

1 RESOLUTION NO. 2010-278

2
3 SPONSOR Mr. Pry

4
5 DATE June 28, 2010 COMMITTEE Public Works

6
7 **A Resolution declaring the necessity of the transfer of the unexpended balance in the Water**
8 **Enterprise Fund, Fund No. 55002, in the amount of \$1,829,457.35, to the General Fund and**
9 **transferring said funds to the General Fund pursuant to Sections 5705.09 and 5705.14 of**
10 **the Ohio Revised Code, for the Executive's Department of Finance and Budget, and**
11 **declaring an emergency.**

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13 WHEREAS, in 1970, the County of Summit Commissioners formed the Summit County
14 Metropolitan Sewer District ("District"), consolidating many local sewer districts into one, in
15 accordance with Chapter 6117 of the Ohio Revised Code; and

16
17 WHEREAS, under the provisions of Chapter 6117 of the Ohio Revised Code, the District
18 owned and operated water lines, and served customers with water in various locations in its
19 territory; and

20
21 WHEREAS, pursuant to Section 6103.02, the County established the Water Enterprise
22 Fund, Fund No. 55002 ("Water Enterprise Fund"), to provide for the operation and maintenance
23 of the water lines and was required to deposit "all moneys collected as rates, charges, or penalties
24 fixed or established in accordance with division (F) of this section for water supply purposes..."
25 and

26
27 WHEREAS, during the 1990's, the District sold or traded its water lines to various local
28 governments or utilities, and divested itself of all water customers; and

29
30 WHEREAS, the County no longer operates a water supply system and no longer provides
31 water service to customers; and

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33 WHEREAS, there is currently an unexpended balance of \$1,829,457.35 in the Water
34 Enterprise Fund that constitutes a surplus given that the County no longer operates any water
35 lines; and

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37 WHEREAS, this Council previously adopted Resolution No. 2010-024, which declared
38 the necessity for the transfer of all funds in the Water Enterprise Fund to the General Fund,
39 directed the County Prosecutor to prepare and forward a petition concerning the transfer monies
40 in the Water Enterprise Fund to the Ohio Tax Commissioner for review and approval, directed
41 the Prosecutor to file said petition with the Court of Common Pleas upon receipt of notice of the
42 Commissioner's approval, and directed the Clerk of Council to publish notice of the filing of the
43 petition in two newspapers having general circulation in the County of Summit, pursuant to
44 Sections 5705.15 and 5705.16 of the Ohio Revised Code, which set forth a procedure for the
45 taxing authority of any political subdivision to transfer from one fund to another any public
46 funds under its supervision, subject to certain exceptions; and

47
48 WHEREAS, the Prosecutor prepared and forwarded a petition authorizing the transfer of
49 all funds in the Water Enterprise Fund to the Ohio Tax Commissioner for review and approval
50 by a letter dated March 12, 2010, attached hereto as Exhibit A and incorporated herein as if fully
51 restated; and

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5 WHEREAS, by a letter dated April 15, 2010, attached hereto as Exhibit B and
6 incorporated herein as if fully restated, the Commissioner advised that the petition is unnecessary
7 because this Council is authorized to transfer the unexpended balance in the Water Enterprise
8 Fund to the General Fund pursuant to Sections 5705.09 and 5705.14 of the Ohio Revised Code,
9 which allow transfer of monies in a special fund where all obligations incurred and payable from
10 that fund have been paid; and

11
12 WHEREAS, the current economic crisis has negatively impacted many of the revenues
13 received by the County; and

14
15 WHEREAS, the 2010 budget adopted by this Council assumed it would be necessary to
16 transfer the funds in the Water Enterprise Fund for the ongoing operations of the County;

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18 WHEREAS, due to the economic crisis, this Council has determined by reviewing all
19 pertinent information that it is necessary and in the best interest of the County of Summit to
20 declare the necessity for the transfer the unexpended balance in the Water Enterprise Fund, Fund
21 No. 55002, in the amount of \$1,829,457.35, to the General Fund and transferring said funds to
22 the General Fund pursuant to Sections 5705.09 and 5705.14 of the Ohio Revised Code;

23
24 NOW, THEREFORE, BE IT RESOLVED, by the Council of the County of Summit,
25 State of Ohio, that:

26
27 SECTION 1

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29 The Council of the County of Summit, Ohio hereby declares that the economic crisis
30 makes it necessary to transfer the unexpended balance in the Water Enterprise Fund, Fund No.
31 55002 ("Water Enterprise Fund"), in the amount of \$1,829,457.35, to the General Fund, pursuant
32 to Sections 5705.09 and 5705.14 of the Ohio Revised Code.

33
34 SECTION 2

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36 Funds are hereby appropriated as follows:

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38

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
55002-8502-84999	Transfers Out	\$1,829,457.35

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40
41 SECTION 2

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43 The County Fiscal Officer is hereby authorized and directed to effect the within
44 appropriations.
45

1 RESOLUTION NO. 2010-278

2 PAGE THREE

3
4 SECTION 3

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6 This Resolution is hereby declared an emergency in the interest of the health, safety and
7 welfare of the citizens of the County of Summit and for the further purpose of immediately
8 declaring the necessity for the transfer of all funds in the Water Fund, in the amount of
9 \$1,829,457.35, to the General Fund and transferring said funds.

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11 SECTION 4

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13 Provided this Resolution receives the affirmative vote of eight members, it shall take
14 effect immediately upon its adoption and approval by the Executive; otherwise, it shall take
15 effect and be in force at the earliest possible time provided by law.

16
17 SECTION 5

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19 It is found and determined that all formal actions of this Council concerning and relating
20 to the adoption of this Resolution were adopted in an open meeting of this Council, and that all
21 deliberations of this Council and of any of its committees that resulted in such formal action,
22 were in meetings open to the public, in compliance with all legal requirements, including Section
23 121.22 of the Ohio Revised Code.

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26 INTRODUCED June 14, 2010

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28 ADOPTED June 28, 2010

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33 CLERK OF COUNCIL

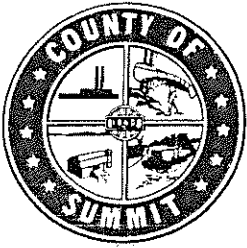

PRESIDENT OF COUNCIL

34
35 APPROVED June 28, 2010

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39 
40 EXECUTIVE

41
42 ENACTED EFFECTIVE June 28, 2010

Voice Vote: 9-1 YES: Komunale, Crossland, Feeman, Kostandaras, Poda,
Prentice, Rodgers, Schmidt, Smith NO: Crawford ABSENT: Shapiro



SHERRI BEVAN WALSH
Summit County Prosecuting Attorney

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10-278

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March 12, 2010

Richard A. Levin, Ohio Tax Commissioner
Ohio Department of Taxation
P.O. Box 530
Columbus, Ohio 43216-0530

Re: Petition for the transfer of funds pursuant to O.R.C §5705.16


Dear Mr. Levin:

Pursuant to O.R.C. §5705.16, enclosed please find a copy of the proposed petition for the transfer of funds from Fund No. 55002, the Environmental Services – Water Fund, to the Summit County General Fund for the reasons set forth in said petition. Also enclosed please find a certified copy of Resolution Number 2010-024 declaring the necessity for the transfer of these funds as authorized by O.R.C. §5705.16. We ask that you review and approve said petition and notify us of your approval at your earliest convenience. It is my understanding that you will also notify Summit County Council of your approval of the petition, at which time our office will file the petition with the Summit County Court of Common Pleas.

If you have any questions regarding this matter, please feel free to contact me.

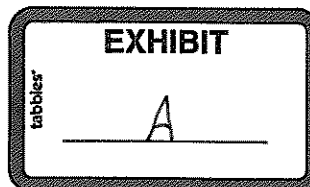
Very truly yours,

SHERRI BEVAN WALSH
Prosecuting Attorney


CORINA STAEHLE GAFFNEY
Assistant Prosecuting Attorney

CSG/tp
Enclosure

cc: Richard E. Dobbins, Director, Department of Law

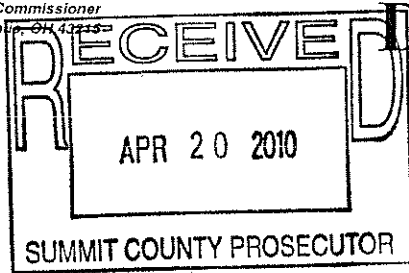


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FINAL DETERMINATION



Date: APR 15 2010

Corina Staehle Gaffney, Esq.
Assistant Prosecuting Attorney
Summit County Prosecuting Attorney's Office
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

Entry Number: 10-04-0146

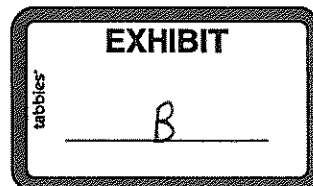
Re: Denial of a Transfer of Funds for Summit County, from the Water Enterprise Fund to the General Fund.

The County Prosecuting Attorney filed an application on April 7, 2010, with the Tax Commissioner on behalf of Summit County, Ohio, for authority to transfer funds from the Water Enterprise Fund to the General Fund of the City pursuant to R.C. §§ 5705.15 and 5705.16. The amount requested to be transferred is One Million Eight Hundred Twenty-Nine Thousand Four Hundred Fifty-Seven Dollars and Thirty-Five Cents (\$1,829,457.35).

The Water Enterprise Fund was established under R.C. § 6103.02 to deposit all moneys collected as rates, charges, or penalties fixed or established in accordance with division (F) of that section to provide for the operation and maintenance of water lines. Since the County "no longer operates a water supply system, and no longer provides water service to customers," the County wishes to dissolve the Water Enterprise Fund and transfer the remaining balance into the General Fund.

Section 5705.16 allows a political subdivision to petition the Tax Commissioner for approval to transfer funds authorized by R.C. § 5705.15. Through R.C. § 5705.15, the Tax Commissioner may approve transfers of funds that are not authorized by R.C. § 5705.14, with certain exceptions.

The unexpended balance in any special fund, other than an improvement fund, established under division (D), (F), or (G) of R.C. § 5705.09 or R.C. § 5705.12, may be transferred pursuant to R.C. § 5705.14(D) to the general fund, if the activity, service, or other undertaking for which the special fund existed is now terminated, but only after payment of all obligations incurred and payable from that fund. The taxing authority must pass a resolution with the affirmative vote of two-thirds of its members. No approval of the court of common pleas is required for a transfer under division (D) of R.C. § 5705.14. Moreover, no transfer of funds pursuant to any division of R.C. § 5705.14 requires the approval of the Tax Commissioner.



10-278

APR 15 2010
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The Water Enterprise Fund was created pursuant to R.C. § 5705.09(F), a special fund for a class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose. Based on the applicant's statements in the Petition and Resolution the conditions of R.C. § 5705.14(D) are satisfied, and the fund transfer in question is, as a result, a candidate for R.C. § 5705.14(D) treatment. Thus, the Tax Commissioner's approval is not required for this transfer involving a terminated activity.

Therefore, the Tax Commissioner finds, after examining County Resolution No. 2010-024, adopted February 8, 2010, and the Petition addressed to the Court of Common Pleas of Summit County, Ohio, that this request for a transfer of funds in the amount of One Million Eight Hundred Twenty-Nine Thousand Four Hundred Fifty-Seven Dollars and Thirty-Five Cents (\$1,829,457.35) does not comply with the provisions of R.C. §§ 5705.15 and 5705.16, and hereby denies the request to file that petition in the Court of Common Pleas of Summit County, Ohio, under those sections.

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

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

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

Richard A. Levin
RICHARD A. LEVIN
TAX COMMISSIONER

/s/ Richard A. Levin

Richard A. Levin
Tax Commissioner

ECS