

Court: Ohio can use tobacco money to plug budget

By STEPHEN MAJORS, The Associated Press Updated 4:51 PM Thursday, December 31, 2009

COLUMBUS, Ohio — The state can use about \$230 million set aside for tobacco prevention for other purposes, an Ohio appeals court ruled Thursday in overturning a trial court's decision.

The 10th District Court of Appeals said Ohio could spend the tobacco prevention money — which had originally been given to the Tobacco Use Prevention and Control Foundation — on an expansion of health care for children and optional Medicaid services.

The American Legacy Foundation had received the funds in question from the tobacco prevention and control group in an effort to prevent them from being spent by lawmakers on other priorities. The American Legacy Foundation argued that the state had created an irrevocable trust, in custody of but not part of the state treasury, that could not later be used for purposes outside tobacco use prevention.

The argument swayed Franklin County Common Pleas Judge David Fais, who barred the state in August from using the funds. But the three-member appeals court overturned that ruling Thursday, which keeps intact lawmakers' spending decisions.

The court ruled that it's up to the Legislature to decide whether it wants to fund programs through the normal budgeting process or through a custodial account, such as the tobacco prevention foundation.

"But the fact that the General Assembly chooses the latter path does not mean that funds placed in a custodial account are shielded in perpetuity from future legislation," the judges wrote.

The state can't access the funds until the case is resolved, which depends on whether the American Legacy Foundation decides to appeal Thursday's ruling to the Ohio Supreme Court. That decision has not yet been made, said General Counsel Ellen Vargyas.

"We are going to carefully review it and we will be guided by what has always been our goal, which is to protect this money to save the lives of the people of Ohio," Vargyas said.

Lawmakers originally wanted to use the tobacco money as part of a \$1.57 billion economic stimulus package approved in 2008. But a lawsuit prevented it from doing so.

Lawmakers then diverted the money in the latest two-year budget to expand children's health insurance and provide optional dental and vision coverage through Medicaid.

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