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October 16, 2007

Mr. Patrick Thompson
Hamilton County Administrator
County Administration Building
138 East Court Street
Cincinnati, Ohio 45202

Re: Budget Authority - County Departments

Dear Mr. Thompson:

We have completed a review and legal analysis of your request for an opinion that reads as follows:

“The purpose of this letter is to request the Prosecutor’s opinion regarding the Board of County Commissioners’ legal ability to reduce the requested budgets of the following county departments in legislating the Hamilton County budget for calendar year 2008. Further, which departments may file a mandamus action (or another legal action with an equivalent outcome) to force the restoration of funding to requested levels?”

- Auditor
- Board of Elections
- Clerk of Courts
- Coroner
- County Engineer
- Court Agencies (including Court of Appeals, Municipal Court, Juvenile Court, Domestic Relations, Probate Court, Court Reporters, and Probation)
- Emergency Management Agency
- Prosecutor
- Public Defender
- Recorder
- Sheriff
- Treasurer.”

In simplest terms the Board of County Commissioners, as the county taxing and appropriating authority, is required to adopt an annual "tax budget" according to the terms of R.C. § 5705.28. The tax budget is derived from an estimate of contemplated revenues and expenditures for the next fiscal year for each county department, board, commission, and district authority entitled to participate in any appropriation or revenue of the county. The Board, as the taxing authority, is required to adopt an appropriation measure for the ensuing fiscal year setting forth the amounts appropriated for each county office, department, and division pursuant to R.C. § 5705.38. A budget is basically the amount of money the county is authorized to appropriate. *See generally* Ohio Attorney General Opinion # 92-003.

The authority that the Board can exercise over the amounts appropriated for each county office, department, and division is divided into two categories. The first category includes those county agencies for which, in the absence of a specific statutory (or constitutional) requirement for full funding, the Board is not required to appropriate all of the funds requested by those county offices, departments, or divisions. The second category includes those offices, departments, and divisions whose appropriations must be made in accord with specific statutory or constitutional provisions. See R.C. § 5705.28(C)(1) and *State ex rel. Trussel v. Meigs County Board of Commissioners* (2003), 155 Ohio App.3d 230. Accordingly, the answer to your inquiry for each of the listed county agencies will turn upon whether there is a specific statutory or constitutional provision requiring an appropriation for the full amount of the agency's budget request.

That is not to say, however, that the Board's appropriation authority for agencies in the first category is absolute. As the general appropriating authority for those county agencies in the first category, the Board has the discretion to budget and appropriate a reasonable amount for the operation of those agencies. The agencies have the ability to challenge the appropriation by the Board if the agency can establish that the amount appropriated is unreasonable and that the Board has abused its discretion. In this context an abuse of discretion does not mean a simple disagreement or the substitution of the agency's judgment for that of the Board but rather that the Board's appropriation decision is "unreasonable, arbitrary, or unconscionable." Indeed, the Ohio Supreme Court in one case has held that the term "unreasonable," in the context of an abuse of discretion, means "irrational." See *Cedar Bay Construction, Inc. v. City of Fremont* (1990), 50 Ohio St.3d 19 and *Trussel v. Meigs County*, cited above. The key element for those county agencies in this category is that the Board's appropriation is presumed to be reasonable and the county agency has a difficult burden to overcome to be able to challenge the appropriation as an abuse of discretion. It should be noted that a major factor to be considered in whether or not the Board has abused its discretion is the array of statutorily mandated duties that each county agency must fulfill. That is, the Board must provide a reasonable level of funding for each county agency to be able to effectively discharge its mandatory duties.

The county agencies listed in the request in the first category, for whom the Board is the general appropriating authority, are the Auditor, Sheriff, Coroner, Engineer, Recorder, Treasurer, and Public Defender. It should be noted that there are specific statutory provisions applicable to the level of appropriations for the Public Defender and unique factors that the Board must consider in the exercise of its appropriating authority for that office. These factors are outlined below.

Public Defender

R.C. § 120.14(B) and (C) provide, in part, that:

“(B) The (county public defender) commission shall determine the qualifications and size of the supporting staff and facilities and other requirements needed to maintain and operate the office of the county public defender.

(C) In administering the office of county public defender, the commission shall:

(1) Recommend to the county commissioners an annual operating budget which is subject to the review, amendment, and approval of the board of county commissioners....”

Accordingly the Board has the discretionary authority to change and approve the budget recommended for the operation of the public defender's office and the amount appropriated by the Board for that office can be challenged only upon proof of an abuse of discretion as outlined above.

However, it is important to note that the public defender is unique among this category of county agencies. The importance of providing sufficient funding for county agencies to meet their statutory obligations has been outlined above. Indigent criminal defendants have a constitutional right to appointed legal counsel provided by the state. In Ohio this constitutional duty is addressed by the state and county public defender commissions pursuant to R.C. Chapter 120. The standards for such representation are established by the Ohio public defender commission and the state public defender pursuant to R.C. § 120.14(F). R.C. § 120.14(B) provides that the level of staff, facilities, and other requirements needed to meet these statutory and constitutional duties are determined by the county public defender commission. Even though the Board is the general appropriating authority for the public defender, any budget reductions of the amounts determined by the commission to be required to represent indigent defendants would be subject to a heightened vulnerability from a challenge for failure to provide a reasonable appropriation to meet these mandatory statutory and constitutional obligations.

The following county agencies listed in your request fall into the second category for which there are specific statutory or constitutional provisions that determine how each agency's annual appropriations are determined. In most cases for these agencies the burden of establishing that the amount budgeted by the agency is unreasonable, as an abuse of discretion, is reversed and imposed upon the Board. That is, the amount budgeted by the agency is presumed reasonable unless the Board can challenge the amount by proof of an abuse of discretion according to the standard outlined above. Effectively, most of these agencies determine the level of funding that is necessary and the Board is required to provide it unless the agency can be shown to have abused its discretion.

Board of Elections

R.C. § 3501.17 provides in part:

“The expenses of the board of elections shall be paid from the county treasury, in pursuance of appropriations by the board of county commissioners, in the same manner as other county expenses are paid. If the board of county commissioners fails to appropriate an amount sufficient to provide for the necessary and proper expenses of the board of elections pertaining to the conduct of elections, the board of elections may apply to the court of common pleas within the county, which shall fix the amount necessary to be appropriated and the amount shall be appropriated.”

The Ohio Attorney General has interpreted this language to mean “that, in the event of a budgetary dispute between the board of elections and the county commissioners, the court of common pleas shall determine the amount of the board of elections’ necessary and proper expenses. The county commissioners are then under a mandatory duty to appropriate to the board of elections the amount determined by the common pleas court to be necessary and proper for the board’s operation.” Opinion # 97-057.

Courts

The courts, as a matter of the separation of powers provisions of the Ohio Constitution, possess inherent authority to order funding that is reasonable and necessary to the court’s administration of its business. The board of county commissioners is obligated to appropriate the requested funds, unless the board can establish that the court abused its discretion by requesting unreasonable and unnecessary funding. See *State ex rel. Wilke v. Hamilton County Board of Commissioners* (2000), 90 Ohio St.3d 55.

Clerk of Courts

The duties of the clerk of courts are twofold. The clerk of courts is an independently elected officer whose duties are set forth primarily in R.C. Chapter 2303. Secondly, R.C. 4505 imposes certain duties upon the clerk of courts concerning motor vehicle certificates of title.

The clerk is empowered to appoint deputy clerks pursuant to R.C. § 2305.05 and is one of the county officials authorized to fix the compensation of their employees pursuant to R.C. § 325.17. The code section further provides that the compensation for such employees may not exceed, in the aggregate, the amount fixed by the board of county commissioners for that office. Seemingly, these statutory provisions establish authority in the Board to exercise discretion in appropriating a reasonable amount for the compensation of the clerk’s employees.

However, several court decisions have analyzed the position of the clerk of courts with respect to the judicial functions of that office and have concluded that the “legal side” of the clerk’s office functions directly in connection with court matters and acts either as an arm of the court or, in some instances, as the court itself. See *State ex rel. Stacey v. Halverstadt*, 1987 WL 18846 (Ohio App. 7 Dist.) and Ohio Attorney General Opinion

2003-030. The Ohio Supreme Court has held that the clerk of courts is a ministerial officer of the court. *State ex rel. Dawson v. Roberts* (1956), 165 Ohio St. 341. Since the administration of justice by the judicial branch may not be impeded by the other branches of government, the courts have held that:

“The board of county commissioners must provide requested funds unless the commissioners can establish that the court or the clerk, the arm of the court, abused its discretion in submitting a budget that was unreasonable and unnecessary.” *State ex rel. Stacey* (cited above) and cases cited in the opinion at pg. 2.

This judicial conclusion is reinforced by R.C. § 2303.26 that provides that the clerk of court shall carry out the duties of office under the direction of the court.

R.C. § 2303.29(B) provides:

“The board of county commissioners shall budget and appropriate funds for the operation of the office of the clerk of the court of common pleas in an amount sufficient for the prompt discharge of the clerk’s duties under Chapter 4505 of the Revised Code.”

In reviewing these statutory provisions, the courts have held it is mandatory for a board of county commissioners to budget and appropriate full funding for the operation of the clerk sufficient for the discharge of the duties concerning motor vehicle title services as imposed by R.C. Chapter 4505. See *State ex rel. Stacey* and *State ex rel. Trussel*, cited above.

Accordingly, the Board is required to fund the operations of the clerk of courts in the same manner as the courts themselves.

Emergency Management Agency

The Emergency Management Agency was created in conformance with the provisions of R.C. § 5502.26. The EMA is unique and is considered to be an independent county agency subject to the direction and control of a board that is called an executive committee. As provided in the statute, the Board of County Commissioners is one of the member jurisdictions within the county that have created the EMA by agreement.

R.C. § 5502.26(A) provides that “the agency shall be supported financially by the political subdivisions entering into the countywide agreement.” Presumably the annual budget for the EMA would involve a process whereby the member jurisdictions agree upon a funding formula and the amount necessary to operate the agency for the next fiscal year. If such a process is employed, the budgeted amount would be approved by the executive committee and submitted to the Board of County Commissioners as the appropriating authority. The appropriation by the Board for the EMA would be ministerial in nature since the amount and the prorata share for each political subdivision had been previously determined in a process that included the Board.

The Board also has discretionary authority to appropriate additional general funds to support EMA functions and operations by the purchase of “assets or equipment”

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including a county wide public safety communication system. This supplemental authority, provided by R.C. §5502.261, includes the ability to appropriate general funds directly to any of the other political subdivisions to purchase communications devices and equipment for use in the countywide public safety communication system.

Prosecutor

R.C. § 309.06 (A) provides that:

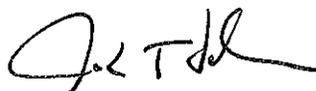
“.....the judges of the court of common pleas in joint session may fix an aggregate sum to be expended for the incoming year for the compensation of assistants, clerks, and stenographers of the prosecuting attorney’s office.

The prosecuting attorney may appoint any assistants, clerks, and stenographers who are necessary for the proper performance of the duties of his office and fix their compensation, not to exceed, in the aggregate, the amount fixed by the judges of the court of common pleas.....”

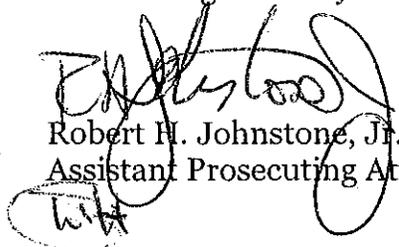
In *State ex rel. Slaby v. Summit County Council* (1983), 7 Ohio App.3d 199, the Court held that the office of the prosecuting attorney is part of the judicial process and that a board of county commissioners must appropriate the amount approved by the court in accord with R.C. § 309.06 unless it can be shown that the court of common pleas has abused its discretion in fixing the aggregate sum.

You have also asked about which departments can file a court action to force the restoration of an appropriation to the amount requested by the department. Any county agency can initiate a court challenge on the basis that the amount of the annual appropriation for the operation of that agency is not in compliance with the statutory provisions outlined above.

Respectfully,



Joseph T. Deters
Prosecuting Attorney



Robert H. Johnstone, Jr.
Assistant Prosecuting Attorney