



STATE OF OHIO
OFFICE OF THE AUDITOR

JIM PETRO, AUDITOR OF STATE

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AUDITOR OF STATE BULLETIN

TO: ALL PUBLIC OFFICES
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: 1994 & 1995 ATTORNEY GENERAL OPINIONS RELEVANT TO LOCAL
PUBLIC OFFICES

The following is a compilation of summaries of formal opinions issued between January 1, 1994, and July 1, 1995, by the Ohio Attorney General that the Auditor of State's Office has determined may have an impact on audits of Ohio's local governments. These opinion summaries are categorized by subject area, rather than by the type of public office; thus, not all of these formal opinions will be applicable to your government.

Opinion

Summary of Decision

Proper Fund Expenditures:

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| 94-001 | Moneys in the waterways safety fund established under R.C. 1547.75 may be expended only for the purposes of salaries, administration and expenses of the division of watercraft, establishing and maintaining marine patrols, boating safety education programs, and maintaining refuge harbors and marine recreational facilities. |
| 94-003 | A board of township trustees may not donate township funds to a merger commission established under R.C. 709.45-.46. |
| 94-019 | Pursuant to R.C. 315.12(A), the cost of removing underground fuel storage tanks used to fuel equipment and vehicles of the county engineer's office is a "cost of operation of the office of county engineer," two-thirds of which "shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27]." |

- 94-025 Motor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer, including the maintenance of bridges on township roads.
- 94-031 The cost of insurance covering liability that may be imposed upon a county under R.C. 2744.02(B)(1) or R.C. 2744.02(B)(2) for acts or omissions of the county engineer or his employees while operating motor vehicles or other heavy equipment or machinery in connection with the engineer's statutory responsibilities is a "cost of operation of the office of county engineer." Thus, the cost of that insurance may be allocated to and paid out of the portion of the county engineer's budget that is funded with state motor vehicle license tax and motor vehicle fuel excise tax revenues under R.C. 315.21.
- 94-034 Pursuant to R.C. 711.10, a county planning commission has implied authority to establish and administer a fund to receive from a developer "money in lieu of land" for park and playground purposes in particular subdivisions and to apply the money in accordance with restrictions imposed upon it pursuant to relevant statutory and constitutional provisions.
- 94-041 A board of trustees of a county tuberculosis hospital has no authority to expend public moneys to promote the approval of a tax levy by the electorate.
- 94-059 When the Ohio Department of Human Services imposes a financial sanction upon a county pursuant to R.C. 2301.35(E)(1), the amount of the sanction must be paid to the county child support enforcement agency either by the board of county commissioners or, if the board of county commissioners does not make payment, by the Tax Commissioner from local government fund moneys allocated to the county.
- 94-060 A board of county commissioners has no authority to use moneys from the dog and kennel fund directly to pay the salary of a county humane society agent for his service to the county humane society as an agent of the society.
- Pursuant to R.C. 955.27, if there remains more than two thousand dollars in the county dog and kennel fund, the board of county commissioners may, at its December session, appropriate any part of

such surplus to a qualifying county humane society.

- 94-063 Pursuant to R.C. 3113.35, a board of county commissioners may allocate funds collected under R.C. 3113.34 to a qualified shelter for victims of domestic violence if the shelter is located within the county or if the shelter is located within a nearby county and serves or will serve the population of the county allocating funds.
- 94-071 Moneys derived from loan repayments by the Ohio Water Development Authority are not "moneys raised by taxation" for purposes of Ohio Const. art. VIII, Paragraph 13, and, accordingly, may be obligated or pledged for the payment of bonds or other obligations issued or guarantees made by the Ohio Water Development Authority pursuant to the provisions of R.C. Chapter 6121 or R.C. Chapter 6123, provided that the tax-supported obligations issued by the State of Ohio pursuant to article VIII, Par. 2i of the Ohio Constitution to make the initial loans have been paid and discharged in full.
- 94-074 Even though the county superintendent of schools also performs the duties of a local superintendent in accordance with R.C. 3311.051(A), R.C. 3319.19 requires the board of county commissioners, without apportionment of such costs among other units of local government, to provide and equip offices for the use of the superintendent, and to provide heat, light, water, and janitorial services for such offices.
- 94-086 Pursuant to R.C. 955.20, should a board of county commissioners find that the expansion and renovation of the county dog pound is necessary to carry out the county's duty to impound dogs, the board may use moneys from the dog and kennel fund for such expansion and renovation.
- 95-004 Pursuant to R.C. 311.29, a township or municipal corporation may enter into a contract with the county sheriff whereby the sheriff dispatches the police officers of the township or municipal corporation, and the township or municipal corporation pays the county for the costs it incurs under the contract.
- Pursuant to R.C. 505.43, a township may enter into a contract with the county sheriff whereby the sheriff dispatches the police officers of the township, and may negotiate as part of the contract the allocation of costs incurred by the sheriff under the contract.
- 95-012 If the body of a dead person is claimed by any person for private interment at the claimant's expense pursuant to R.C. 5101.521, then no political subdivision has any obligation under R.C. 5101.521 to

pay any expenses relating to the burial of the person.

If the body of a dead person is claimed as a loved one by an indigent person pursuant to R.C. 5101.521, then a political subdivision is not relieved of any duty it may have to bury the person at the expense of the subdivision in accordance with R.C. 5101.521. (1973 Op. Att'y Gen. No. 73-073, modified in part on the basis of legislative change.)

R.C. 5101.521 does not authorize an indigent person to claim a body, make independent arrangements for a private funeral, and have the bill sent to the political subdivision, nor does it require a political subdivision to pay a bill submitted in such circumstances.

Contracts and Bidding Compliance:

- 94-021 The competitive bidding requirement of R.C. 307.86 does not apply to contracts made on behalf of a joint solid waste management district by the district's board of directors.
- 94-055 The clerk of the court of common pleas has no authority to use a private contractor instead of the United States mail in the service of process by certified mail as governed by R. Civ. P. 4.1(1).

Salaries, Wages and Benefits:

- 94-002 When municipal income taxes have not been withheld from the wages or salaries of county employees as required by R.C. 9.42, the county is not liable for payment of the tax due nor for any penalties or interest that result from the failure to withhold.
- 94-009 If county employees who are subject to R.C. 124.39(B) terminate their employment and elect not to receive payment under R.C. 124.39(B) for their previously accumulated, unused sick leave, R.C. 124.38 entitles those employees to receive credit for such sick leave upon their reemployment by the county, as long as such reemployment occurs within ten years of the date of their last termination from public service.
- Pursuant to R.C. 325.19(C), county employees who terminate their employment must be compensated at the time of such termination for unused vacation leave that they have accumulated in accordance with R.C. 325.19(C).

Pursuant to R.C. 9.44(C), a county employee who has retired in accordance with the provisions of R.C. Chapter 145, governing the PERS, and who is employed by a county on or after June 24, 1987, "shall not have his prior service with the state or any political subdivision of the state counted for the purpose of computing vacation leave."

- 94-023 Pursuant to R.C. 3709.02, a member of a board of health of a general health district is entitled to be paid for mileage traveled to and from each meeting listed in that statute at the rate established by the Director of Budget and Management in 2 Ohio Admin. Code 126-1-02(C). In addition, a member is entitled to be paid an amount not to exceed eighty dollars per day for those necessary expenses that the member actually incurs in attending such meeting.
- 94-043 If a court includes in its budget as a cost of operation of the court an amount for payment of professional association dues on behalf of a judge of that court, to the extent that a political subdivision is responsible for the payment of the court's operating costs, it has a duty to appropriate the requested sum, unless it can show that the request is unreasonable or not necessary for the proper administration of the court's business.
- 94-078 R.C. 124.38(C) does not entitle a person who becomes employed by a general health district to receive credit for unused sick leave accumulated under that statute during prior employment in the "public service."
- 94-092 Pursuant to R.C. 145.297, a board of county commissioners has no authority to determine the terms of a retirement incentive plan for employees of the county board of mental retardation and developmental disabilities.
- 95-003 R.C. 124.38 does not entitle a county employee to receive credit for sick leave benefits that were earned in employment with a state other than Ohio.
- 95-014 R.C. 742.112(B) authorizes the Board of Trustees of the Police and Firemen's Disability and Pension Fund (PFDPF) to enter into a transaction with a fiduciary or party in interest, and thus is an exception to the provisions of R.C. 742.112(A) that prohibit a fiduciary from causing PFDPF to engage in certain specified transactions with a party in interest.

Pursuant to R.C. 742.112(B), the Board of Trustees of PFDPF is authorized to enter into a transaction with a party in interest, provided that all the terms and conditions of the transaction are comparable to the terms and conditions which might reasonably be expected in a similar transaction between similar parties who are not parties in interest, and the transaction is consistent with the fiduciary duties described in R.C. Chapter 742.

Public Records:

94-006 Pursuant to R.C. 149.43(B), the county recorder must make the public records of that office available to the public for inspection at all reasonable times during regular business hours and must make copies available within a reasonable period of time. However, the public cannot remove public records from the office of the county recorder.

The county recorder must charge all persons, without exception the fee prescribed for services performed pursuant to R.C. 317.32(I).

94-046 Records of information contained in or processed through Law Enforcement Automated Data System (LEADS), including data entered directly into a LEADS data base, computer tape logs created by LEADS of transactions on LEADS, and hard copies of data on a LEADS data base or from other data bases accessed through LEADS, are not public records subject to disclosure pursuant to R.C. 149.43(B).

Cemetery Compliance:

94-018 A board of county commissioners has no authority to operate a pet cemetery that would be available to the public for the burial of deceased pets, but a county humane society could determine that operating a pet cemetery for the disposal of the remains of deceased pets falls within the objectives of such society, as set forth in R.C. 1717.02.

94-049 Pursuant to R.C. 759.08, the title to, right of possession, and responsibility for the maintenance and care of a public cemetery that is located in a village is vested in the village, unless the village has transferred title to that cemetery to the township in which the village is located under R.C. 759.19.

94-053 When the electors of a township that includes a city and a village approve a levy under R.C. 5705.19(T) for cemetery purposes, the proceeds of such levy accrue only to the township and may not be used to maintain a cemetery that is owned by, and located within, the city or village.

Powers of the Auditor of State:

94-073 The Ohio Veterans' Children's Home is not an institution for purposes of Ohio's Uniform Management of Institutional Funds Act, R.C. 1715.51-.59.

94-093 No statutory provision authorizes the Auditor of State to delay the determination as to the existence of a fiscal emergency condition described in R.C. 118.03(A)(4), (5), or (6) when the determination is made more than four months following the end of the fiscal year. In determining pursuant to R.C. 118.04 whether fiscal emergency conditions exist, the Auditor of State may exercise reasonable discretion with regard to the manner, means, and time frame for making the determination, provided that the determination be set forth in written reports and supplemental reports within thirty days after the request for the determination and that the Auditor file an initial report immediately upon determining the existence of any fiscal emergency condition.

Legal Representation of Public Entities:

94-082 A regional transit authority is not a county board and is not entitled to legal representation by the county prosecuting attorney, regardless of whether it consists of a single county or a number of participants.

94-085 The board of township trustees of a township that has adopted the limited self-government form of township government under R.C. Chapter 504 may not enter into a contract with the prosecuting attorney of the county for the purpose of employing the prosecuting attorney as additional legal counsel to represent the township and its officers in their official capacities and to advise them on legal matters.

Ohio Retirement Study Commission:

94-016 The requirements of R.C. 121.11 regarding bonds and oaths ARE NOT applicable to the ORSC. The requirements of R.C. 113.08, 125.01-.11, 125.16, 127.16, and OAC 123:5-1 regarding using a centralized system of state purchasing, competitive bidding requirements and procedures, annual inventories of state property and payment of state moneys to the Treasurer of State ARE applicable to the ORSC.

Transfer of Funds:

94-004 R.C. 5705.14(D) does not authorize a township to transfer to a joint fire district of which it is a member the balance remaining in a special fund, created in accordance with R.C. 5705.09(D), that contains the proceeds of a tax levied by the township under R.C. 5705.19(I). The township may, however, transfer the unexpended balance remaining in such fund to another fund of the township, including the township's general fund, in accordance with the terms and conditions of R.C. 5705.14(D).

94-007 Pursuant to R.C. 5705.40, transfers from one appropriation item to another appropriation item within the annual appropriation measure passed by a board of county commissioners under R. C. 5705.38 must be made by resolution of the board.

94-015 Unused moneys in a county delinquent tax and assessment collection fund established pursuant to R.C. 321.261 may be transferred to the county general fund only in the manner provided in R.C. 5705.15 and 5705.16; no authority to transfer moneys from the delinquent tax and assessment fund exists under R.C. 5705.14.

Investment Compliance:

94-048 Pursuant to R.C. 135.35(A)(2) (eff. July 1, 1994), a county investing authority is authorized to invest the county's inactive moneys in obligations or securities issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, provided that any such investment is made in accordance with those fiduciary standards of care, skill, and judgment as are generally

applicable to the investment of inactive moneys of a county.

If the Auditor of State determines that a county investing authority was not authorized to invest in a particular investment, and a loss of principal is sustained, the Auditor of State must issue a finding for recovery against the county investing authority for the amount of such loss.

If it is determined that a county investing authority was not authorized to invest in a particular investment, and a loss of principal is sustained, the county investing authority is personally liable for the amount of the loss.

A county investing authority may determine a reasonable manner in which to allocate a loss of principal if the investments of the county investing authority result in a loss of principal.

While the preceding list of opinion summaries is lengthy, please be aware that there may be additional Ohio Attorney General Opinions that are relevant to a public office that do not have an impact on its audit report. Since the preceding compilation is only a brief summary, each Ohio Attorney General Opinion should be read in its entirety. In addition, the Auditor of State's Office recommends that each public office consult with its legal counsel before taking any formal action as a result of any Opinion.

Jim Petro, Auditor of State
State of Ohio