. 5747.53(B). The granting or denying of approval of an alternative method of apportionment must be by motion. R.C. 5747.53(B). "A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published." R.C. 5747.53(B). An alternative method of allocation adopted pursuant to R.C. 5747.53 can be revised, amended, or repealed in the same manner. R.C. 5747.53(B). "[A]fter initial and unlimited approval, additional action by the necessary governmental units is required only in order to revise, amend, repeal, or adopt a new formula." *City of Lancaster v. Fairfield County Budget Commission*, 86 Ohio St.3d 137, 142, 712 N.E.2d 719, 1999-Ohio-142.

On the other hand, these governmental units may limit their approval of an alternative method of allocation to a definite period of time. *Township of Andover v. Ashtabula County Budget Commission*, 49 Ohio St.2d 171, 174-175, 360 N.E.2d 690 (1977). The Ohio Supreme Court has held that "subdivisions can either restrict their approval of an alternative method to a given time, or they can grant unrestricted approval." *City of Reynoldsburg v. Licking County Budget Commission*, 104 Ohio St.3d 453, 820 N.E.2d 323, 2004-Ohio-6773, ¶25.

### **B. Approval of the use of an alternative method in Lake County**

In Lake County, the budget commission has, since 1983, allocated the undivided local government fund distributions pursuant to an alternative method. The Lake County Budget Commission adopted the alternative method on August 2, 1982, pursuant to R.C. 5747.53, having received approval from the Lake County Board of Commissioners, the City of Mentor, and 12 of the 22 remaining townships and municipalities. Lake Metroparks also approved the use of the alternative method. The Lake County Board of Commissioners approved this alternative method of allocation by resolution dated July 6, 1982 (the 1982 resolution). The 1982 resolution attached the alternative method formula as Exhibit A and made it a part of the resolution.

Exhibit A to the 1982 resolution provided that the alternative method of allocation would apply for years 1983 through 1987. It further provided that the alternative method of allocation would continue for successive periods of five years, unless the Board of Commissioners, the City of Mentor, or 50% of the remaining participants requested, by motion and before January 31<sup>st</sup> of the fifth year of distribution, that the alternative method be amended or abolished (the Sunset Clause). Upon certifying the motion to request that the alternative method be amended or abolished to the Budget

Commission, the Sunset Clause further provided for the budget commission to appoint a committee to recommend a new alternative method of allocation to be adopted pursuant to R.C. 5747.53. In the event that approval of an amended alternative method was not possible the Sunset Clause provided that “the provisions of present Section 5747.53 R.C. shall apply to the allocation and distribution of the Local Government Fund.” 1982 Resolution, Exhibit A.

The Sunset Clause as written appears to contain a typographical error. The last sentence of the Sunset Clause states, “If approval of an amended alternate formula is not possible, provisions of present section 5747.53 R.C. shall apply to the allocation and distribution of the Local Government Fund.” Citing R.C. 5747.53 in this context does not make sense. R.C. 5747.53 is the statute that allows for and prescribes the procedure for adopting an alternative method of allocating the county’s undivided local government fund money. Whereas, R.C. 5747.51 does make sense and provides logical meaning to the Sunset Clause as a whole. R.C. 5747.51 is the statutory section requiring the Budget Commission to determine the amount of the undivided local government fund needed by and to be appropriated to each subdivision.

**C. Lake County Board of Commissioners’ 2012 resolution to amend or abolish the alternative method**

On January 26, 2012, the Lake County Board of Commissioners passed a resolution requesting that the alternative method be amended or abolished (the January 2012 resolution). Pursuant to the Sunset Clause, the Budget Commission was supposed to appoint a committee to recommend a new alternative method. It is not clear whether this happened. The records of the Budget Commission include a template of a letter notifying the participating entities of the 2012 resolution and the need, pursuant to the Sunset Clause, to create a committee to either amend the alternate method or abolish it. I have been unable to locate records demonstrating that this letter was sent out. However, the Budget Commission’s records include a second template of a letter scheduling a meeting of the committee to consider the amendment or abolishment of the alternate method. Again, I have been unable to locate any records indicating that this letter was sent out, or that the meeting took place. If such a meeting took place, I have been unable to locate records of the results of this meeting or the actions of the committee. The absence of records and the continued use of the 1982 alternative method indicate that the alternative method was not amended. It is therefore necessary to determine what effect the 2012 resolution had in regards to the continued use of the 1982 alternative method.

Due to the typographical error, the Sunset Clause is not clear as to the consequences of failing to form the committee, the committee’s failure to act, or the failure to successfully adopt a new alternative method. What is clear and certain is that the Lake County Board of Commissioners terminated the authority of the Budget Commission to use the 1982 alternate formula by passing the January 2012 resolution. No alternative method may be used by the Budget Commission without the approval of the Lake County Board of Commissioners (R.C. 5747.53(B)).

The local government fund appropriation is strictly a statutory procedure. Any lack of clarity in the Sunset Clause is not relevant because the alternative method is not a contractual agreement. The Supreme Court of Ohio has held that an alternative method of allocation adopted pursuant to R.C. 5747.53 is not a contract, and contract law principles do not apply [emphasis added]. *Township of Andover v. Ashtabula County Budget Commission*, 49 Ohio St.2d 171, 174, 360 N.E.2d 690 (1977); *City of Girard v. Trumbull County Budget Commission*, 70 Ohio St.3d 187, 191, 638 N.E.2d 67, 1994-Ohio-169. In *Girard*, the Supreme Court of Ohio noted that if it were to find that a multi-year alternative method that was not timely adopted by the budget commission could become effective the following year, it could potentially frustrate the objectives of the participating subdivisions. "It would then be necessary to determine the intent of the various participating governmental units in approving the adoption of the alternative method formula. Such a contractual analysis, however, is precisely what this court rejected in *Andover* \* \* \*." *Girard* at 192. Therefore, the intent of necessary governmental units in adopting an alternative method that included this provision is irrelevant. The only relevant question is whether all of the necessary governmental units approved distribution of the undivided local government fund pursuant to the alternative method.

By incorporating the Sunset Clause into the 1982 resolution, the Board of Commissioners restricted its approval of the alternative method of allocation. The Sunset Clause states that the Board of Commissioners' approval of the alternative method would automatically renew for successive five year periods unless the Board of Commissioners notified the Budget Commission that it would not renew its approval through a motion to amend or abolish the alternative method. Assuming that this provision relieved the Budget Commission of the requirement to affirmatively obtain the approval of the alternative method in successive years, the Board of Commissioners renewed its approval of the alternative method of allocation for subsequent five year periods in 1987, 1992, 1997, 2002, and 2007 by failing to pass a resolution for the alternative method to be amended or abolished.

In 2012, however, the Board of Commissioners, through its January 26<sup>th</sup> resolution, notified the Budget Commission that it was revoking its approval of the alternative method. As noted by the Supreme Court of Ohio, the statutes regarding distribution of the undivided local government fund "prescribe an elaborate procedure, by which the budget commission proposes the formula and the specified governmental units must each approve the formula \* \* \* The formula fails if one of these units disapproves." *Lancaster* at 141. Consequently, beginning in 2013, the Budget Commission no longer had all of the necessary approvals for the alternative method and the undivided local government fund should have been distributed according to the statutory method.

### **III. CONCLUSION**

In 1982, the Budget Commission properly adopted an alternative method to apportion the undivided local government fund pursuant to R.C. 5747.53.

In 2012, the Board of Commissioners revoked its approval of the alternative method for another five year term. Beginning in 2013, the Budget Commission no longer had the necessary approval to distribute the undivided local government fund pursuant to the alternative method. Therefore, the Budget Commission should seek the necessary approval to adopt an alternative method, and until an alternate method is approved, revert to the statutory method.