October 4, 2011

The Honorable Donald R. Burns, Jr.
Carroll County Prosecuting Attorney
11 East Main Street
Carrollton, Ohio 44615

SYLLABUS: 2011-036

1. A county law library resources board may not donate moneys directly to the county recorder. A transfer of moneys from the county law library resources fund for the benefit of the county recorder, and the subsequent expenditure of those moneys by the county recorder, must be accomplished in accordance with the provisions of R.C. Chapter 5705.

2. A county law library resources board may contract with a vendor and pay for the cost of uploading to a third-party website public land records filed with the county recorder if the county law library resources board determines, in the reasonable exercise of its discretion, that the expenditure furthers the statutory purposes and responsibilities of the county law library resources board and fits within a specific appropriation adopted by the board of county commissioners under R.C. 5705.38. The expenditure also must be consistent with any rule adopted by the county law library resources board pursuant to R.C. 307.51(D)(1)(a).

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OPINION NO. 2011-036

The Honorable Donald R. Burns, Jr.
Carroll County Prosecuting Attorney
11 East Main Street
Carrollton, Ohio 44615

Dear Prosecutor Burns:

I am in receipt of your request for an opinion regarding the authority of the Carroll County Law Library Resources Board (the "Board") and the Carroll County Recorder (the "Recorder"). My understanding is that the Recorder's office makes land records available to the public through a third-party website, www.landaccess.com, owned and operated by Affiliated Computer Services, Inc. ("ACS"). *See* http://www.landaccess.com (last visited Sept. 20, 2011).[1] Currently, an individual using www.landaccess.com can search an online index of public land records filed with the Recorder on or after January 1, 1990, and can view images of documents filed on or after January 1, 1994. *See* http://www.landaccess.com/sites/oh/carroll/index.php (last visited Sept. 20, 2011).

The Recorder's office now would like to make available for online viewing those documents filed between January 1, 1990, and December 31, 1993. While the Recorder's office will scan the physical documents into electronic files, there is a one-time cost of $4,941.84 to have these files uploaded to www.landaccess.com. The Recorder does not have sufficient funds in her current budget to pay this expense. The Recorder has asked the Board to provide financial assistance for this project, and the Board has voted to donate $4,941.84 to the Recorder's equipment fund. In this context, you have asked whether the Board may donate funds to the Recorder, and whether the Recorder may accept and use those funds for the purpose designated by the Board. In the alternative, if such an arrangement is not allowed by Ohio law, you have asked whether the Board may contract with the vendor and directly pay for the cost of uploading document images to the third-party website.

We begin by examining the statutory scheme for a county law library resources board (an "LLRB"), a topic addressed in several recent Attorney General opinions. Historically, county law libraries were operated by county law library associations organized as either private associations or

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[1] According to its website, ACS is owned by Xerox Corporation and is an international provider of business process and information technology services. *See* http://www.acs-inc.com/about_acs.aspx (last visited Sept. 28, 2011).

nonprofit corporations under R.C. 1713.28. *See* 2010 Op. Att'y Gen. No. 2010-001, at 2-1. This changed with the enactment of Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008). Am. Sub. H.B. 420 "created in each county a new county entity, the law library resources board, which must 'provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources.'" 2010 Op. Att'y Gen. No. 2010-001, at 2-2 (quoting R.C. 307.51(B)); *see also* 2010 Op. Att'y Gen. No. 2010-014, at 2-94 (Am. Sub. H.B. 420 "transferred the responsibility for operating a county law library from the county law library association to the county law library resources board"). As a county agency, an LLRB must submit an annual budget to the board of county commissioners. *See* R.C. 307.513(A); 2010 Op. Att'y Gen. No. 2010-014, at 2-95; 2010 Op. Att'y Gen. No. 2010-001, at 2-2. "This budget, along with the other budgets submitted to the board of county commissioners, is used in preparing the county's tax budget, making appropriations, and distributing the revenue of the county." 2009 Op. Att'y Gen. No. 2009-049, at 2-370 n.6 (citing R.C. 5705.28(C)(1)).

The expenses and operations of an LLRB are paid from moneys that comprise the county law library resources fund, a separate fund within the county treasury. R.C. 307.514.

> The [county law library resources] fund receives revenue from certain fines, penalties, and forfeited bails collected by the courts and previously paid to the law library associations. R.C. 307.51(E); R.C. 307.514; R.C. 307.515; 2010 Op. Att'y Gen. No. 2010-001, slip op. at 2. Any fees for law library services collected pursuant to R.C. 307.51(D)(1)(c) also are deposited into the fund. R.C. 307.51(D)(4); R.C. 307.514. In addition, the fund may receive money appropriated by the board of county commissioners from the county general fund. R.C. 307.513; R.C. 307.514. An appropriation from the general fund is based on an annual estimate of the LLRB's revenue and expenditures that is prepared by the LLRB and submitted to the board of county commissioners. R.C. 307.513(A). The "estimate of expenses" must be "sufficient to provide for the operation of the county law library resources board," and the "estimate of revenue" must specifically request an appropriation from the general fund. *Id.* Finally, the county law library resources fund may receive revenue that is designated for deposit into the fund from private sources. This may include gifts or bequests from a person, firm, or corporation. R.C. 307.51(D)(1)(d); R.C. 307.514. Any expenditure from the county law library resources fund must be made pursuant to the annual appropriation measure adopted by the board of county commissioners. R.C. 307.514.

2010 Op. Att'y Gen. No. 2010-014, at 2-94 to 2-95; *see also* 2010 Op. Att'y Gen. No. 2010-001, at 2-2 to 2-3 ("[e]xpenditures from the county law library resources fund must be made pursuant to the annual appropriation measure adopted by the board of county commissioners under R.C. 5705.38").

A county recorder is an elected officer of the county. R.C. 317.01. The duties of a county recorder are prescribed by statute and are largely ministerial in nature. *See State ex rel. Preston v. Shaver*, 172 Ohio St. 111, 114, 173 N.E.2d 758 (1961); 2004 Op. Att'y Gen. No. 2004-011, at 2-84.

These duties include recording, filing, keeping, and indexing various documents—such as deeds, mortgage, plats, and liens—that are either required or authorized by the Revised Code to be recorded and that are presented to the county recorder for recording. *See* R.C. 317.08; R.C. 317.081; R.C. 317.09; R.C. 317.10; R.C. 317.13; R.C. 317.24; R.C. 317.35; *see also* 2004 Op. Att'y Gen. No. 2004-011, at 2-84; 1994 Op. Att'y Gen. No. 94-006, at 2-19 to 2-20.

**Donation of Funds by an LLRB to a County Recorder**

Your first question relates to the ability of an LLRB to donate funds to a county recorder, and the concomitant ability of a county recorder to accept that donation. As creatures of statute, it is well established that both an LLRB and a county recorder may exercise only those powers as are expressly conferred upon them by statute or that may be necessarily implied in order to effect the exercise of an express power. *See, e.g.*, 2010 Op. Att'y Gen. No. 2010-024, at 2-173; 2007 Op. Att'y Gen. No. 2007-036, at 2-372 to 2-373; 2002 Op. Att'y Gen. No. 2002-031, at 2-206.

The moneys of an LLRB held within a county law library resources fund are public moneys held in trust for the benefit of the public. *See* 2007 Op. Att'y Gen. No. 2007-036, at 2-373; 2002 Op. Att'y Gen. No. 2002-031, at 2-206. "Public money may be expended only by clear authority of law and in compliance with applicable statutory provisions." 2002 Op. Att'y Gen. No. 2002-031 at 2-206 to 2-207 (citing *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (syllabus, paragraph 1) (1918) ("[a]ll public property and public moneys … constitute a public trust fund …. Said trust fund can be disbursed only by clear authority of law")); *see also* 2007 Op. Att'y Gen. No. 2007-036, at 2-373. Doubts as to the authority to expend public funds should be resolved in favor of the public and against the ability to expend the funds. *See, e.g.*, *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2007 Op. Att'y Gen. No. 2007-036, at 2-373; 2002 Op. Att'y Gen. No. 2002-031, at 2-207. [2]

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[2] In addition to a public body's general statutory authority to expend public moneys, there is a separate issue of public moneys being restricted to use for specific purposes. *See* 2007 Op. Att'y Gen. No. 2007-036, at 2-373 to 2-374; 2002 Op. Att'y Gen. No. 2002-031, at 2-207 n.2. For example, moneys generated by special tax levies and statutorily-authorized fees often are restricted to use for specific purposes. *See, e.g.*, R.C. 311.171(F) ("[a]ll fees paid to a sheriff under this section shall be paid into the county treasury to the credit of the county general fund and shall be allocated to the sheriff to be used to defray the costs of registering sex offenders and child-victim offenders and providing community notification under [R.C. Chapter 2950]"); 2006 Op. Att'y Gen. No. 2006-009 (syllabus) ("[a]dministrative fees retained by the county auditor and deposited into the county general fund pursuant to R.C. 319.63(C) are restricted to use by the county recorder for the administration of the housing trust fund fee"); 2000 Op. Att'y Gen. No. 2000-048, at 2-296 ("[i]n determining whether resources generated from [a special] tax levy may be used for [a particular] purpose, we must examine the precise language of [the statute] under which the tax was levied, as well as the resolution and ballot language placing the question of the levy before the voters"). Obviously, public moneys in a

Several Attorney General opinions have addressed analogous situations and thoroughly analyzed the ability of public entities to donate public moneys to a public or private entity. In 2007 Op. Att'y Gen. No. 2007-036, the issue was the ability of a township to donate funds to a general health district. The opinion began by noting there is "no general authority for one political subdivision to donate money to another political subdivision." 2007 Op. Att'y Gen. No. 2007-036, at 2-373. Next, the opinion highlighted that townships are authorized by various statutes to give financial assistance to other political subdivisions only in limited circumstances. *Id.* at 2-374 to 2-375. Because no statute reasonably could be construed as giving a township the authority to donate funds for the specific purpose being considered—supporting a program to inform the public about a general health district's finances and activities—the Attorney General concluded no such authority existed. *See id.* (syllabus, paragraph 3); *see also* 1988 Op. Att'y Gen. No. 88-018, at 2-71 to 2-72 ("the General Assembly has provided various means by which a county may assist its townships and municipalities with respect to specific projects or needs.… [The] General Assembly has not, however, identified responsibility for the general financial needs of townships and municipalities as a county purpose").

In 2002 Op. Att'y Gen. No. 2002-031, the issue was the general authority of counties and townships to make contributions to private nonprofit entities. Again, the Attorney General identified a litany of statutes in which counties and townships are expressly granted authority to make contributions to private entities for specific purposes. 2002 Op. Att'y Gen. No. 2002-031, at 2-208. As a result, the Attorney General concluded a "county or township may donate public money to a charity, community group, nonprofit corporation, community social event, or community cultural event *only if* the county or township has statutory authority … to make such a donation." *Id.* (syllabus, paragraph 1) (emphasis added). The clear implication, therefore, is that a county or township's ability to donate funds to a private entity must be tied to a specific statutory grant of authority similar to the statutes identified in that opinion. *See also* 1983 Op. Att'y Gen. No. 83-069, at 2-286 ("I agree that a specific grant of authority would be necessary for a township to simply donate tax funds, or property or maintenance services acquired with such funds, to a private individual or corporation").

The Revised Code provisions dealing with LLRBs nowhere grant an LLRB the authority to donate money to a public or private entity for any purpose. *Cf.* 1989 Op. Att'y Gen. No. 89-068 (syllabus, paragraph 1) (county law library association had no authority to donate public funds to a

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county law library resources fund may be expended only pursuant to statutory authority and for a proper purpose of the LLRB. The Revised Code provisions identifying funding sources for an LLRB do not, however, further restrict the use of moneys to specific LLRB purposes. *See* R.C. 307.51(D)(1)(c) (fees for services); R.C. 307.513(B) (appropriations from the county's general fund); R.C. 307.514 (gifts or bequests); R.C. 307.515 (moneys collected by courts from certain fines, penalties, and forfeited bail). Thus, this opinion focuses on an LLRB's general statutory authority to expend moneys from a county law library resources fund, including the ability to make donations.

community college civic center). Accordingly, an LLRB lacks the general authority to make donations.

A county recorder also lacks authority to accept donations. The only statutory provision granting county entities or officers general authority to accept gifts or donations is R.C. 9.20, which states, in relevant part:

> [A] county, township, or a cemetery association or the commissioners or trustees of a county, township, or cemetery association … may receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit or the benefit of any of those under their charge and may hold and apply the moneys, lands, or properties according to the terms of the gift, devise, or bequest.

In 1989 Op. Att'y Gen. No. 89-074, the Attorney General addressed whether a county sheriff could accept donations pursuant to R.C. 9.20. Applying the principle of *expressio unius est exclusio alterius*, or the "expression of one thing implies exclusion of another," *Craftsman Type Inc. v. Lindley*, 6 Ohio St. 3d 82, 82, 451 N.E. 2d 768 (1983), the Attorney General concluded "the legislature intended to limit the public bodies or officers that are authorized to accept [donations] … pursuant to R.C. 9.20.… [T]here is no authority for county officers other than the county commissioners to receive" donations. 1989 Op. Att'y Gen. No. 89-074, at 2-340. The reasoning in 1989 Op. Att'y Gen. No. 89-074 applies with equal force to a county recorder. *See* 2011 Op. Att'y Gen. No. 2011-033, slip op. at 3. Further, nothing in R.C. Chapter 317 authorizes a county recorder to accept donations. This should be contrasted with other situations in which the General Assembly has granted specific authority to officers or boards to accept donations. *See, e.g.*, R.C. 307.51(D)(1)(d) (LLRB shall adopt rules regarding the receipt of gifts); R.C. 307.514 (LLRB may accept a "gift or bequest from any person, firm, or corporation"); R.C. 3709.282 (board of health of a city or general health district may "receive or give financial assistance" in establishing and operating federal programs).

Finally, an LLRB is a county board and a county recorder is a county officer. A county is a subdivision for purposes of R.C. Chapter 5705, R.C. 5705.01(A), and the board of county commissioners is the taxing authority for the county, R.C. 5705.01(C). R.C. 5705.28(A) requires the taxing authority of each subdivision to adopt the subdivision's annual tax budget. R.C. 5705.38(A) further requires the taxing authority of each subdivision to pass an annual appropriation measure. *See also* R.C. 5705.38(C) ("[a]ppropriation measures shall be classified so as to set forth separately the amounts appropriated for each office, department, and division"). Accordingly, a board of county commissioners is the appropriating authority for the county, including the LLRB and the county recorder. *See* 2008 Op. Att'y Gen. No. 2008-014, at 2-155 to 2-156 n.12.

Ohio law permits amended or supplemental appropriations. *See* R.C. 5705.38(A); R.C. 5705.40. Any amended or supplemental appropriation, however, must "comply with all provisions of law governing the taxing authority in making an original appropriation." R.C. 5705.40. Thus, a county recorder cannot receive and expend funds in addition to those originally appropriated unless the board of county commissioners passes an amended or supplemental appropriation to this effect under R.C. 5705.40. *See* 2000 Op. Att'y Gen. No. 2000-009, at 2-44 ("once a board of county

commissioners has appropriated funds in a particular manner, any change … may be made only by resolution of the board"); 1994 Op. Att'y Gen. No. 1994-007 (syllabus) ("[p]ursuant 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").

Further, the Revised Code establishes two statutory procedures by which moneys may be transferred from one fund of a subdivision to another fund. The first, set forth in R.C. 5705.14, "authorizes the taxing authority of a subdivision, acting by resolution, to transfer moneys from certain funds to other specified funds in the circumstances prescribed in its provisions." 2008 Op. Att'y Gen. No. 2008-009, at 2-100 (overruled on other grounds by 2009 Op. Att'y Gen. No. 2009-054). Our review indicates none of the provisions in R.C. 5705.14 apply to the transfer of funds from a county law library resources fund to another fund within the county treasury.[3] The second procedure is set forth in R.C. 5705.15-.16. This procedure requires a petition by the taxing authority to the court of common pleas, approval by the Tax Commissioner, and a judicial finding "that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom." 2008 Op. Att'y Gen. No. 2008-009, at 2-100 (quoting R.C. 5705.16); *see also* 1989 Op. Att'y Gen. No. 89-104, at 2-510 ("[t]he transfer of funds pursuant to R.C. 5705.15 and 5705.16 requires a resolution passed by a majority of the members of the taxing authority of the political subdivision, a petition to the court of common pleas, and approval of the Tax Commissioner").

The situation you have described—whereby an LLRB would donate funds directly to a county recorder to spend—would circumvent the statutory provisions outlined above with respect to the transfer of moneys from one fund of a subdivision to another fund. It is a well-established doctrine that, when a statute directs that a thing may be done by a specified means or in a particular manner, it may not be done by other means or in a different manner. *Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493 (1951); *see also City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 137

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[3] R.C. 5705.14(A) applies to the "unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created." R.C. 5705.14(B) applies to the "unexpended balance in any specific permanent improvement fund, other than a bond fund." R.C. 5705.14(C)(1) applies to the "unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest, and other obligations for the payment of which such fund exists have been paid and retired." R.C. 5705.14(C)(2) applies to "[m]oney in a bond fund or bond retirement fund of a city, local, exempted village, cooperative education, or joint vocational school district." R.C. 5705.14(D) applies to the unexpended balance in certain special funds "after the termination of the activity, service, or other undertaking for which such special fund existed." R.C. 5705.14(E) allows for money to be "transferred from the general fund to any other fund of the subdivision." R.C. 5705.14(F) applies to "[m]oneys retained or received by a county under [R.C. 4501.04] or [R.C. 5735.27(A)(3)]." R.C. 5705.14(G) applies to "[m]oneys retained or received by a municipal corporation under [R.C. 4501.04] or [R.C. 5735.27(A)(1) or (A)(2)]." R.C. 5705.14(H) applies to funds created for the benefit of a county board of developmental disabilities.

N.E. 6 (1922). This further supports the conclusion that an LLRB cannot donate moneys to the county recorder. Instead, any transfer of moneys from the county law library resources fund for the benefit of the county recorder, and the subsequent expenditure of such moneys by the county recorder, must be accomplished in accordance with the provisions of R.C. Chapter 5705.

**Direct Expenditures by an LLRB**

My understanding is that, if the donation arrangement described in your letter is not permitted, you also would like us to address whether an LLRB may directly contract with a vendor and pay for the cost of uploading scanned document images to a third-party website that serves as the online host for land records filed with the county recorder. We again start with the fundamental principles that an LLRB may exercise only those powers as are expressly conferred by statute or that necessarily may be implied in order to effect the exercise of an express power, and that moneys in the county law library resources fund may be expended only by clear authority of law and in compliance with applicable statutory provisions. *See, e.g.*, 2007 Op. Att'y Gen. No. 2007-036, at 2-372 to 2-373; 2002 Op. Att'y Gen. No. 2002-031, at 2-206.

Turning to the statutory provisions governing expenditures by an LLRB, R.C. 307.51(B) states an LLRB "shall provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources." *See also* 2010 Op. Att'y Gen. No. 2010-001, at 2-2 (noting an LLRB "must" provide these services). The phrases, "legal reference services" and "legal resources," are not statutorily defined for purposes of R.C. 307.51(B). Nor have these phrases been given a particular meaning by the courts. When terms in a statute have not "acquired a technical or particular meaning, whether by legislative definition or otherwise," the common or ordinary meaning of the term applies. R.C. 1.42; *see also* 2011 Op. Att'y Gen. No. 2011-031, slip op. at 3.

In the ordinary sense, the terms "legal," "reference," "resource," and "service" are defined as follows:

> **legal** … of or relating to law … deriving authority from or founded on law[.]
>
> ....
>
> **reference** … a source of information (as a book or passage) to which a reader or consulter is referred[.]
>
> ….
>
> **resource** … a source of information or expertise[.]
>
> ….
>
> **service** … a helpful act … useful labor that does not produce a tangible commodity[.]

*Merriam-Webster's Collegiate Dictionary* 710, 1045, 1061, 1137 (11th ed. 2005). Thus, "legal reference services" include acts that facilitate the conveyance of information about the legal rights of individuals and other entities and that is relevant to the municipal corporations, townships, and courts within the county, and a "legal resource" includes a mechanism through which this information is conveyed.

The documents filed with a county recorder's office include "all deeds, mortgages, plats, or other instruments of writing that are required or authorized by the Revised Code to be recorded and that are presented to the recorder for that purpose." R.C. 317.13. It is beyond dispute that these documents have legal significance. For example, a "deed" is a "written instrument by which land is conveyed." *Black's Law Dictionary* 423 (7th ed. 1999). A "mortgage" is defined as both a "lien against property that is granted to secure an obligation (such as a debt)" *and* the "instrument … specifying the terms of such a transaction." *Id.* at 1026. The very purpose of filing deeds, mortgages, and other written instruments with a county recorder for recording is "to provide public notice, either actual or constructive, to all persons of the various matters set forth in those instruments." 1996 Op. Att'y Gen. No. 96-034, at 2-134 to 2-135 (citations omitted). The documents filed with a county recorder's office are critical to, and routinely consulted in conjunction with, real property transactions. These documents are also essential to the assessment and collection of real property taxes by political subdivisions. Accordingly, by contracting and paying for the cost of uploading county land records to a third-party website, and thereby making such records more easily accessible, an LLRB provides a legal reference service and coordinates the acquisition of a legal resource under R.C. 307.51(B).[4]

In addition, while R.C. 307.51(B) directs an LLRB to provide "legal research, reference, and library services" and to manage "the coordination, acquisition, and utilization of legal resources," the means and methods of performing these functions are not specified. It has long been the established rule that, while the powers of statutorily-created boards are limited "strictly to such powers as are expressly granted to them or necessarily implied to carry out the express powers granted," when "power is extended by statute to administrative boards to act with respect to any matter the manner of so doing and the extent thereof if not fixed or limited by statute [then the means and method of exercising the power] are within the discretion of the board." 1940 Op. Att'y Gen. No. 1698, vol. I, p. 39, at 42; *see also* 2003 Op. Att'y Gen. No. 2003-019, at 2-151 ("[w]hile it is clear that a board of education has only the authority it is granted by statute, it is also clear that, within the authority granted by statute, a board of education has broad discretion"); 1993 Op. Att'y Gen. No. 93-066, at 2-311 ("where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be vested in such trustees, … [as] the statute can not

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[4] We are aware that the expenditure of funds from a county law library resources fund to pay for the cost of uploading county land records to a third-party website also benefits the county recorder. So long as the expenditure is otherwise lawful, however, this additional benefit will not affect the legality of the expenditure. *See, e.g.*, *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 324, 98 N.E.2d 835 (1951) ("[i]t is well settled that if the primary object of an expenditure … is to subserve a public purpose, the expenditure is legal although it may also involve as an incident an expenditure which, standing alone, would not be lawful"); 1991 Op. Att'y Gen. No. 91-060, at 2-294 (addressing expenditures by a former county law library resources association; "[t]he fact that the expenditures of public funds for the provision of a law library and related services to public officials may simultaneously serve additional purposes … is, of course, entirely acceptable" (quoting 1989 Op. Att'y Gen. No. 89-068, at 2-312 n.4)).

undertake to enumerate in detail every movement that they may make" (quoting 1952 Op. Att'y Gen. No. 1126, p. 97, at 103)). Thus, an LLRB may determine, in its discretion, whether contracting with a vendor and paying for the cost of uploading to a third-party website public land records filed with the county recorder furthers the statutory purposes and responsibilities of the LLRB.

R.C. 307.514 also states that expenditures from a county law library resources fund "shall be made pursuant to the annual appropriation measure adopted by the board of county commissioners under [R.C. 5705.38]." By its plain terms, R.C. 307.514 prohibits expenditures for which there is no appropriation. *See State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) ("[w]here the wording of a statute is clear and unambiguous, [the] only task is to give effect to the words used"). An LLRB has the discretion to determine, however, whether an expenditure fits within a specific appropriation. *See* 1994 Op. Att'y Gen. No. 94-007, at 2-27 n.3 (once an "appropriation has been made by the board of county commissioners and the funds allocated to a county board or agency, the authority to disburse funds *within* each itemized amount is within the discretion of the board or agency" (emphasis in original)); 1966 Op. Att'y Gen. No. 66-170, at 2-362 (overruled on other grounds by 1991 Op. Att'y Gen. No. 91-008) ("[i]t is clear that after the appropriation has been effected and the funds allocated, the disbursal of the funds within each itemized amount is completely within the discretion" of the county agency). Thus, an LLRB may contract with a vendor and pay for the cost of uploading to a third-party website public land records filed with the county recorder if the LLRB determines, in its discretion, that the expenditure fits within a specific appropriation for or to the LLRB.

An LLRB must, of course, exercise its discretion in a reasonable manner. *See State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) ("[e]very officer of this state or any subdivision thereof … is required to exercise an intelligent discretion in the performance of his official duty"); 2003 Op. Att'y Gen. No. 2003-029, at 2-248 (an agency may not abuse its discretion in determining whether an expenditure constitutes a proper public purpose); 1994 Op. Att'y Gen. No. 94-048, at 2-246 ("[a]ny exercise of discretion must be reasonable"). It is beyond the scope of the formal opinion process to definitively determine whether an individual expenditure is a reasonable exercise of an LLRB's discretion. Determinations of reasonableness must be made, in the first instance, by the individual LLRB. *See* 2003 Op. Att'y Gen. No. 2003-029, at 2-248; 1998 Op. Att'y Gen. No. 98-035, at 2-209. Ultimately, determinations of reasonableness are left to the courts. *See* 2003 Op. Att'y Gen. No. 2003-029, at 2-249 n.9; 1998 Op. Att'y Gen. No. 98-035, at 2-209.

Finally, R.C. 307.51(D)(1)(a) states that an LLRB "shall adopt rules for … [t]he expenditure of funds that are appropriated for its use pursuant to [R.C. 307.513(B)]." Thus, the decision by an LLRB to contract with a third-party vendor and pay for the cost of uploading to a third-party website public land records filed with the county recorder must be consistent with any rules adopted pursuant to R.C. 307.51(D)(1)(a).

**Conclusion**

In sum, it is my opinion, and you are hereby advised as follows:

1. A county law library resources board may not donate moneys directly to the county recorder. A transfer of moneys from the county law library resources fund for the benefit of the county recorder, and the subsequent expenditure of those moneys by the county recorder, must be accomplished in accordance with the provisions of R.C. Chapter 5705.

2. A county law library resources board may contract with a vendor and pay for the cost of uploading to a third-party website public land records filed with the county recorder if the county law library resources board determines, in the reasonable exercise of its discretion, that the expenditure furthers the statutory purposes and responsibilities of the county law library resources board and fits within a specific appropriation adopted by the board of county commissioners under R.C. 5705.38. The expenditure also must be consistent with any rule adopted by the county law library resources board pursuant to R.C. 307.51(D)(1)(a).

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General