October 29, 2009

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street, Second Floor
Xenia, Ohio 45385

SYLLABUS: 2009-044

1. In appropriating funds to the clerk of the court of common pleas and other elected county officers, the board of county commissioners is authorized to distribute those funds to various line items that specify the amount that may be expended for particular purposes (such as personal services, training, or equipment) as provided in applicable statutes and rules, including R.C. 325.17 and R.C. 5705.38, and subject to the constitutional restriction that the use of line items must not interfere with the administration of judicial functions.

2. Amounts that have been budgeted to the clerk of the court of common pleas or another elected county officer and appropriated to a particular line item by the board of county commissioners may be transferred to another line item only upon resolution of the board of county commissioners amending the appropriation measure under R.C. 5705.40. The board of county commissioners, acting in the reasonable exercise of its discretion, may restrict or deny a transfer request unless constitutional or statutory provisions require approval of the request. Approval of a transfer request is required if a statute grants the elected county officer sole discretion to determine the amount of the appropriation.

3. Subject to an abuse of discretion standard, the board of county commissioners has authority under R.C. 325.17 to fix the aggregate amount appropriated for compensation of the employees of the clerk of the court of common pleas, and also of the county auditor, county treasurer, county sheriff, county engineer, and county recorder, and is not required to grant any requests to transfer funds to or from a line item established for this purpose, even if the officer requesting the transfer determines that a transfer is necessary for the efficient operation of the office.

4. Because the clerk of the court of common pleas is a statutory officer, the board of county commissioners may restrict or deny a request made by the clerk to transfer appropriated amounts from one line item to another unless a statute vests sole discretion over a budget item in the clerk, as is the case with regard to funding the costs of the administration of the motor vehicle title function under R.C. 2303.29(A).

5. To protect the independence of the judiciary under the separation of powers doctrine, the board of county commissioners must grant a request made by a constitutional judicial officer to transfer appropriated amounts from one line item to another unless the board establishes that the request is unreasonable and unnecessary for the administration of judicial functions and thus constitutes an abuse of discretion on the part of the requester.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

October 29, 2009

OPINION NO. 2009-044

The Honorable Stephen K. Haller
Greene County Prosecuting Attorney
61 Greene Street, Second Floor
Xenia, Ohio 45385

Dear Prosecutor Haller:

We have received your opinion request, submitted on behalf of the Clerk of the Greene County Court of Common Pleas. You have asked the following questions:

1. Once the Board of County Commissioners has allocated and approved a certain amount of funding to be appropriated from the County General Fund for an elected county official's annual budget, does the Board of County Commissioners have the authority to dictate the distribution of those funds to specific line items?

2. Once funds have been appropriated to a line item within an elected official's budget, may the Board of County Commissioners restrict or deny a transfer request (known as an "Amendment to Appropriations") from an elected official, to move funds from a previously appropriated line item to another line item, if the elected official has determined the transfer is necessary for the efficient operation of his/her office?

You have explained that in Greene County, after completing the budget process, the board of county commissioners appropriates funds to elected county officials, with specific figures allocated to various line items, such as employee compensation, training, and equipment. The board of county commissioners has adopted a policy of not permitting money in the employee compensation line item to be transferred to other uses. This policy was initiated because of past instances in which an official would transfer amounts from the employee compensation line item to other purposes and then would approach the commissioners near the

end of the fiscal year needing additional funding for employee compensation. The intent of the policy is that each elected official work within the constraints of the amounts appropriated. Elected officials, however, sometimes find that their employee compensation needs are less than the amounts that were budgeted and wish to use the excess funds for other purposes.

You have submitted your questions on behalf of the clerk of the court of common pleas but have explained that they are relevant to all elected county officials.[1] This opinion addresses general principles applicable to all elected county officials and focuses specifically on statutes and case law pertinent to the clerk of the court of common pleas. It considers only the operations of counties that, like Greene County, have not adopted a charter.[2]

Various statutory provisions govern the budgeting and expenditures of particular elected county officials. In order to accurately address the appropriation for a particular elected county official, it is necessary to thoroughly examine all statutes relevant to that official. That task requires detailed analysis that exceeds the scope of this opinion. *See, e.g.*, R.C. 309.06 (the compensation of certain employees of the county prosecutor is fixed in the aggregate by the judges of the court of common pleas); R.C. 325.071, .12 (furtherance of justice funds for county sheriff and prosecutor); R.C. 5577.13 (duty of boards of county commissioners to appropriate from county road fund money to equip and compensate deputy sheriffs for enforcement of motor vehicle weight and size limits). *See generally* 2006 Op. Att'y Gen. No. 2006-013, at 2-109 to 2-110 (citing numerous statutes that affect particular appropriations).

Authority of Board of County Commissioners to Appropriate Funds by Using Line Items for Particular Purposes

Under Ohio law, the board of county commissioners is required to adopt budgets and appropriate funds for various county bodies and officials. The statutory process provides for a county elected officer to request funding and for the county commissioners to appropriate amounts to that officer for various uses. R.C. 5705.28-.39; 2006 Op. Att'y Gen. No. 2006-013, at 2-104 to 2-106, 2-109; 2000 Op. Att'y Gen. No. 2000-009; 1994 Op. Att'y Gen. No. 94-007.

The level of detail required in appropriating money is prescribed by statute and rule and may include the specification of line items in particular amounts for particular purposes. *See*,

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[1] In addition to persons holding the office of the clerk of the court of common pleas, the term "elected county officials" commonly includes the following officers: county commissioners, county prosecuting attorneys, county sheriffs, county coroners, county engineers, county recorders, county auditors, county treasurers, and common pleas court judges. R.C. 305.01; R.C. 309.01; R.C. 311.01; R.C. 313.01; R.C. 315.01; R.C. 317.01; R.C. 319.01; R.C. 321.01; R.C. 2301.01; R.C. 2303.01; 2003 Op. Att'y Gen. No. 2003-027, at 2-222 n.1.

[2] A county is authorized to adopt a charter under Ohio Const. art. X, § 3. Summit County is the only county that has adopted a charter. *See* 2007 Op. Att'y Gen. No. 2007-035.

e.g., R.C. 5705.29 (requiring a tax budget to present certain information "in such detail as is prescribed by the auditor of state"); 2000 Op. Att'y Gen. No. 2000-009.[3]

The board of county commissioners is required by statute to provide each office, department, and division—including each elected officer—its own appropriation and, within that appropriation, a specific amount, or line item, to be used for personal services or employee compensation. *See* R.C. 325.17 (with regard to the clerk of the court of common pleas and other county elected officers mentioned in R.C. 325.27,[4] granting authority to appoint and employ the necessary employees and fix their compensation, specifying that "[t]he employees' compensation shall not exceed, in the aggregate, for each office, the amount fixed by the board of county commissioners for that office"); 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, and, within each, the amount appropriated for personal services").[5]

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[3] As explained in 2000 Op. Att'y Gen. No. 2000-009, the lowest level at which a government's management is not permitted to reassign resources without legislative approval is known as the legal level of control. 2 Ohio Admin. Code 117-2-02(C)(1); Auditor of State Bulletin 97-010. The rule under which the board of county commissioners adopts appropriation measures that establish the legal level of control for elected county officials states: "The legal level of control is the level (e.g., fund, program or function, department, object level) at which spending in excess of budgeted amounts would be a violation of law. This is established by the level at which the legislative body appropriates, and must meet or exceed the level prescribed by [R.C. 5705.38]." 2 Ohio Admin. Code 117-5-02.

With regard to the local government's ability to establish its level of control, Auditor of State Bulletin 97-010 states: "The local government's legislative authority has the ability to establish its legal level of control at the beginning of each fiscal year coinciding with the adoption of its annual budget. Once established, the legal level of control should be the same throughout the fiscal year." The legislative body of a local government is not permitted to delegate its authority to establish appropriations. However, "other officials of the local government may be given the authority to allocate or re-allocate funds within a legally adopted appropriation." Auditor of State Bulletin 97-010; *see* 2000 Op. Att'y Gen. No. 2000-009.

[4] In addition to the clerk of the court of common pleas, R.C. 325.27 mentions the county auditor, county treasurer, probate judge, sheriff, county engineer, and county recorder.

[5] Further, R.C. 5705.392 permits a board of county commissioners to adopt as part of its appropriation measure a spending plan setting forth a quarterly schedule of expenditures for the fiscal year from the county general fund. The plan "shall be classified to set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and within each, the amount appropriated for personal services." R.C. 5705.392. The schedule serves as a limitation on expenditures during that quarter for purposes of R.C. 5705.41(D). *Id.*

The board of county commissioners is also authorized to include in the appropriation various line items that allocate stated amounts of money to other specified purposes, as provided by statute and rule. *See* R.C. 5705.29; 2000 Op. Att'y Gen. No. 2000-009. Thus, the process of appropriating funds to the clerk of the court of common pleas or another county officer includes designating particular amounts to be allocated to specific line items to be used for limited purposes.[6]

When appropriations are for judicial functions, the discretion of the board of county commissioners to establish line items is restricted by the doctrine that the judiciary is a separate branch of government and the board of county commissioners is not permitted to take legislative action that interferes with the performance of the functions of courts named in, or established pursuant to, the Ohio Constitution. *See* Ohio Const. art. IV, § 1; *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981); 2005 Op. Att'y Gen. No. 2005-028. Therefore, the authority of the board of county commissioners to establish line items in an appropriation for the court of common pleas is subject to the restriction that there must be no interference with the control of court operations. *See* 2000 Op. Att'y Gen. No. 2000-009 (syllabus, paragraph 1) ("[b]ased upon the request for funds submitted by the court of common pleas, a board of county commissioners may structure its appropriation to the court to reflect the sums appropriated for the various categories of expenses covered by the appropriation, provided that such appropriation does not interfere with the judge's exercise of control over court operations"). Notwithstanding this limitation, it is common for appropriations for courts to include amounts for particular line items. *See, e.g., State ex rel. Weaver v. Lake County Bd. of Comm'rs*, 62 Ohio St. 3d 204, 205, 580 N.E.2d 1090 (1991); *Reed v. Portage County Bd. of Comm'rs*, 30 Ohio App. 3d 41, 41, 506 N.E.2d 249 (Portage County 1985); 2000 Op. Att'y Gen. No. 2000-009.[7]

The clerk of the court of common pleas is an elected officer who functions as an integral part of the common pleas court and also serves as the clerk of the court of appeals of the county.

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[6] The board of county commissioners has discretion to determine the amounts allocated to particular line items, subject to restrictions imposed by provisions of constitution or statute. 2008 Op. Att'y Gen. No. 2008-014, at 2-155 to 2-157; *see State ex rel. Durkin v. Youngstown City Council*, 9 Ohio St. 3d 132, 134, 459 N.E.2d 213 (1984) (when a statute vests sole discretion over a budgetary item in a body or individual other than the local legislative authority, the legislative authority has a mandatory duty to fund the item); *State ex rel. Trussell v. Bd. of County Comm'rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, at ¶13 (Meigs County).

[7] Further, even as the separation of powers doctrine limits the authority of the board of county commissioners to establish line items, it also limits the board's authority to set the amounts of line items. *See State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶25; 2008 Op. Att'y Gen. No. 2008-014, at 2-157.

R.C. 2303.01, .03; .07-.19; R.C. 2501.16; 2003 Op. Att'y Gen. No. 2003-030, at 2-253 to 2-254. Therefore, the principle that there cannot be legislative interference with judicial functions must apply to functions performed by the clerk of the court of common pleas, although, as discussed more fully below, some distinctions apply to particular matters of funding. *See State ex rel. Cramer v. Bd. of County Comm'rs*, 18 Ohio St. 3d 157, 159, 480 N.E.2d 443 (1985) ("the board [of county commissioners] may not act in a manner which impairs the courts' administration of justice"); *State ex rel. Durkin v. Youngstown City Council*, 9 Ohio St. 3d 132, 135, 459 N.E.2d 213 (1984) (with regard to funding the budget of the elected clerk of municipal court, stating: "[t]he doctrine of separation of powers requires that the funds necessary for the administration of justice be provided to the courts"); *State ex rel. McKean v. Graves*, 91 Ohio St. 23, 25, 109 N.E. 528 (1914) ("the duties of the clerk of the court are the duties of the court itself and embraced within the grant of judicial power"); *State ex rel. Thomas v. City of Conneaut*, No. 92-A-1716, 1993 Ohio App. LEXIS 30 (Ashtabula County Jan. 8, 1993).

In response to your first question, therefore, we conclude that, in appropriating funds to the clerk of the court of common pleas and other elected county officers, the board of county commissioners is authorized to distribute those funds to various line items that specify the amount that may be expended for particular purposes (such as personal services, training, or equipment) as provided in applicable statutes and rules, including R.C. 325.17 and R.C. 5705.38, and subject to the constitutional restriction that the use of line items must not interfere with the administration of judicial functions.

Transfer of Appropriated Funds from One Line Item to Another

Your second question concerns requests by an elected official to transfer amounts of appropriated funds from one line item to another line item. You have asked if the board of county commissioners may restrict or deny a transfer request if the elected official has determined that the transfer is necessary for the efficient operation of the official's office.

If a county's anticipated revenues or expenses change, its appropriation measure may be amended or supplemented, provided that there is compliance with all provisions of law governing an original appropriation and that no appropriation is reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation. R.C. 5705.40; 1987 Op. Att'y Gen. No. 87-018 (board of county commissioners may amend and reduce amounts that have been appropriated).

Transfers of county appropriations may be made from one appropriation item to another only by resolution of the board of county commissioners. R.C. 5750.40; 1994 Op. Att'y Gen. No. 94-007, at 2-27 ("[w]ith respect to appropriations made by a county, . . . the board of county commissioners alone has the authority to transfer funds among appropriation items"); 1966 Op. Att'y Gen. No. 66-170, at 2-362 (overruled in part on other grounds by 1991 Op. Att'y Gen. No. 91-008) (even with regard to items for which the board of county commissioners is required to appropriate the amounts requested by the soldiers' relief commission, the commission is not permitted to make transfers from one appropriation item to another; rather, "after the

appropriation has been effected and the funds allocated, . . . there is no authority which would permit the soldiers' relief commission to effect transfers between itemized allocations in the fund appropriated for their operation and maintenance").

The board of county commissioners has discretion to decide whether to make a requested transfer except to the extent that a constitutional or statutory provision limits that discretion. *See, e.g.*, R.C. 3501.17(A) ("[i]f the board of elections requests a transfer of funds from one of its appropriation items to another, the board of county commissioners shall adopt a resolution providing for the transfer except as otherwise provided in [R.C. 5705.40]"); R.C. 5705.40 (board of county commissioners must make a transfer requested by the board of elections "unless the board of county commissioners determines that the transfer is sought for the purpose of providing employee bonuses or salary increases other than increases necessary to reimburse employees for overtime worked").

If the authority to establish the amount of an appropriation has been delegated to an official or body other than the board of county commissioners, that other official or body retains authority to direct the transfer of funds from one line item to another within the appropriation. *See* R.C. 5705.40 (an amendment or supplement to a county's appropriation measure must comply with all provisions of law governing the original appropriation); 2006 Op. Att'y Gen. No. 2006-013, at 2-106; note 6, *supra.*

If no constitutional or statutory provision limits the discretion of the board of county commissioners to decide whether to grant a transfer request, the board of county commissioners may refuse the request, and the burden is upon the requester to show that the board of county commissioners is acting unreasonably in refusing the request. *Geauga County Bd. of County Comm'rs v. Geauga County Sheriff*, 2003-Ohio-7201, 2003 Ohio App. LEXIS 6508, at ¶82 (Geauga County) (the sheriff must keep in mind that the funding of the sheriff's department, even as to mandatory statutory duties, is a matter within the sound discretion of the board of county commissioners).[8]

The standard for amending appropriations in these circumstances was described in 1987 Op. Att'y Gen. No. 87-018, at 2-123, as follows:

> The board may not exercise its discretion in an arbitrary manner, but instead must do so in a sound and reasonable manner. 1941 Op. No. 3600; 1927 Op. No. 1339; 1926 Op. No. 3429. Whether a particular amendment to an appropriation is reasonable and, therefore, valid is dependent upon many factors which those at the local level are best able to evaluate. In this regard, 1941 Op. No. 3600 states

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[8] Claims of financial hardship on the part of the government are relevant to a determination as to whether there is abuse of discretion in the budgeting process, but are not determinative. *See, e.g., State ex rel. Maloney v. Sherlock* at ¶43, 46-48; *State ex rel. Durkin v. Youngstown City Council*, 9 Ohio St. 3d at 134-35; *State ex rel. Trussell v. Bd. of County Comm'rs* at ¶26-27.

> in paragraph three of the syllabus: "The courts will not attempt to control the discretion of county commissioners, and other officers, boards and commissions having . . . discretionary powers and authority, and will interfere only where there is an usurpation or unlawful exercise of power, fraud or such gross abuse of discretion as amounts to fraud."

If an elected official has determined that a transfer of funds from one appropriation item to another is necessary for the efficient operation of the official's office, this determination is a factor that the board of county commissioners may consider in deciding whether to make the transfer. However, this factor does not in itself resolve the issue. The responsibility for making the decision has been given to the board of county commissioners, and the board must consider all factors it finds relevant.

This standard applies under R.C. 325.17 to transfers to or from appropriations for compensation expenses for employees of the county auditor, county treasurer, county sheriff, county engineer, or county recorder, subject to an abuse of discretion standard. Under R.C. 325.17, the board of county commissioners has authority to fix the aggregate amount appropriated to these officers for employee compensation and is not required to grant any requests to transfer money to or from a line item established for this purpose, even if the officer requesting the transfer determines that a transfer is necessary for the efficient operation of the office, so long as the board does not abuse its discretion. *See Reed v. Portage County Bd. of Comm'rs*, 30 Ohio App. 3d at 42; 1987 Op. Att'y Gen. No. 87-018, at 2-121 to 2-123.

To protect the independence of the judiciary, the separation of powers doctrine requires that courts deriving their jurisdiction from the Ohio Constitution receive funding in amounts that are reasonable and necessary for the administration of the business of the courts. *State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶25-26; *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d at 420-22. Therefore, the board of county commissioners is required to make appropriations requested by the court of common pleas unless the board can establish that the court abused its discretion by requesting amounts that are unreasonable and unnecessary for the performance of judicial functions. *See State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 569 N.E.2d 1046 (1991); *State ex rel. Britt v. Bd. of County Comm'rs*, 18 Ohio St. 3d 1, 3, 480 N.E.2d 77 (1985); 2005 Op. Att'y Gen. No. 2005-028, at 2-294 to 2-296.[9]

This standard has been applied to instances in which a court requests amounts in addition to those appropriated in response to the original budget request, with the board of county

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[9] While constitutional courts have inherent authority to order funding that is reasonable and necessary to the court's administration of its business, they are also directed to cooperate with executive and legislative bodies in the budget process. *State ex rel. Mahoning County Comm'rs v. Maloney*, 100 Ohio St. 3d 248, 2003-Ohio-5770, 797 N.E.2d 1284, at ¶17-18; 2000 Op. Att'y Gen. No. 2000-009, at 2-46.

commissioners bearing the burden of demonstrating that the court has abused its discretion in requesting amounts that are unreasonable and unnecessary. *State ex rel. Arbaugh v. Richland County Bd. of Comm'rs*, 14 Ohio St. 3d 5, 470 N.E.2d 880 (1984) (a court may modify its budget request at any time if the modification is reasonable and necessary). As was stated in 2000 Op. Att'y Gen. No. 2000-009 (syllabus, paragraph 2):

> Should a common pleas court's funding needs change from those reflected in its original budget, it may request a modification of its budget, and, unless the board of county commissioners can show that such modification is unreasonable and unnecessary, the board must accordingly modify the court's appropriation.

Thus, to protect the independence of the judiciary under the separation of powers doctrine, the board of county commissioners must grant a request made by a constitutional judicial officer to transfer appropriated amounts from one line item to another unless the board establishes that the request is unreasonable and unnecessary for the administration of judicial functions and thus constitutes an abuse of discretion on the part of the requester.

Because the office of the clerk of the court of common pleas is established by statute, rather than constitution, a different analysis applies. The rule applicable to the clerk of the court of common pleas was set forth in *Geauga County Bd. of County Comm'rs v. Geauga County Sheriff* at ¶45: "[W]hen a public official's authority is predicated solely upon statutory provisions, the extent of the official's discretion over her spending will not turn on the exact nature of the relationship between the commissioners and the official; instead, it will turn on the wording of the controlling statutory provisions."

The *Geauga County* case relied upon *Whitman v. Magee*, No. 3558, 1985 Ohio App. LEXIS 7326 (Trumbull County Oct. 4, 1985), which states, at *7-8:

> Since the clerk of the common pleas court is not a constitutional office but a statutory one, as are municipal courts and municipal court clerks, we conclude that the holdings and reasoning of the Ohio Supreme Court as to the budget requests of municipal courts and municipal court clerks should apply to budget requests of clerks of the common pleas courts. Therefore, whether a board of county commissioners has a mandatory duty to appropriate funds requested by a clerk of the court of common pleas is dependent upon the statute authorizing the expenditure. *If the commissioners are given the statutory discretion to fund a budget item, the clerk is not entitled to an automatic appropriation of the money requested for that item even if the request is reasonable. On the other hand, if a statute vests sole discretion over a budgetary item in the clerk of courts or some other body or individual other than the commissioners, the commissioners have a mandatory duty to fund the item if such request is reasonable and not an abuse of discretion.* The burden of proof as to reasonableness, or possible abuse of discretion, is upon the commissioners. (Emphasis added.)

See also Ohio Const. art. IV, §§ 1, 4; *State ex rel. Hillyer v. Tuscarawas County Bd. of Comm'rs*, 70 Ohio St. 3d 94, 637 N.E.2d 311 (1994); *State ex rel. O'Farrell v. New Philadelphia City Council*, 57 Ohio St. 3d 73, 565 N.E.2d 829 (1991); *State ex rel. Cramer v. Bd. of County Comm'rs*; *State ex rel. Durkin v. Youngstown City Council*; *State ex rel. Thomas v. City of Conneaut*; 2003 Op. Att'y Gen. No. 2003-020.

Thus, where discretion over an appropriation is given to the board of county commissioners, the board is not required to amend an appropriation upon the request of the clerk of the court of the common pleas. This is the case under R.C. 325.17 with respect to the clerk of the court of common pleas as it is for non-judicial elected county officers. Although the clerk of the court of common pleas may fix the compensation of employees, the board of county commissioners is authorized to set an aggregate total that the clerk cannot exceed. Subject to an abuse of discretion standard, the board of county commissioners is not required to grant any requests to transfer money to or from a line item covering this employee compensation. *See Reed v. Portage County Bd. of Comm'rs*; 1987 Op. Att'y Gen. No. 87-018, at 2-121 to 2-123.

In contrast, where the clerk of the court of common pleas is given authority to fix the amount of an appropriation, the board of county commissioners is required to grant the clerk's budget requests, absent an abuse of discretion on the part of the clerk. In particular, R.C. 2303.29(A) states that the clerk of the court of common pleas is authorized (or, upon the request of the board of county commissioners, required) to submit to the board of county commissioners a request for an appropriation detailing the costs required to administer responsibilities under R.C. Chapter 4505, pertaining to certificates of motor vehicle title, and the board of county commissioners is required to consider the request in adopting its appropriation resolution. Division (B) states: "The board of county commissioners *shall budget and appropriate funds* for the operation of the office of the clerk of the court of common pleas in an amount *sufficient for the prompt discharge of the clerk's duties* under [R.C. Chapter 4505]." R.C. 2303.29(B) (emphasis added). It has been found that this is a mandatory requirement and it is an abuse of discretion for the board of county commissioners to refuse a request by the clerk for additional funds to fulfill this mandate. *Reed v. Portage County Bd. of Comm'rs* (upholding writ of mandamus compelling board of county commissioners to appropriate funds for the clerk of the court of common pleas to hire employees needed for the prompt discharge of duties of the motor vehicle title department). Therefore, if the clerk later determines that a different allocation of funds is required for the operation of the motor vehicle title department, the clerk may request the transfer of funds from one line item to another and, because the clerk has statutory authority to establish the amount sufficient for operation of the motor vehicle title department, the board of county commissioners is required to grant the request to transfer funds from one line item to another within the appropriation made for motor vehicle title purposes under R.C. 2303.29, unless the board establishes that the clerk is abusing his or her discretion in making the request.

In response to your second question, we conclude, therefore, that amounts that have been budgeted to the clerk of the court of common pleas or another elected county officer and appropriated to a particular line item by the board of county commissioners may be transferred to another line item only upon resolution of the board of county commissioners amending the

appropriation measure under R.C. 5705.40. The board of county commissioners, acting in the reasonable exercise of its discretion, may restrict or deny a transfer request unless constitutional or statutory provisions require approval of the request. Approval of a transfer request is required if a statute grants the elected county officer sole discretion to determine the amount of the appropriation. Subject to an abuse of discretion standard, the board of county commissioners has authority under R.C. 325.17 to fix the aggregate amount appropriated for compensation of the employees of the clerk of the court of common pleas, and also of the county auditor, county treasurer, county sheriff, county engineer, and county recorder, and is not required to grant any requests to transfer funds to or from a line item established for this purpose, even if the officer requesting the transfer determines that a transfer is necessary for the efficient operation of the office.

We conclude, further, that because the clerk of the court of common pleas is a statutory officer, the board of county commissioners may restrict or deny a request made by the clerk to transfer appropriated amounts from one line item to another unless a statute vests sole discretion over a budget item in the clerk, as is the case with regard to funding the costs of the administration of the motor vehicle title function under R.C. 2303.29(A). Because R.C. 325.17 gives the board of county commissioners authority to fix an aggregate amount for compensation of employees of the clerk of the court of common pleas, the board is not required to grant a request to transfer appropriated amounts to that line item even if the request is reasonable. In appealing the board's decision, the clerk of the court of common pleas has the burden of proving that the board is interfering with the administration of judicial functions or otherwise abusing its discretion.

When economic difficulties are encountered, county officials must endeavor to use limited resources efficiently while complying with existing statutes. *See State ex rel. Trussell v. Bd. of County Comm'rs*, 155 Ohio App. 3d 230, 2003-Ohio-6084, 800 N.E.2d 381, at ¶26 (Meigs County). If changes in statutory provisions are needed, the General Assembly may take legislative action. *See Bd. of Educ. v. Fulton County Budget Comm'n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975).

Conclusions

For the reasons discussed above, it is my opinion and you are advised, as follows:

1. In appropriating funds to the clerk of the court of common pleas and other elected county officers, the board of county commissioners is authorized to distribute those funds to various line items that specify the amount that may be expended for particular purposes (such as personal services, training, or equipment) as provided in applicable statutes and rules, including R.C. 325.17 and R.C. 5705.38, and subject to the constitutional restriction that the use of line items must not interfere with the administration of judicial functions.

2. Amounts that have been budgeted to the clerk of the court of common pleas or another elected county officer and appropriated to a particular line item by the board of county commissioners may be transferred to another line item only upon resolution of the board of county commissioners amending the appropriation measure under R.C. 5705.40. The board of county commissioners, acting in the reasonable exercise of its discretion, may restrict or deny a transfer request unless constitutional or statutory provisions require approval of the request. Approval of a transfer request is required if a statute grants the elected county officer sole discretion to determine the amount of the appropriation.

3. Subject to an abuse of discretion standard, the board of county commissioners has authority under R.C. 325.17 to fix the aggregate amount appropriated for compensation of the employees of the clerk of the court of common pleas, and also of the county auditor, county treasurer, county sheriff, county engineer, and county recorder, and is not required to grant any requests to transfer funds to or from a line item established for this purpose, even if the officer requesting the transfer determines that a transfer is necessary for the efficient operation of the office.

4. Because the clerk of the court of common pleas is a statutory officer, the board of county commissioners may restrict or deny a request made by the clerk to transfer appropriated amounts from one line item to another unless a statute vests sole discretion over a budget item in the clerk, as is the case with regard to funding the costs of the administration of the motor vehicle title function under R.C. 2303.29(A).

5. To protect the independence of the judiciary under the separation of powers doctrine, the board of county commissioners must grant a request made by a constitutional judicial officer to transfer appropriated amounts from one line item to another unless the board establishes that the request is unreasonable and unnecessary for the administration of judicial functions and thus constitutes an abuse of discretion on the part of the requester.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General