

OPINION NO. 2001-024**Syllabus:**

A board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power. (1982 Op. Att'y Gen. No. 82-011, syllabus, paragraph 1, approved and followed.)

To: Jonathan D. Blanton, Jackson County Prosecuting Attorney, Jackson, Ohio
By: Betty D. Montgomery, Attorney General, July 2, 2001

We have received your request for an opinion concerning the authority of the Board of Commissioners of Jackson County to charge administrative fees. Your first question asks whether there is authority for a board of county commissioners to require public agencies to pay certain administrative fees. The fees would include costs incurred by the county auditor's office or the county treasurer's office in providing the agencies with services, and might also include utility and rent charges. Your second question asks, if there is authority for the county commissioners to charge such fees, whether fees may be assessed upon moneys provided to the Jackson County Common Pleas Court, Juvenile Division, for the Department of Youth Services commitment.

You have informed us that, upon the advice of the county auditor and a consulting firm employed by the county auditor's office, the Board of Commissioners of Jackson County has enacted a resolution that charges administrative fees to certain public agencies. Under the resolution, the charges are determined by referencing a cost analysis that allocates various charges to the different agencies. You have stated that this is a rather contentious issue, and you are seeking our guidance in determining whether the fees are appropriate.

As your letter notes, the question whether a board of county commissioners may charge public offices for services rendered by an office of county government was addressed in 1982 Op. Att'y Gen. No. 82-011. That opinion concluded that there was no general authority to impose such charges, stating:

If a service is performed for a public office by an office of county government, whether on a mandatory or discretionary basis, a board of county commissioners may not charge the office receiving such service unless there is express statutory authorization for such charge or authority implied from an express power.

1982 Op. Att'y Gen. No. 82-011 (syllabus, paragraph 1). In accordance with that opinion, a board of county commissioners is not permitted to charge a public office for services rendered by the county unless there is either express statutory authorization for the charge or authority implied from an express power.

This conclusion is based on the principle that a board of county commissioners is a creature of statute that has only such powers as it is granted by statute, either expressly or by necessary implication. *See State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 197 N.E.2d 112 (1935). Further, it has been stated, with respect to boards of county commissioners, that "[t]he authority to act in financial transactions must be clear and distinctly granted." *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916); *see* 1995 Op. Att'y Gen. No. 95-004, at 2-15. Therefore, unless a statute authorizes a county to charge for services provided in the exercise of statutory powers and duties, the county may not do so.

You have asked specifically, in light of this general rule, whether there is an exception that allows county commissioners to charge administrative fees. Our research has disclosed no provision of law that grants a board of county commissioners general authority to charge public bodies for administrative costs incurred by the county. Rather, like other costs incurred by the county, administrative costs may be charged to particular public bodies only if there is express statutory authorization for such charge or authority implied from an express power.

It has long been established under Ohio law that a board of county commissioners has no general authority to charge public bodies for services provided by the county. *See* 1931 Op. Att’y Gen. No. 3406, vol. II, p. 938, at 941 (“the county would not be authorized to charge back to the state or to political subdivisions of the county any part of the compensation of legal counsel so allowed and paid ..., without express statutory authority therefor”). The same conclusion has also been reached in more recent opinions. *See, e.g.*, 1995 Op. Att’y Gen. No. 95-004, at 2-17 (“it is a general rule that, if a county provides a service, the county may not charge the political subdivision receiving the service unless there is express statutory authorization for such charge or authority necessarily inferred from an express power”); 1986 Op. Att’y Gen. No. 86-104; *see also* 1992 Op. Att’y Gen. No. 92-072, at 2-307.

We are aware of certain instances in which there is statutory authority permitting particular charges to be allocated to public bodies. For example, 1982 Op. Att’y Gen. No. 82-011 concluded that a board of county commissioners is authorized by R.C. 307.85 to “charge a public office for services provided by an office of county government to the extent necessary to collect federal reimbursement funds which have been specifically provided for such purpose.” 1982 Op. Att’y Gen. No. 82-011 (syllabus, paragraph 2); *see also, e.g.*, R.C. 305.171; R.C. 307.846; R.C. 321.26; R.C. 321.27; R.C. 4504.05; 1995 Op. Att’y Gen. No. 95-004. However, we are not aware of any provision of law that provides general authority for a board of county commissioners to charge other public bodies administrative fees.

By statute, the county auditor and county treasurer are given various powers and duties, and the county is given the responsibility of funding their activities. *See, e.g.*, R.C. 319.03; R.C. 319.12; R.C. 319.14-.16; R.C. 319.28-.30; R.C. 319.45-.49; R.C. 321.05; R.C. 321.07-.10; R.C. 321.12; R.C. 321.16-.20; R.C. 321.24; R.C. 321.29-.34; R.C. 325.01; R.C. 325.17; *see also* R.C. 319.54. When services of the county auditor and treasurer are provided pursuant to statute to public bodies outside the county’s general budget, those services are provided as part of the general powers and duties of the auditor and treasurer. The cost of those services cannot be charged to the public bodies that receive them unless there is statutory authority to impose such a charge. *See, e.g.*, 1963 Op. Att’y Gen. No. 555, p. 557 (the cost of drawing warrants and the cost of envelopes in which they are mailed to individual recipients are part of the county auditor’s operating expenses and are properly charged to the county auditor’s appropriation, rather than to the department for which they are issued).¹

The same conclusion is reached when, pursuant to statute, the county provides public bodies with office space and utilities. *See, e.g.*, R.C. 307.01; 1986 Op. Att’y Gen. No. 86-104. No costs for office space or utilities can be charged to the public bodies absent statutory authority for imposing such charges. *See, e.g.*, 1991 Op. Att’y Gen. No. 91-016.

We conclude, therefore, that a board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is express statutory authorization for the charge or

¹The rule discussed herein has been applied also to state officials. In particular, it has been concluded that “[t]he Treasurer of State may not charge a fee for services performed with regard to custodial accounts unless there is express statutory authorization for such charge or authority implied from an express power.” 1982 Op. Att’y Gen. No. 82-082 (syllabus, paragraph 3). The Auditor of State has express statutory authority to recover the costs of audits. R.C. 117.13. No similar general authority has been granted to county auditors to recover costs of functions performed on behalf of public bodies.

authority implied from an express power. We are aware of no authority for such charges in the instant case.

With regard to your second question, we are aware of no provision that would authorize a board of county commissioners to charge administrative fees against moneys provided to the court of common pleas. Under Ohio law, the board of county commissioners is required to provide funds for the court of common pleas. *See* 2000 Op. Att'y Gen. No. 2000-009; 1996 Op. Att'y Gen. No. 96-015; 1993 Op. Att'y Gen. No. 93-043. Various statutory provisions establish procedures by which the common pleas court receives funding from the county to cover its administrative expenses. *See* R.C. 307.01(B); R.C. 2101.11 (probate court); R.C. 2151.10 (juvenile court). We are aware of no statutory authority for the county commissioners to charge the court for administrative expenses incurred by the county. *See, e.g.,* 1992 Op. Att'y Gen. No. 92-072, at 2-307 (finding no statutory authority for a county children services board to impose upon a court a charge for providing supervised visitation and stating: "[i]n the absence of statutory authority, one governmental agency may not charge a second governmental agency for services performed, even if those services benefit the second agency"). Therefore, it is unnecessary to address your second question.

For the reasons set forth above, it is my opinion, and you are advised, that a board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power. (1982 Op. Att'y Gen. No. 82-011, syllabus, paragraph 1, approved and followed.)