

Note from the Attorney General's Office:

2001 Op. Att'y Gen. No. 2001-006 is explained by
2015 Op. Att'y Gen. No. 2015-015.

OPINION NO. 2001-006**Syllabus:**

A court of common pleas may not use fees generated pursuant to R.C. 2303.201(E)(1) to pay the county sheriff for security services that the sheriff is required by R.C. 311.07(A) to provide to the court.

To: Robin N. Piper, Butler County Prosecuting Attorney, Hamilton, Ohio

By: Betty D. Montgomery, Attorney General, March 9, 2001

Your predecessor requested an opinion of us concerning the proper use of fees collected by a court of common pleas under R.C. 2303.201(E)(1). Specifically, we were asked to advise whether special projects fund moneys collected under R.C. 2303.201(E)(1) may be used to pay the county sheriff for expenses incurred by the sheriff in providing security for the court of common pleas.

Resolution of this question requires us to examine R.C. 2303.201(E)(1), which provides, in pertinent part, that a "court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court." After making this determination, "the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession" to pay for special projects of the court. *Id.*

All moneys collected by the court pursuant to R.C. 2303.201(E)(1) are deposited into either a general special projects fund or a fund established for a specific special project. *Id.* The moneys from a special projects fund are disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. *Id.*

Although the General Assembly has not defined the term "special projects," for purposes of R.C. 2303.201(E)(1), it has provided a general description of such special projects as, "including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services." *Id.* The list of examples set forth in R.C. 2303.201(E)(1) thus suggests that the General Assembly intended to permit special projects fund moneys to be used for any "special projects" of the court, whether the expenditures are for staff, equipment, facilities, programs, training, or any services related to such projects. *See* 1997 Op. Att'y Gen. No. 97-049 at 2-305 (addressing similar language in R.C. 1901.26(B)(1), which authorizes a municipal court, by rule, to charge a fee, in addition to all other court costs, for the funding of "special projects" that the court determines will benefit its efficient operation).

The statute simply describes “special projects” as items that would benefit the court’s efficient operation. *See id.* Moreover, since the General Assembly has referred to the moneys generated under R.C. 2303.201(E)(1) as “additional funds,” it appears that the General Assembly intended that such moneys would supplement, but not replace, the funds otherwise provided for the court through ordinary funding mechanisms. *See id.*

With respect to the proposal to use special projects fund moneys to pay the county sheriff for security services that the sheriff provides to the court of common pleas, it is necessary to consider the county’s duty to provide for the court’s security. Pursuant to R.C. 307.01(A), a board of county commissioners is required to provide a courthouse when it is deemed necessary. *See* 1989 Op. Att’y Gen. No. 89-029 at 2-120 and 2-121; 1987 Op. Att’y Gen. 87-039 at 2-261. *See generally Commissioners of Trumbull Cty. v. Hutchins*, 11 Ohio 368, 371 (1842) (“[i]t is the legal duty of the county commissioners to furnish all things coupled with the administration of justice within the limits of their own county”). The “primary and paramount purpose of the courthouse ... is to furnish the rooms and facilities essential for the proper and efficient performance of the functions of the courts.” *State ex rel. Hottle v. Board of Cty. Comm’rs*, 52 Ohio St. 2d 117, 119-20, 370 N.E.2d 462, 464 (1977); *accord Zangerle v. Court of Common Pleas*, 141 Ohio St. 70, 82, 46 N.E.2d 865, 870 (1943); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65, 119 N.E. 136, 137 (1917). Because a board of county commissioners is required by R.C. 307.01(A) to manage and control the courthouse, the board is required to keep the courthouse safe and in good repair. 1989 Op. Att’y Gen. No. 89-029 at 2-122; 1987 Op. Att’y Gen. No. 87-039 at 2-261; 1917 Op. Att’y Gen. No. 80, vol. I, p. 187.

In order to keep the courthouse safe, R.C. 311.07(A) provides, in part, that, “[u]nder the direction and control of the board of county commissioners, [the county] sheriff shall have charge of the court house.” R.C. 311.07(A) imposes a duty upon the county sheriff to “attend upon the court of common pleas and the court of appeals during their sessions, and, when required, [to] attend upon the probate court.”¹ Accordingly, pursuant to R.C. 311.07(A), a county sheriff is responsible for providing for the court of common pleas’ security.

We must now consider whether special projects fund moneys generated under R.C. 2303.201(E)(1) may be used to reimburse the county sheriff for the security services he provides to the court of common pleas. We have been informed that the court of common pleas would like to use special projects fund moneys to pay for that portion of the county sheriff’s fiscal budget that the sheriff expends to provide security services to the court of common pleas pursuant to R.C. 311.07(A). No fees in the special projects fund, however, would be used to supplement the security services that the county sheriff is required by R.C. 311.07(A) to provide to the court of common pleas, or to purchase security equipment that is to be used by the sheriff in discharging his statutorily imposed duty to provide security services to the court.²

¹In addition, R.C. 307.01(A) requires the board of county commissioners to provide the county sheriff with any equipment the board considers reasonably necessary for the sheriff to keep the courthouse safe. *See generally* 1938 Op. Att’y Gen. No. 1952, vol. I, p. 364 (a board of county commissioners may provide the county sheriff with a camera, police siren, and high powered rifle); 1927 Op. Att’y Gen. No. 101, vol. I, p. 151 (a board of county commissioners may purchase handcuffs and pistols for the use of the county sheriff).

²The language of R.C. 2303.201(E)(1) suggests that, if a court of common pleas determined that it would be beneficial to “the efficient operation of the court” to supplement the security services provided to the court by the county sheriff pursuant to R.C. 311.07, such

As explained above, fees generated pursuant to R.C. 2303.201(E)(1) may not be used to replace moneys and services otherwise provided by statute for the operation of the court of common pleas. Rather, such moneys are to provide "additional funds" to the court of common pleas for "special projects."

The provision of security services by the county sheriff in accordance with R.C. 311.07(A), is not an extraordinary or special undertaking, but rather an ordinary part of the sheriff's operating expenses. *See* 1989 Op. Att'y Gen. No. 89-086 (syllabus) ("[e]xpenses incurred by the county sheriff in serving summonses, warrants, citations, subpoenas, writs, and other papers issued by the juvenile court in connection with cases that are filed in the juvenile court shall, pursuant to R.C. 2151.19, be paid out of the monthly allowance that is made available therefor by the board of county commissioners under R.C. 325.07. Such expenses shall not be taxed and collected by the juvenile court as fees or costs under R.C. 2151.54"). We find, therefore, that the cost of providing such service cannot constitute a "special project" within the meaning of R.C. 2303.201(E)(1). *See generally* 1997 Op. Att'y Gen. No. 97-049 (syllabus, paragraph two) (stating, in part, "[b]ecause a municipal court had no authority prior to the amendment of R.C. 1901.26 in Am. Sub. H.B. 438, 121st Gen. A. (1996) (eff., in pertinent part, July 1, 1997), to hire special projects staff members whose salaries are payable from special projects fund moneys, special projects fund moneys may not be used to pay the salary of a municipal court employee hired by the court prior to that date"). Consequently, a court of common pleas may not use special projects fund moneys to pay the county sheriff for security services that the sheriff is required by R.C. 311.07(A) to provide to the court.³

Based on the foregoing, it is my opinion, and you are hereby advised that a court of common pleas may not use fees generated pursuant to R.C. 2303.201(E)(1) to pay the county sheriff for security services that the sheriff is required by R.C. 311.07(A) to provide to the court.

supplemental services would constitute a "special project" for purposes of that statute. *See* 1997 Op. Att'y Gen. No. 97-049 at 2-306 and 2-307 ("[b]ecause special projects fund moneys are to be used to acquire and pay for items that would benefit the court's efficient operation, should the court choose to appoint an additional bailiff as a 'special project' of the court, I can find no reason that special projects fund moneys could not be used to pay the salary of such additional bailiff"). *See generally* 1989 Op. Att'y Gen. No. 89-029 at 2-123 (a court of common pleas "has the right to control its facilities, to the extent that proper and efficient administration of justice requires"). In this instance, however, we are not presented with the question of whether the court could properly expend moneys collected pursuant R.C. 2303.201(E)(1) to provide supplemental security services or security equipment, and so we do not find it necessary to resolve that question at this time.

³*See generally* 1982 Op. Att'y Gen. No. 82-011 (syllabus, paragraph one) ("[i]f 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").