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Auditor of State

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TO: County Law Library Associations
County Commissioners
County Auditors
Independent Public Accountants

SUBJECT: Implementation of Amendments to Statutory Funding for Law Library Associations

The Auditor of State's Office (AOS) is issuing this Bulletin in response to questions raised by Law Library Associations (LLAs) regarding various auditing issues related to amendments to the compensation, space, utilities and fixtures provisions of Ohio Rev. Code Section 3375.48 and .49. Specifically, this Bulletin addresses the LLAs' responsibilities under House Bill 66 (effective September 29, 2005) and House Bill 363 (effective August 3, 2006), and the accounting issues related to those amendments. Ultimately, this Bulletin should help ensure auditing practices are applied consistently to LLAs and in compliance with the statutory amendments and Ohio Attorney General Opinion 2007-12 (available at <http://www.ag.state.oh.us/legal/opinions/2007/2007-012.pdf>).

I. Background

Pursuant to House Bill 363 and House Bill 66, beginning January 1, 2007, Ohio Rev. Code Section 3375.49 requires law libraries to pay 20% of the compensation for their librarian and up to two assistants from their own funds. The law library's funding obligation increases by 20 percentage points annually. Therefore, beginning January 1, 2011, law libraries must pay 100% of these librarians' compensation from law library funds.

The same law applies one year later for space, utilities and fixtures the county commissioners provide to the LLA. Therefore, beginning January 1, 2008, LLA must pay 20% of these costs. The LLA's percentage increases 20% annually. Therefore, beginning January 1, 2012, LLA's libraries must pay 100% of their space, utilities and fixtures costs from law library funds.

Prior to these Revised Code amendments, counties paid for the compensation of law librarians as well as provided space. The LLAs have asked that we issue a bulletin to provide guidance for their year-end accounting. Ohio Attorney General Opinion 2007-12 clarifies what elements do (and do not) fall within the definition of *compensation* under Ohio Rev. Code Section 3375.49. This Bulletin includes excerpts from the Attorney General Opinion and explains other important guidance law libraries must follow to

comply with this law. **Important:** Ohio Rev. Code Section 3375.49 does not permit counties to pay amounts exceeding the statutory percentages for law library compensation, space, utilities and fixtures. The Auditor of State must therefore report noncompliance findings, including findings for recovery or findings for adjustment if counties continue to pay all these costs on behalf of a law library.

II. Summary of Legislative Changes

House Bill 66 amended Ohio Rev. Code Section 3375.48 to transfer the authority to fix the compensation of the law librarian and assistant law librarians from the judges of the common pleas court to the county law library association's board of trustees. Additionally, this bill and House Bill 363 amended Ohio Rev. Code Section 3375.49 to allocate the responsibility of paying the compensation of the law librarian and up to two assistants as well as space, utilities, and fixtures, between the law library association and the county. Beginning in calendar year 2007, the proportionate share of which the LLA is responsible for increases, and the county's share proportionately decreases, each calendar year until 2011 for compensation, and 2012 for space utilities and fixtures. At those times the law library association will be responsible for the entire amount of the librarians' compensation and space, utilities, furniture, and fixtures.

III. Attorney General Opinion 2007-12 on Compensation of Law Librarians and Assistants

The following is a summary of the main components of Attorney General Opinion 2007-012 relating to law library compensation issues likely to affect counties and county law library associations:

- Prior to the amendment of Ohio Rev. Code sections 3375.48 and 3375.49, court of common pleas' judges had the authority to fix and pay the librarians a salary, as well as fringe benefits, such as paid leave, medical insurance, and life insurance. As such, the current power of a library board to set a librarian's compensation includes this discretionary authority to grant fringe benefits.
- As mentioned previously, the board of county commissioners and the county law library association board of trustees must allocate the costs of the compensation set by the library board pursuant to the percentages established by Ohio Rev. Code Section 3375.49. However, each component of a librarian's salary (i.e., salary and each fringe benefit) does not need to be allocated separately in accordance with these percentages. The county and library board are free to divide up the payment of each component of a librarian's compensation as they see fit, as long as the total cost is allocated in accordance with the percentages set by Ohio Rev. Code Section 3375.49. Finally, the manner in which the compensation package is apportioned between the county board and library may be renegotiated annually by the respective entities, as long as the Ohio Rev. Code Section 3375.49 percentages are met.
- A county law library association is a private organization, rather than a creature of statute, and is not an agency or subdivision of county government. It follows then,

that its librarians and assistant librarians are not county employees, and thus, are not included within the definition of “civil service” found in Ohio Rev. Code Section 124.01. As a result, law librarians are not entitled to receive any compensation set by statute for county employees, unless they are specifically included within a statutory scheme (e.g., Ohio Rev. Code Section 145.01 “PERS,” *see below*).

- If the judges of a county court of common pleas, prior to the enactment of House Bill 66 and House Bill 363, granted law librarians the same sick and vacation leave benefits as county employees are entitled, the librarians have a vested right in any accrued and unused leave. Under such circumstances, the county may choose to pay out a librarian’s accrued and unused leave balances. Alternatively, the county board of commissioners and library board may decide to have the county pay the law library association to assume those balances. **Please note:** Sick leave and vacation leave that accrued prior to the aforementioned legislative changes remain the obligation of the county, and are not subject to allocation under Ohio Rev. Code Section 3375.49, regardless of whether the county directly pays out the unused leave, or pays the law library association to assume it. Likewise, neither form of payment by a county can be credited towards the allocated percentage of compensation for which the county is responsible under amended Ohio Rev. Code Section 3375.49.
- As part of its authority to fix compensation, a library board may elect to provide insurance benefits for its librarians. If so, and the library board and board of county commissioners agree to have the library association pay the cost of such insurance during the Ohio Rev. Code Section 3375.49 transition period, the county board of commissioners may not include the librarians in the insurance plans provided to county officers and employees under Ohio Rev. Code sections 9.833 and 305.171. However, if the two entities agree to have the county pay the insurance costs during the transition period, the board of county commissioners has the discretion to include the librarian and up to two assistant librarians in the insurance plans it offers to county employees and officers, and such a cost must be counted towards its amended Ohio Rev. Code Section 3375.49 allocation percentage. **Please note:** Beginning in 2011, at the end of the Ohio Rev. Code Section 3375.49 transition period, neither the library board nor the county board will have the authority to include law librarians in county insurance plans, as the library association becomes responsible for paying the entire amount of librarian compensation at this time.
- Employees of a county law library meet the definition of “public employee” under Ohio Rev. Code Section. 145.01, and thus, are members of the Public Employee Retirement System.
- House Bill 66 and House Bill 363 did not alter the definition of “earnable salary” under Ohio Rev. Code Section 145.01(R) for purposes of determining PERS benefits, such that the definition still excludes amounts paid by an employer to provide various forms of insurance coverage for its employees. Thus, costs paid for insurance benefits by a county or law library association for law library

employees are not included in the employees' compensation for purposes of their PERS benefits.

- Mandatory employer contributions and payments to PERS, the state unemployment compensation fund, and worker's compensation state insurance fund are generally not considered fringe benefits to employees. These contributions are the obligation of the county law library association, and are not compensation subject to allocation between the law library association and county under amended Ohio Rev. Code Section 3375.49.

IV. Space, Utilities, and Fixtures

Pursuant to Ohio Rev. Code Section 3375.49, the county is required to provide suitable rooms, bookcases, heating, and lighting for LLAs. The amendments of HB 363 likewise require the LLA to proportionally take over the cost of maintaining these items beginning in 2008, with complete financial responsibility by LLAs in 2012.

V. Audit Implications

Payments for compensation made by a county or county law library association will be subject to audit beginning on or after **January 1, 2007**. Payments for space, utilities, and fixtures made by a county or county law library association will be subject to audit beginning on or after **January 1, 2008**. The AOS strongly recommends that you consult with your legal counsel to determine whether you are in compliance with the statutory amendments.

The following attempts to provide guidance for counties and LLAs on acceptable methods of implementing the statutory changes in regard to compensation and space:

1. Compensation

As noted above, and pursuant to Ohio Rev. Code Section 3375.49, beginning in calendar year 2011 county law library associations will be solely responsible for paying their law librarians' compensation. Additionally, for calendar years 2007 through 2010, law library association boards of trustees and county boards of commissioners are responsible for the portion of a law librarian's total compensation package that is equal to the allocated percentage set forth in Ohio Rev. Code Section 3375.49.

Therefore, counties and county law library associations will be subject to adverse audit consequences, up to and including findings for recovery or findings for adjustment for law librarian compensation payments not made in accordance with the new requirements of the law.

Law libraries must maintain documentation supporting that costs paid for compensation, space, utilities, and fixtures complied with the statutory percentages Ohio Rev. Code Section 3375.49 prescribes. Law libraries can use any reasonable manual or automated method to document this compliance. While not mandatory, spreadsheet software is ideal for computing and documenting compliance with

Ohio Rev. Code Section 3375.49 percentages. A greatly simplified example of documentation supporting librarians' compensation for the month of December 2008 follows:

Name	Type	Total	County Share 60%	Library Share 40%
Jane	Wages	\$200	\$120	\$80
	Medical insurance (fringe)	\$40	\$24	\$16
	Employer PERS	\$26		\$26
Joe	Wages	\$100	\$60	\$40
	Medical insurance (fringe)	\$20	\$12	\$8
	Employer PERS	\$13		\$13

2. *Space, Utilities, and Fixtures*

By the year 2012 law library associations are likewise expected to incur the costs of space, utilities, and fixtures. The county commissioners and the LLA must likewise come to agreement on how the parties will deal with these potential costs. The following provides some examples of the type of arrangements which can be made between counties and LLA for allocating these costs. **Please note:** These examples are not recommendations or requirements, but they are provided for illustrative purposes only.

a. **Space**

Example: If the law library occupies space in a county courthouse that is fully paid for, the commissioners in their discretion may reasonably deem there is only minimal cost to the county for providing this space. In that instance, an agreement between the parties that the LLA may use/rent/lease the space for “one dollar per year” would be accepted.

Example: If the law library occupies space in a courthouse for which construction debt is still outstanding, the commissioners may choose to pro rate a portion of the debt service cost to the law library based on any reasonable method.

b. **Utilities**

Example: The commissioners may choose to pro rate a reasonable portion of utility costs to the law library.

Similar to the debt service example above, the commissioners could pro rate a portion of the courthouse's utility costs to the law library based on any reasonable method.

Example: If the law library space is separately metered, the law library must pay the statutory percentages listed in Ohio Rev. Code Section 3375.49 for each year until the LLA assumes full responsibility for utility costs in 2012.

c. Fixtures

Example: If a fixture benefits all courthouse offices including the law library, the commissioners and law library trustees may choose to pro rate a portion of the cost to the law library based on any reasonable method.

VI. Charging these Costs to Law Library Funds

Amended Ohio Rev. Code Section 3375.54 now specifically authorizes fine money paid to a law library board of trustees to be used for compensation of a law librarian and their assistant(s), as well as for fixtures and furniture. Therefore, the LLA may charge costs paid for compensation, space, utilities, and fixtures to any of the following funds:

- General Fund – to account for fines remitted to law libraries pursuant to Ohio Rev. Code sections 3375.50 through 3375.53.
- Retained Money Fund – to account for unspent fines not subject to a 90% refunding to contributing subdivisions pursuant to Ohio Rev. Code Section 3375.56.
- Private Fund – to account for other cash.

The costs paid for compensation, space, utilities, and fixtures must comply with the statutory percentages prescribed in Ohio Rev. Code Section 3375.49 until the LLA is solely responsible for the cost of compensation, space, utilities, and fixtures. At that point in time, the LLA may use fine monies to pay the costs of compensation, space, utilities and fixtures.

VII. Complying for 2007

As described above, LLAs must pay 20% of its librarian's compensation for 2007, and a failure to do so will result in audit findings against the LLA. If your LLA has not yet met the 20% requirement, you can still comply by applying RC 3375.56, which permits law libraries to include general fund *encumbered* amounts as current year expenditures (to reduce the amount subject to 90% refund). We believe law libraries may encumber any

unspent amounts, *if* the library incurred the obligation prior to year end. Therefore, a LLA can avoid a 2007 noncompliance finding by:

1. Computing 20% of librarian's 2007 compensation as described above.
2. Paying the required amount to its county prior to December 31, 2007.
3. If paying this obligation by December 31 is impractical, the LLA may encumber the unpaid portion as a 2007 expenditure, and remit it to the county within a reasonable time subsequent to December 31, 2007.

Finally, Ohio Rev. Code Section 3375.56 permits law libraries to include general fund *encumbered* amounts as current year expenditures, and thus, reduce the amount subject to 90% refund. We believe law libraries may encumber any unspent amounts, *if* the library incurred the obligation prior to year end. For example, the law library may owe a county \$100 for space used in December (of any year). While the library may not write a check to the county until the following January, the law library could encumber the amount as a December cost.

VIII. Financial Statement Reporting

Because Ohio Rev. Code Section 3375.49 places importance on amounts law libraries pay for compensation, space, utilities, and fixtures, law library financial statements the Auditor of State (and contracted independent accountants) audits should separately present disbursements for these costs. You can see an example of a law library financial statement that separately presents these costs at www.auditor.state.oh.us Click on *Local Government Resources; Accounting & Auditing Resources*, and finally click on *AOS Regulatory Basis Financial Statements*.

IX. Questions and Comments

If you have any accounting or auditing related questions regarding this Bulletin, please contact the AOS Accounting and Auditing Support Group at (800) 282-0370 or the legal division at (614) 752-8683.



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