

required interest, the tax will no longer be levied.<sup>3</sup> Accordingly, the revenue derived from a county sales tax levied pursuant to R.C. 5739.026(A)(2) to establish a fixed amount of local matching funds to be used each year to secure the necessary federal operating monies to operate the county's transit authority must be applied during the life of the sales tax levy to the purpose for which the levy was passed.

### Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Revenue derived from a county sales tax levied pursuant to R.C. 5739.026(A)(2) must be deposited into a special fund.
2. Revenue derived from a county sales tax levied pursuant to R.C. 5739.026(A)(2) may not be deposited into a trust fund.
3. There is no statutory limit upon the amount of revenue in a special fund that is comprised of revenues derived from a county sales tax levied pursuant to R.C. 5739.026(A)(2) that may be carried forward from year to year. However, revenue derived from such sales tax must be applied during the life of the levy to the purpose for which the levy was passed.

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<sup>3</sup> Whether the principal of the fund generates sufficient interest to secure matching federal operating monies is a factual question that will have to be decided by the board of county commissioners. Any exercise of discretion by the board in that regard must be reasonable and within the limitations set by statute and the resolution to levy the tax. 1989 Op. Att'y Gen. No. 89-078 at 2-363.

### OPINION NO. 93-076

#### Syllabus:

1. If an offender is sentenced, pursuant to R.C. 2925.03(C)(9) or (10), to an indefinite term of fifteen years (actual incarceration) to life, consecutive to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less, R.C. 2929.41(E)(2) provides that the minimum term shall be fifteen years of actual incarceration.
2. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less, R.C. 2929.41(E)(2) does not limit the minimum term to fifteen years; rather, R.C. 2925.03(C)(10) is, when applicable, an exception to R.C. 2929.41(E)(2) and, pursuant to R.C. 2925.03(C)(10) and R.C. 2929.41(E)(2), the offender is subject to a minimum term of twenty years of actual incarceration.

3. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite term of twenty years (actual incarceration) to life pursuant to R.C. 2925.03(C)(10), R.C. 2929.41(E)(2) does not limit the minimum term to fifteen years; rather, R.C. 2925.03(C)(10) is, when applicable, an exception to R.C. 2929.41(E)(2) and, pursuant to R.C. 2925.03(C)(10) and R.C. 2929.41(E)(2), the offender is subject to a minimum term of twenty years of actual incarceration.
4. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less or consecutive to another indefinite sentence for a minimum term of twenty years pursuant to R.C. 2925.03(C)(10), the offender's parole eligibility is calculated on the basis of the twenty-year minimum term for the consecutive sentences. Assuming that no three-year terms of actual incarceration have been imposed pursuant to R.C. 2929.71 and no six-year terms of actual incarceration have been imposed pursuant to R.C. 2929.72, the prisoner will be eligible to be considered for parole at the expiration of twenty years, diminished as provided by law.

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**To: Reginald A. Wilkinson, Director, Department of Rehabilitation and  
Correction, Columbus, Ohio**  
**By: Lee Fisher, Attorney General, December 30, 1993**

You have requested an opinion concerning the minimum sentence that must be served in particular circumstances involving drug trafficking, and also the manner in which parole eligibility is to be calculated. Your specific questions are as follows:

1. If an offender is sentenced, pursuant to ORC 2925.03(C)(9) or (10) [aggravated trafficking in drugs] to an indefinite term of 15 years (Actual Incarceration) to life consecutive to another indefinite sentence, does ORC 2929.41(E)(2) limit the minimum term to 15 years?
2. If an offender is sentenced, pursuant to ORC 2925.03(C)(10) to an indefinite term of 20 years (Actual Incarceration) to life consecutive to another indefinite sentence, does ORC 2929.41(E)(2) limit the minimum term to 15 years?
3. If ORC 2929.41(E)(2) does not limit to fifteen years the minimum term of an offender sentenced, pursuant to ORC 2925.03(C)(10), to an indefinite term of 20 years (Actual Incarceration) to life consecutive to another indefinite sentence, how is parole eligibility to be calculated?

#### **Sentences for Trafficking in Drugs**

Your questions relate to offenders who are, pursuant to R.C. 2925.03(C)(9) or (10), sentenced to indefinite terms of imprisonment. R.C. 2925.03 defines various drug trafficking offenses. In particular, R.C. 2925.03(A)(9) prohibits any person from knowingly possessing a controlled substance in an amount equal to or exceeding one hundred times the bulk amount, and R.C. 2925.03(A)(10) prohibits any person from knowingly selling or offering to sell such an

amount of a controlled substance. R.C. 2925.03(C) provides that a violation of R.C. 2925.03 constitutes aggravated trafficking if certain types of drugs are involved. Pursuant to R.C. 2925.03(C):

(9) Where the offender has violated division (A)(9) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose an indefinite term of imprisonment of fifteen years to life for the offense, with the minimum term of fifteen years being a sentence of actual incarceration.

(10) Where the offender has violated division (A)(10) of this section, aggravated trafficking is a felony of the first degree, and the court shall impose an indefinite term of imprisonment of fifteen years to life for the offense, with the minimum term of fifteen years being a sentence of actual incarceration, except that the court shall impose an indefinite term of imprisonment of twenty years to life for the offense, with the minimum term of twenty years being a sentence of actual incarceration, if any of the following apply:

(a) The offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises;

(b) The offender commits the offense within one hundred feet of any juvenile or within the view of any juvenile, whether or not the offender knows the age of the juvenile, the offender knows the juvenile is within one hundred feet or within view of the commission of the offense, or the juvenile views the commission of the offense;

(c) The offender previously has been convicted of a felony drug abuse offense.

An offender may thus be sentenced to a minimum term of actual incarceration of either fifteen or twenty years for aggravated trafficking in drugs, depending on the circumstances of the offense.

### **Consecutive Sentences**

R.C. 2929.41 governs the period of imprisonment that must be served by an individual who has been sentenced for more than one offense. Your questions relate to sentences that are to be served consecutively. The General Assembly has imposed limits on such terms, as follows:

Consecutive terms of imprisonment imposed shall not exceed:

(1) An aggregate minimum term of twenty years, when the consecutive terms imposed include a term of imprisonment for murder and do not include a term of imprisonment for aggravated murder;

(2) *An aggregate minimum term of fifteen years, plus the sum of all three-year terms of actual incarceration imposed pursuant to section 2929.71 of the Revised Code and the sum of all six-year terms of actual incarceration imposed pursuant to section 2929.72 of the Revised Code, when the consecutive terms imposed are for felonies other than aggravated murder or murder;*

(3) An aggregate term of eighteen months, when the consecutive terms imposed are for misdemeanors.

R.C. 2929.41(E) (emphasis added); *see also* 17 Ohio Admin. Code 5120-2-03(F). R.C. 2929.71 provides for three-year terms of actual incarceration, in addition to a life sentence or indefinite term of imprisonment, for certain offenses involving firearms. R.C. 2929.72 provides for a six-year term of actual incarceration, in addition to a life sentence or indefinite term of

imprisonment, for certain offenses involving an automatic firearm or a firearm equipped with a muffler or silencer. Your letter of request raises no questions with respect to these three-year and six-year terms. It is assumed, for purposes of this opinion, that the prisoner under consideration has not been sentenced to any three-year terms under R.C. 2929.71 or any six-year terms under R.C. 2929.72.

Your questions relate to the application of R.C. 2929.41(E) to indefinite sentences imposed under R.C. 2925.03(9) or (10). Your letter states, in part:

In the case of an offender sentenced, pursuant to ORC 2925.03(C)(9) or (10) to a term of 15 years (Actual Incarceration) to life, consecutive to another indefinite sentence, the effect will be to limit the minimum sentence to fifteen years. However, if an offender is sentenced pursuant to 2925.03(C)(10) to a term of 20 years (Actual Incarceration) to life, consecutive to another indefinite sentence, ORC 2929.41(E)(2) would seem, to limit the minimum sentence to fifteen years.

It is assumed, for purposes of this opinion, that the other indefinite sentence is not for murder or aggravated murder and has a minimum term of actual incarceration that is fifteen years or less, or that the other indefinite sentence is for a minimum term of twenty years pursuant to R.C. 2925.03(C)(10).

**Application of R.C. 2929.41(E)(2) to Sentence of Fifteen-Year Minimum Term Pursuant to R.C. 2925.03(C)(9) or (10), Consecutive to Another Sentence**

Your first question is whether, when an offender is sentenced under R.C. 2925.03(C)(9) or (10) to an indefinite term of fifteen years (actual incarceration) to life, consecutive to another indefinite sentence with a minimum term of fifteen years or less, R.C. 2929.41(E)(2) provides that the minimum term shall be fifteen years of actual incarceration. In such circumstances, R.C. 2929.41(E)(2), by its express terms, dictates that the aggregate minimum term shall be fifteen years. See, e.g., *State v. White*, 18 Ohio St. 3d 340, 481 N.E.2d 596 (1985) (statute providing minimum term for consecutive sentences is self-executing, automatically operating to set the aggregate minimum term); *State v. Slider*, 70 Ohio App. 2d 283, 437 N.E.2d 5 (Franklin County 1980).

It might be argued that, if the second sentence also has a term of "actual incarceration" -- as, for example, if the second sentence is also a sentence to an indefinite term of fifteen years (actual incarceration) to life under R.C. 2925.03(C)(9) or (10) -- the aggregate minimum term must be the total of the terms of actual incarceration imposed, even if that total exceeds fifteen years. A contrary result, however, is indicated by R.C. 2929.41(E)(2), which requires that the three-year terms of actual incarceration imposed pursuant to R.C. 2929.71 and the six-year terms of actual incarceration imposed pursuant to R.C. 2929.72 be served in addition to an aggregate minimum term of fifteen years, but leaves all other terms of actual incarceration for offenses that are subject to R.C. 2929.41(E)(2) to be included in the aggregate minimum term of fifteen years for consecutive terms.

R.C. 2929.01(C) defines "actual incarceration" as follows:

"Actual incarceration" means that an offender is required to be imprisoned for the stated period of time to which he is sentenced that is specified as a term of actual incarceration. If a person is sentenced to a term of actual incarceration, the court shall not suspend his term of actual incarceration, and shall not grant

him probation or shock probation, pursuant to section 2929.51, 2947.061, 2951.02, or 2951.04 of the Revised Code, and the department of rehabilitation and correction or the adult parole authority shall not, pursuant to Chapter 2967. of the Revised Code or its rules adopted pursuant to Chapter 2967., 5120., 5143., or 5149. of the Revised Code, grant him a furlough for employment or education, a furlough for being a trustworthy prisoner other than a furlough pursuant to division (A)(1) or (2) of section 2967.27 of the Revised Code, parole, emergency parole, or shock parole until after the expiration of his term of actual incarceration, diminished as provided in sections 2967.19, 2967.193, 5145.11, and 5145.12 of the Revised Code.

An offender who is sentenced to a term of actual incarceration may be transferred from an institution operated by the department of rehabilitation and correction to the custody of the department of mental health or the department of mental retardation and developmental disabilities, as provided in section 5120.17 of the Revised Code, and shall be credited with all time served in the custody of the department of mental health or the department of mental retardation and developmental disabilities against the term of actual incarceration.

By applying an aggregate minimum term to consecutive sentences, R.C. 2929.41(E)(2) establishes the amount of time that must be served by an individual sentenced to consecutive terms of actual incarceration under provisions other than R.C. 2929.71 or 2929.72. "Actual incarceration," as defined in R.C. 2929.01(C), applies to the "stated period of time to which [an offender] is sentenced that is specified as a term of actual incarceration." R.C. 2929.41(E) restricts the length of consecutive minimum terms of imprisonment that may be imposed, requiring that terms of actual incarceration imposed pursuant to R.C. 2929.71 and 2929.72 be served in full, but requiring other terms of actual incarceration to be aggregated in the specified minimum term permitted.

**Application of R.C. 2929.41(E)(2) to Sentence of Twenty-Year Minimum Term Pursuant to R.C. 2925.03(C)(10), Consecutive to Another Sentence**

The next question is whether, when an offender is sentenced under R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence with a minimum term of fifteen years or less, R.C. 2929.41(E)(2) limits the minimum term to fifteen years. As your letter suggests, a literal application of R.C. 2929.41(E)(2) would limit the minimum term in that situation to fifteen years. As a result of having been convicted of two offenses, the offender would thus be subject to a minimum sentence shorter than the twenty years of actual incarceration to which he would have been sentenced if he had been convicted of only a single offense pursuant to R.C. 2925.03(C)(10).

For example, if an offender is sentenced to twenty years (actual incarceration) to life pursuant to R.C. 2925.03(C)(10), the offender must serve a term of imprisonment of at least twenty years, diminished as provided by law. *See* R.C. 2929.01(C). If, however, the offender is also convicted of a violation of R.C. 2925.03(C)(9) and sentenced to a consecutive term of fifteen years (actual incarceration) to life, a literal application of R.C. 2929.41(E)(2) would restrict the consecutive terms of imprisonment imposed to an aggregate minimum term of fifteen years. That minimum term would then be subject to diminution as provided by law. *See* note 2, *infra*.

Under such an interpretation of R.C. 2929.41(E)(2), the offender, who would have faced *twenty years* of actual incarceration if he had been convicted of a single offense under R.C. 2925.03(C)(10), will, instead, be subject to only a *fifteen-year* minimum term because he has

been convicted of a second offense. Such a result is contrary to logic and it does not appear that the General Assembly could reasonably have intended such a result. See R.C. 1.47 ("[i]n enacting a statute, it is presumed that... (C) A just and reasonable result is intended"); R.C. 1.49 ("[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:... (E) The consequences of a particular construction"); 1990 Op. Att'y Gen. No. 90-090; see also *State v. Arnold*, 61 Ohio St. 3d 175, 178-79, 573 N.E.2d 1079, 1082 (1991) (rejecting as "absurd" a statutory construction under which "aggravated drug trafficking" would carry a lesser penalty than "drug trafficking"); *State ex rel. Crenshaw v. Tatman*, 73 Ohio App. 3d 601, 605, 598 N.E.2d 91, 93 (Ross County 1991) (rejecting as "absurd" a statutory construction that would permit an offender who has served most of a fifteen-year minimum sentence and commits a felony while on parole to "essentially go unpunished" for the crime committed while on parole).

Faced with a similar question involving the application of R.C. 2929.41(E)(2) to a defendant sentenced to two consecutive life terms with no minimum terms, the Court of Appeals for Hamilton County found that the fifteen-year minimum term provision did not apply, stating: "[L]ogic says that if a man must serve a full life term for a single forcible rape of a child, then the legislature could not have meant that when he commits two such rapes, he is entitled to a fifteen-year minimum term." *State v. Gregory*, 8 Ohio App. 3d 184, 186, 456 N.E.2d 839, 841 (Hamilton County 1982). The court concluded that the specific provision of R.C. 2907.02(B) imposing a life term for forcible rape of a child under age thirteen prevailed over the general provision of R.C. 2929.41(E) that established minimum terms for consecutive sentences. *Id.*; see also R.C. 1.51; Op. No. 90-090.

The analysis applied in the *Gregory* case is applicable also in this instance. Even though R.C. 2929.41(E) does not specifically exclude drug trafficking under R.C. 2925.03(C)(10) from its operation, and even though laws defining offenses and penalties are to be construed strictly against the state and liberally in favor of the accused, see R.C. 2901.04(A), the provisions of R.C. 2929.41(E)(2) cannot reasonably be read as granting an offender an aggregate minimum term for two or more offenses that is shorter than the minimum term he would serve if sentenced to only one of those offenses. R.C. 2925.03(C)(10) expressly provides that, for certain drug trafficking offenses, an offender must be sentenced to a minimum term of twenty years of actual incarceration. That specific language of R.C. 2925.03(C)(10) must be read as providing an exception to the general language of R.C. 2929.41(E)(2) that limits to fifteen years consecutive sentences for felonies other than aggravated murder or murder. See, e.g., *State v. Cravens*, 42 Ohio App. 3d 69, 536 N.E.2d 686 (Hamilton County 1988); 1990 Op. Att'y Gen. No. 90-022.

The same conclusion is also dictated by R.C. 1.51, which states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, *the special or local provision prevails as an exception to the general provision*, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. (Emphasis added.)

R.C. 2925.03 was amended more recently than R.C. 2929.41. See Sub. H.B. 377, 120th Gen. A. (1993) (eff. July 30, 1993); 1991-1992 Ohio Laws, Part IV, 5911 (Am. Sub. H.B. 561, eff. April 9, 1993). Further, the fifteen-year limitation on the aggregate minimum term for consecutive sentences for felonies other than aggravated murder or murder has been part of Ohio law since 1974. See 1971-1972 Ohio Laws, Part II, 1986 (Am. Sub. H.B. 511, eff. Jan. 1, 1974). R.C. 2925.03(C)(9) and (10) originally became effective in 1990, and at that time R.C.

2925.03(C)(10) provided for a twenty-year sentence of actual incarceration. *See* 1989-1990 Ohio Laws, Part I, 1376-77 (Am. Sub. S.B. 258, eff. Aug. 22, 1990, with amendments to R.C. 2925.03 eff. Nov. 20, 1990). It follows that the specific twenty-year provision of R.C. 2925.03(C)(10) prevails over the general fifteen-year limitation of R.C. 2929.41(E)(2). *See generally, e.g., State ex rel. Myers v. Chiaramonte*, 46 Ohio St. 2d 230, 348 N.E.2d 323 (1976).

For these reasons, therefore, if a twenty-year sentence imposed under R.C. 2925.03(C)(10) is consecutive to another sentence that is not for murder or aggravated murder and has a minimum term of fifteen years or less, the exception contained in R.C. 2925.03(C)(10) supersedes the fifteen-year minimum term set forth in R.C. 2929.41(E)(2) and establishes twenty years as the aggregate minimum term for those two sentences. A similar result is reached if the offender is sentenced to two consecutive terms of twenty years (actual incarceration) to life pursuant to R.C. 2925.03(C)(10). Then the exception contained in R.C. 2925.03(C)(10) prevails over the fifteen-year minimum term of R.C. 2929.41(E)(2) to establish twenty years as the aggregate minimum term that may be imposed. As discussed above, R.C. 2929.41(E)(2) requires that terms of actual incarceration imposed under R.C. 2929.71 or R.C. 2929.72 be served, but requires other terms of actual incarceration to be aggregated in the minimum term.

### Parole Eligibility

Your third question asks how parole eligibility is to be determined if it is concluded that R.C. 2929.41(E)(2) does not limit to fifteen years the minimum term of an offender sentenced under R.C. 2925.03(C)(10) to a term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence that has a minimum term of fifteen years or less or consecutive to another indefinite sentence for a minimum term of twenty years pursuant to R.C. 2925.03(C)(10). In such circumstances, parole eligibility is determined on the basis of the twenty-year minimum term for the consecutive sentences.

The matter of parole eligibility when sentences are served consecutively is addressed generally in R.C. 2967.25, which states that "[a] person serving several indeterminate sentences consecutively becomes eligible for parole upon the expiration of the aggregate of the minimum terms of his several sentences diminished as provided in [R.C. 2967.19]."<sup>1</sup> R.C. 2967.13 contains provisions governing parole eligibility under certain circumstances in which sentences are served consecutively, but does not address the factual situation that you have presented.<sup>2</sup> *See also* 17 Ohio Admin. Code 5120-2-10.

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<sup>1</sup> R.C. 2967.19 governs time off for good behavior. Various other statutes also provide for the diminution of sentences of imprisonment in various circumstances. *See* R.C. 2967.193 (days of credit); R.C. 5145.11 - .12 (sentence diminution for certain prisoner who attend or teach at the elementary day school for uneducated prisoners of the penitentiary); *see also* R.C. 2929.01(C) (defining "actual incarceration" as permitting parole after the term of actual incarceration, diminished as provided in R.C. 2967.19, 2967.193, 5145.11, and 5145.12); R.C. 2967.13(A) (providing that a prisoner serving an indefinite term of imprisonment for a felony becomes eligible for parole at the expiration of the minimum term, diminished as provided in R.C. 2967.19, 2967.193, 5145.11, and 5145.12); R.C. 2967.13(L), .19(F), .193 (E)(3) (imposing limitations on grants of diminution); 17 Ohio Admin. Code 5120-2-05 to -12. *See generally* 17 Ohio Admin. Code 5120:1-1-03.

<sup>2</sup> R.C. 2967.13(F) states that, in certain circumstances, a prisoner becomes eligible for parole after serving a term of ten full years' imprisonment. Those circumstances include a

The language of R.C. 2967.25 providing for parole eligibility at the expiration of the aggregate of the minimum terms of sentences served consecutively is consistent with R.C. 2929.41(C) and (D), which provide, in general, that the term to be served under consecutive sentences is the aggregate of the consecutive terms imposed. The general rule of R.C. 2929.41(C) and (D) is, however, subject to the limits on aggregate minimum terms set forth in R.C. 2929.41(E), and those limits must apply also to R.C. 2967.25. *But see* R.C. 2967.13(G)-(J) (establishing parole eligibility for certain types of consecutive sentences, including life sentences for aggravated murder); 17 Ohio Admin. Code 5120-2-10. *See generally State ex rel. Gregory v. Stein*, No. 1572 (Ct. App. Scioto County May 6, 1986).

If, for example, an offender is sentenced to an indefinite term of twenty years (actual incarceration) to life pursuant to R.C. 2925.03(C)(10) and is sentenced to a consecutive indefinite term of fifteen years (actual incarceration) to life pursuant to R.C. 2925.03(C)(9), then the aggregate of the minimum terms is thirty-five years but, pursuant to R.C. 2925.03(C)(10) and R.C. 2929.41(E)(2), the aggregate minimum term of imprisonment imposed may not exceed twenty years. If a prisoner's aggregate minimum term for a sentence under R.C. 2925.03(C)(10) and another consecutive sentence is twenty years then, pursuant to R.C. 2967.25 and R.C. 2929.41(E), the prisoner's parole eligibility is based upon the twenty-year term, diminished as provided by law. Thus, an offender who is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another sentence that is not for murder or aggravated murder and has a minimum term of incarceration of fifteen years or less or consecutive to another indefinite sentence for a minimum term of twenty years pursuant to R.C. 2925.03(C)(10), and who is not sentenced to any three-year terms of actual incarceration pursuant to R.C. 2929.71 or any six-year terms of actual incarceration imposed pursuant to R.C. 2929.72, is eligible to be considered for parole at the expiration of twenty years, diminished as provided by law. *See generally* R.C. 2967.03; *State v. Packer*, 16 Ohio App. 2d 171, 243 N.E.2d 115 (Marion County 1969).

It should be noted that R.C. 2929.01(C), quoted above, provides that a court may not grant parole to a person who is sentenced to a term of actual incarceration "until after the expiration of his term of actual incarceration, diminished as provided in [R.C. 2967.19, 2967.193, 5145.11, and 5145.12]." Nevertheless, R.C. 2929.41(E), which provides that consecutive terms of imprisonment imposed shall not exceed specified aggregate minimum terms, permits sentences of actual incarceration (other than those under R.C. 2929.71 or R.C. 2929.72) to be reduced to satisfy the aggregate minimum term limitations.

### Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. If an offender is sentenced, pursuant to R.C. 2925.03(C)(9) or (10), to an indefinite term of fifteen years (actual incarceration) to life, consecutive

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prisoner who is "serving a minimum term or terms, whether consecutive or otherwise, of imprisonment longer than fifteen years, imposed under any former law of this state." The reference to "any former law of this state" appears to apply to laws in effect prior to January 1, 1974. *See* 1971-1972 Ohio Laws, Part II, 1866, 2004-05 (Am. Sub. H.B. 511, eff. Jan. 1, 1974, with certain provisions effective on other dates) (enacting R.C. 2967.13, eff. Jan. 1, 1974). It is assumed, for purposes of this opinion, that the prisoner in question is not serving a sentence under such former law. The other circumstances mentioned in R.C. 2967.13(F) do not apply here.

to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less, R.C. 2929.41(E)(2) provides that the minimum term shall be fifteen years of actual incarceration.

2. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less, R.C. 2929.41(E)(2) does not limit the minimum term to fifteen years; rather, R.C. 2925.03(C)(10) is, when applicable, an exception to R.C. 2929.41(E)(2) and, pursuant to R.C. 2925.03(C)(10) and R.C. 2929.41(E)(2), the offender is subject to a minimum term of twenty years of actual incarceration.
3. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite term of twenty years (actual incarceration) to life pursuant to R.C. 2925.03(C)(10), R.C. 2929.41(E)(2) does not limit the minimum term to fifteen years; rather, R.C. 2925.03(C)(10) is, when applicable, an exception to R.C. 2929.41(E)(2) and, pursuant to R.C. 2925.03(C)(10) and R.C. 2929.41(E)(2), the offender is subject to a minimum term of twenty years of actual incarceration.
4. If an offender is sentenced, pursuant to R.C. 2925.03(C)(10), to an indefinite term of twenty years (actual incarceration) to life, consecutive to another indefinite sentence that is not for murder or aggravated murder and has a minimum term of actual incarceration of fifteen years or less or consecutive to another indefinite sentence for a minimum term of twenty years pursuant to R.C. 2925.03(C)(10), the offender's parole eligibility is calculated on the basis of the twenty-year minimum term for the consecutive sentences. Assuming that no three-year terms of actual incarceration have been imposed pursuant to R.C. 2929.71 and no six-year terms of actual incarceration have been imposed pursuant to R.C. 2929.72, the prisoner will be eligible to be considered for parole at the expiration of twenty years, diminished as provided by law.

#### OPINION NO. 93-077

#### Syllabus:

For purposes of R.C. 5901.08, which specifically concerns eligibility for veterans' assistance funds within a particular county, an incarcerated individual remains a resident of the county where he or she had a domicile prior to the incarceration and the individual is precluded from changing his or her domicile until released. Unless an individual has already established bona fide residence in a county before being incarcerated there, the time spent as a prisoner does not count toward the six month county residence requirement of R.C. 5901.08.

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To: David E. Aldstadt, Director, Governor's Office of Veterans Affairs,  
Columbus, Ohio

By: Lee Fisher, Attorney General, December 30, 1993