October 27, 1993

OPINION NO. 93-028

The Honorable John E. Meyers
Sandusky County Prosecuting Attorney
Child Support Enforcement - Branch Office
108 S. Park Avenue
P.O. Box 1228
Fremont, Ohio 43420

Dear Prosecutor Meyers:

You have requested my opinion concerning the duties of the county child support enforcement agency. Your letter states that the court in Sandusky County is referring matters to the child support enforcement agency under R.C. 3113.21(B)(4) "to gather information on both the obligor and the obligee." It is the position of the child support enforcement agency that the scope of an investigation ordered by a court under R.C. 3113.21(B)(4) is limited to information concerning only the obligor, not the obligee. Based upon information provided by your staff, your concern is whether the child support enforcement agency has a duty to investigate the obligee, as well as the obligor, where the court, pursuant to R.C. 3113.21(B)(4), has ordered the agency to conduct an investigation pursuant to R.C. 3113.21(B)(3).

Child Support Enforcement Agencies

R.C. 2301.35 provides for the establishment and operation of a child support enforcement agency within each county. Among the duties imposed upon a child support enforcement agency are the duties to "be responsible in the county it serves for the collection of payments due under support orders, [and to] ...perform all administrative duties related to the collection of payments under any support order." R.C. 2301.35(C). Pursuant to R.C. 2301.35(F):

> Each child support enforcement agency designated under this section shall enter into written agreements with the courts, the prosecuting attorney, and law enforcement officials of the county it serves, which agreements shall establish cooperative working arrangements and specify areas of responsibility for the enforcement of support among the agency, courts, and officials. The agreements shall provide for the reimbursement of the courts and law enforcement officials for the responsibilities they assume and actions they undertake pursuant to such agreements.

Thus, although a child support enforcement agency has certain duties imposed upon it by statute, any cooperative agreement entered into under R.C. 2301.35(F) must also be consulted to determine

that particular child support enforcement agency's areas of responsibility.[1]

Payment of Child Support Through Withholding of Funds

Your question concerns the scope of an investigation ordered by a court under R.C. 3113.21(B)(4), which states:

> If any proceedings involving a support order issued before, on, or after December 1, 1986, are commenced in the court and if either the court previously has not issued any orders under division (D) of this section with respect to the support order or the court determines that there is a need to modify any orders previously issued under division (D) of this section, the court, prior to or during any hearings held with respect to the proceedings and prior to the conclusion of the proceedings, shall order the child support enforcement agency to *conduct an investigation pursuant to division (B)(3) of this section.* Upon the filing of the findings of the agency following the investigation or the completion of any administrative hearing held pursuant to division (B)(1) of this section or upon the completion of any court hearing held pursuant to division (B)(5) of this section, the court shall issue one or more orders described in division (D) of this section or modify, as necessary, any orders previously issued under division (D) of this section. (Emphasis added.)

Pursuant to R.C. 3113.21(B)(4), once any proceedings involving a support order are commenced in court, the court may order the child support enforcement agency "to conduct an investigation pursuant to [R.C. 3113.21(B)(3)]," if the court has not previously issued an order under R.C. 3113.21(D) or if the court finds it necessary to modify an order previously issued under R.C. 3113.21(D).

Scope of Investigation under R.C. 3113.21(B)(3)

R.C. 3113.21(B)(3), pursuant to which the child support enforcement agency conducts an investigation ordered by a court under division (B)(4), states in part:

> (a) The child support enforcement agency immediately shall conduct an investigation to determine the employment status of the *obligor*, the *obligor's* social security number, the name and business address of the *obligor's* employer, whether the *obligor* is in default under a support order, the amount of any arrearages, *and any other information necessary to enable the court to issue any order described in division (D) of this section*, if any of the following apply:
> ....

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[1] Because you have not mentioned the possible application of any cooperative agreements entered into by the Sandusky County Child Support Enforcement Agency, this opinion will address only those duties imposed by statute upon a child support enforcement agency.

> (iv) The court, pursuant to division (B)(4) of this section, orders the child support enforcement agency to conduct an investigation pursuant to division (B)(3) of this section.
> (b) ...[A]ny investigation conducted pursuant to division (B)(3)(a)(iii) or (iv) of this section *shall be completed within twenty days after the obligor's or obligee's motion is filed with the child support enforcement agency or the court orders the agency to conduct an investigation.* When the child support enforcement agency completes an investigation under division (B)(3)(a) of this section, the agency immediately shall file its findings with the court that issued the order, immediately shall send a copy of its findings to the obligee, and immediately shall send all of the following to the obligor:
> ....
> *If the court* detects a mistake of fact in the findings filed under division (B)(3)(b) of this section, discovers other irregularities in the findings, or *determines that the findings are not sufficiently complete to enable the court to issue an order, it immediately shall* return the findings to the child support enforcement agency, notify the agency of the mistake of fact, irregularity, or incompleteness, and *order the agency to correct the findings* and return the corrected findings to the court prior to the date when the unpaid support under the support order equals the support payable for one month under that order. Immediately upon the filing of the corrected findings of the agency, the court shall issue one or more appropriate orders in accordance with division (D) of this section. (Emphasis added.)

Thus, R.C. 3113.21(B)(3)(a) specifies certain information concerning the obligor that the child support enforcement agency must gather where the court, pursuant to R.C. 3113.21(B)(4), has ordered the agency to conduct an investigation under R.C. 3113.21(B)(3). R.C. 3113.21(B)(3)(b)(iv). In addition, R.C. 3113.21(B)(3)(a) states that the court may require a child support enforcement agency to gather "any other information necessary to enable the court to issue any order described in [R.C. 3113.21(D)]." Pursuant to R.C. 3113.21 (B)(3)(b), should the court determine that the child support enforcement agency's findings are insufficient to enable the court to issue an order, the court may return the agency's findings to it for correction. Thus, whether a child support enforcement agency must provide information concerning the obligee, as well as the obligor, when ordered to perform an investigation under R.C. 3113.21(B)(4) depends upon whether such information is "information necessary to enable the court to issue any order described in [R.C.3113.21(D)]," R.C. 3113.21(B)(3)(a).

Types of Orders Issued under R.C. 3113.21(D)

R.C. 3113.21(D) prescribes various types of orders a court may issue, stating in pertinent part:

> If a court is required under division (B) or (C) of this section or any other section of the Revised Code to issue one or more orders described in this division, the court shall issue one or more of the following types of orders to pay the support required

under the support order and also, if required by either of those divisions, any other section of the Revised Code, or the court, to pay any arrearages:

(1)(a) If the court or the child support enforcement agency determines that the obligor is employed, the court shall issue an order requiring the obligor's employer to withhold from the obligor's personal earnings, a specified amount for support in satisfaction of the support order, to begin the withholding one week after receipt of the order, and to continue the withholding at intervals determined by the court in its order until further order of the court....

....

(2)(a) If the court or the child support enforcement agency determines that the obligor is receiving workers' compensation payments, the court may issue an order requiring the bureau of workers' compensation or the employer that has been granted the privilege of paying compensation directly and that is paying workers' compensation benefits to the obligor to withhold from the obligor's workers' compensation payments a specified amount for support in satisfaction of the support order....

....

(3)(a) If the court or child support enforcement agency determines that the obligor is receiving any pension, annuity, allowance, or other benefit or is to receive or has received a warrant refunding his individual account from the public employees retirement system, a municipal retirement system..., the police and firemen's disability and pension fund, the state teachers retirement system, the school employees retirement system, or the state highway patrol retirement system, the court may issue an order requiring the [appropriate governing board]...to withhold from the obligor's pension, annuity, allowance, other benefit, or warrant a specified amount for support in satisfaction of the support order....

....

(4)(a) If the court or child support enforcement agency determines that the obligor is receiving any form of income, including, but not limited to, disability or sick pay, insurance proceeds, lottery prize awards, federal, state, or local government benefits to the extent that the benefits can be withheld or deducted under any law governing the benefits, any form of trust fund or endowment fund, vacation pay, commissions and draws against commission that are paid on a regular basis, bonuses or profit-sharing payments or distributions, or any lump-sum payments, the court may issue an order requiring the person who pays or otherwise distributes the income to the obligor to withhold from the obligor's income a specified amount for support in satisfaction of the support order....

....

(5) If the court or child support enforcement agency determines that the obligor has funds on deposit in any account in a financial institution under the jurisdiction of the court, the court may issue an order requiring any such financial institution in which the obligor's funds are on deposit to deduct from the obligor's account a specified amount for support in satisfaction of the support order....

....

> (6) The court may issue an order requiring the obligor to enter into a cash bond with the court....
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> ....
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> (7) If the obligor is unemployed, has no income, and does not have an account at any financial institution, the court shall issue an order requiring the obligor to seek employment, if the obligor is able to engage in employment, and immediately to notify the child support enforcement agency upon obtaining employment, upon obtaining any income, or upon obtaining ownership of any asset with a value of five hundred dollars or more.

It is not apparent from examination of R.C. 3313.21(D) that information concerning the obligee would be necessary in order for the court to issue an order under R.C. 3113.21(D). Although information concerning the obligee is always needed by the court in determining whether to issue or modify a child support order or in determining the amount to be awarded under such an order, *see generally* R.C. 3113.215, such information may not always be necessary in order for the court to issue an order, as authorized by R.C. 3113.21(D), to withhold funds from the obligor as a means of meeting the obligor's child support obligations. Where a court does find, however, that it is necessary to obtain information concerning the obligee in order for the court to issue an order authorized by R.C. 3113.21(D), R.C. 3113.21(B)(3)(a) requires the child support enforcement agency to compile such information as part of its investigation.

Requirements for Compliance with Court Order

Because there may be some question as to whether information needed for a court to issue any of the orders specified in R.C. 3113.21(D) includes information with respect to the obligee, your concern appears to involve the options available to a child support enforcement agency that has been ordered by a court to conduct an investigation under R.C. 3113.21(B)(3) and to provide information concerning the obligee. As recently summarized in 1992 Op. Att'y Gen. No. 92-072, slip op. at 3-4, concerning the options available to a county children services board in responding to a court order that appears on its face to be valid and within the jurisdiction of the court:

> When a county children services board is the subject of a court order, the board may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril. *See, e.g., State ex rel Beil v. Dota*, 168 Ohio St. 315, 322, 154 N.E.2d 634, 639 (1958) (quoting *United States v. United Mine Workers of America*, 330 U.S. 258, 303 (1947)) ("[t]he interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience, does so at his peril"), *cert. denied*, 360 U.S. 912 (1959); *Board of Education v. Hamilton Classroom Teachers Association*, 5 Ohio App. 3d 51, 53, 449 N.E.2d 26, 29 (Butler County 1982) ("[a]n order issued by a court with jurisdiction must be obeyed until it is reversed by orderly and proper proceedings" (citation omitted)); 1988 Op. Att'y Gen. No. 88-052; 1986 Op. Att'y Gen. No.86-034; 1981 Op. Att'y Gen. No. 81-053. A person who disobeys or resists a court order may

> be subject to a contempt proceeding. *See, e.g.*, R.C. 2705.02(A); 1990 Op. Att'y Gen. No. 90-009. It has been stated that "an opinion of the Attorney General regarding a court's authority cannot authorize a public official to disregard any order of that court." Op. No. 90-009, at 2-39.

Similarly, when a court, pursuant to R.C. 3113.21(B)(4), has ordered the child support enforcement agency to conduct an investigation under R.C.3113(B)(3) and to provide information concerning both the obligor and obligee, the child support enforcement agency must comply with the order, "unless and until the order is changed by orderly and proper proceedings. Refusal to comply with the court's order may be the basis for a contempt proceeding." *Id.*, slip op. at 4. While the analysis of the provisions of R.C. 3113.21(B)(3) and (4), set forth above, may provide some basis for questioning the scope of the court's order under R.C. 3113.21(B)(4), the child support enforcement agency remains subject to any order directed to it until the order is changed.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, where a court has, pursuant to R.C. 3113.21(B)(4), issued an order to a child support enforcement agency to conduct an investigation under R.C. 3113.21(B)(3), including investigation of the obligee, the agency must comply with that order, unless and until the order is changed by orderly and proper judicial proceedings.

Respectfully,

LEE FISHER
Attorney General

October 27, 1993

The Honorable John E. Meyers
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SYLLABUS: 93-028

Where a court has, pursuant to R.C. 3113.21(B)(4), issued an order to a child support enforcement agency to conduct an investigation under R.C. 3113.21(B)(3), including investigation of the obligee, the agency must comply with that order, unless and until the order is changed by orderly and proper judicial proceedings.