June 3, 2010

The Honorable Chris Berhalter
Belmont County Prosecuting Attorney
Courthouse Annex No. 1
147-A West Main Street
St. Clairsville, Ohio 43950

SYLLABUS: 2010-014

Absent express statutory authority, individual members of a county law library resources board are not permitted to receive compensation for their service on the board.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

June 3, 2010

OPINION NO. 2010-014

The Honorable Chris Berhalter
Belmont County Prosecuting Attorney
Courthouse Annex No. 1
147-A West Main Street
St. Clairsville, Ohio 43950

Dear Prosecutor Berhalter:

You have requested an opinion regarding the payment of compensation to members of a county law library resources board (LLRB). Specifically, you ask whether members of a county LLRB may receive compensation and, if so, whether the members may set the amount of that compensation. For the following reasons, I conclude that individual members of a county LLRB are not permitted to receive compensation for their service on the board. Because I have answered the first part of your question in the negative, it is not necessary to address whether the members may set the amount of that compensation.

Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008), fundamentally changed the organization of county law libraries. *See generally* 2010 Op. Att'y Gen. No. 2010-001 (discussing the changes and legislative history in more detail). Previously, county law libraries were operated by county law library associations pursuant to R.C. 3375.48-.56. Law library associations were private associations or nonprofit corporations under R.C. 1713.28. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-012 at 2-38. The 2008 legislation transferred the responsibility for operating a county law library from the county law library association to the county law library resources board. R.C. 307.51. Unlike a law library association, a county LLRB is a county agency. *See* 2010 Op. Att'y Gen. No. 2010-001, slip op. at 3; 2009 Op. Att'y Gen. No. 2009-049 at 2-370 n.5.

A county law library resources board is composed of five members.[1] R.C. 307.51(B); R.C. 307.511(A). The members are appointed pursuant to R.C. 307.511(A) and, after their initial appointment terms expire, serve five-year terms. R.C. 307.511(A); R.C. 307.511(D). The board must employ a county law librarian who serves as the chief administrator of the county LLRB. R.C. 307.51(C). The board also may employ additional staff "to perform any functions as determined by the board." *Id.* The compensation of the librarian and any additional employees is set by the board. *Id.*

In addition, Am. Sub. H.B. 420 created a county law library resources fund within each county treasury to receive funds for the LLRB. R.C. 307.514. Like a law library association, the county law library resources fund receives financial support from several sources. *See generally* 1992 Op. Att'y Gen. No. 92-012 at 2-39 (discussing sources of financial support for law library associations). The fund receives revenue from certain fines, penalties, and forfeited bails collected by the courts and previously paid to the law library associations. R.C. 307.51(E); R.C. 307.514; R.C. 307.515; 2010 Op. Att'y Gen. No. 2010-001, slip op. at 2. Any fees for law library services collected pursuant to R.C. 307.51(D)(1)(c) also are deposited into the fund. R.C. 307.51(D)(4); R.C. 307.514. In addition, the fund may receive money appropriated by the board of county commissioners from the county general fund. R.C. 307.513; R.C. 307.514. An appropriation from the general fund is based on an annual estimate of the LLRB's revenue and expenditures that is prepared by the LLRB and submitted to the board of county commissioners. R.C. 307.513(A). The "estimate of expenses" must be "sufficient to provide for the operation of the county law library resources board," and the "estimate of revenue" must specifically request an appropriation from the general fund. *Id.* Finally, the county law library resources fund may receive revenue that is designated for deposit into the fund from private sources. This may include gifts or bequests from a person, firm, or corporation. R.C. 307.51(D)(1)(d); R.C. 307.514. Any expenditure from the county law library resources fund must be made pursuant to the annual appropriation measure adopted by the board of county commissioners. R.C. 307.514.

Although the statutory provisions related to county LLRBs are silent regarding compensation for members of a county LLRB, *see* R.C. 307.51-.516, the standard regarding the payment of compensation to public officials is well established under Ohio law – if the statute does not explicitly authorize the board members to compensate themselves, they may not do so. "Statutes relating to compensation and allowances of public officers are to be strictly construed, and such officers are entitled to no more than that clearly given thereby." *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948) (syllabus, paragraph two); s*ee also Clark v. Bd. of County Comm'rs*, 58 Ohio St. 107, 50 N.E. 356 (1898) (syllabus, paragraph one) ("[t]o warrant the payment of fees or compensation to an officer, out of the county treasury, it must

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[1] Until December 31, 2010, there are seven members on each county LLRB rather than five. R.C. 307.511(C). In addition to the five members appointed pursuant to R.C. 307.511(A), through December 31, 2010 the county LLRB must also include two members appointed by the board of trustees of the law library association within the county. R.C. 307.511(C).

appear that such payment is authorized by statute"); *Anderson v. Bd. of Comm'rs*, 25 Ohio St. 13, 13 (1874) ("[w]here a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced"); 1996 Op. Att'y Gen. No. 96-053 (syllabus) (concluding that absent express statutory authority, individual members of a public board are not entitled to receive compensation or set the amount of compensation); 1989 Op. Att'y Gen. No. 89-068 at 2-312 ("it is a well established rule of construction that doubts regarding the authority to expend public funds must be resolved in favor of the public and against the exercise of such authority").

When the General Assembly intends members of a public board to receive compensation, the General Assembly "expressly communicates that intention in language that is plain, direct, and unequivocal." 1996 Op. Att'y Gen. No. 96-053 at 2-206. There are examples throughout the Revised Code of explicit language authorizing the payment of compensation to members of public boards. *See, e.g.*, R.C. 127.12 (legislative members of controlling board "shall be paid" a per diem rate "when engaged in their duties as members of the controlling board"); R.C. 175.03(C)(4)(a) (Ohio housing finance agency members "shall receive compensation at the rate of two hundred fifty dollars per agency meeting attended in person, not to exceed a maximum of four thousand dollars per year"); R.C. 306.02 (compensation for members of county transit board "shall be determined by the county commissioners"); R.C. 991.02(E) (members of Ohio expositions commission "shall be paid the rate established pursuant to division (J) of section 124.15 of the Revised Code"); R.C. 4582.03(A) (members of port authority board of directors "shall be entitled to receive from the port authority such sum of money as the board of directors may determine as compensation for services as director"); R.C. 6101.67 (members of conservancy district board of directors "shall receive a sum established by the [conservancy] court"). *See also* 1996 Op. Att'y Gen. No. 96-053 at 2-206 to 2-207 (listing additional Revised Code provisions authorizing compensation for individual members of various public boards).

No similar provision within R.C. 307.51-.516 expressly authorizes compensation to individual members of a county law library resources board. If the General Assembly had intended to authorize members of a county LLRB to receive compensation, it could have done so in language comparable to that used in other sections of the Revised Code. *See, e.g., Lake Shore Elec. Ry. Co. v. Public Utilities Comm'n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose" having used that language in other provisions); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). That the General Assembly did not include any such language in R.C. 307.511 or elsewhere indicates its intent that individual members of a county LLRB are not to receive compensation for their service.

Additional support for this conclusion is demonstrated by the fact that the General Assembly did not amend the pertinent statutes by adding language authorizing compensation despite a 1992 opinion of the Attorney General that concluded that trustees of a county law library association could not use public funds to compensate themselves absent clear statutory

authority. 1992 Op. Att'y Gen. No. 92-012 (syllabus, paragraph two). "In interpreting the meaning of legislative language, it is not unimportant that the General Assembly has failed to amend the legislation subsequent to a prior interpretation thereof.... A reenactment of legislation, without modification after judicial interpretation, is a further indication of implied legislative approval of such interpretation." *Seeley v. Expert, Inc.*, 26 Ohio St. 2d. 61, 72-73, 269 N.E.2d 121 (1971) (citations omitted); s*ee also State v. Cichon*, 61 Ohio St. 2d 181, 183-84, 399 N.E.2d 1259 (1980) ("legislative inaction in the face of longstanding judicial interpretations of [a statute] evidences legislative intent to retain existing law"); *Geiger v. Geiger*, 117 Ohio St. 451, 468-69, 160 N.E. 28 (1927) (in interpreting statutes, it is presumed that the General Assembly acted with full knowledge of existing law on the subject under consideration); 2002 Op. Att'y Gen. No. 2002-007 at 2-39 ("[a]lthough an opinion of the Attorney General is not a judicial decision, the same argument may be made that the 1934 opinion has been known for many years, during which the General Assembly has amended R.C. Chapter 4713 without overturning the conclusion of the 1934 opinion, thus implying legislative approval of the opinion's interpretation of the law").

1992 Op. Att'y Gen. No. 92-012 concluded that public funds could not be used to compensate the trustees of a law library association under R.C. 3375.48-.56. The opinion stated that "since the statute does not explicitly authorize the trustees [of a law library association] to compensate themselves, they may not do so." 1992 Op. Att'y Gen. No. 92-012 at 2-42. Since this opinion was issued, the General Assembly has amended the legislation governing county law libraries several times. Am. Sub. H.B. 420, 127th Gen. A. (2008) (eff. Dec. 30, 2008); Sub. H.B. 363, 126th Gen. A. (2006) (eff. Aug. 3, 2006); Am. Sub. H.B. 66, 126th Gen. A. (2005) (eff. Sept. 29, 2005). *See generally* 2010 Op. Att'y Gen. No. 2010-001, slip op. at 2 (discussing legislative history); 2007 Op. Att'y Gen. No. 2007-012 at 2-101 to 2-102 (same). The fact that the General Assembly did not add authorization for members of a county LLRB (or, previously, a county law library association) to receive compensation implies legislative approval of the opinion's conclusion.

Although the 1992 opinion concluded that trustees of a law library association could not be compensated using public funds, the opinion went on to conclude that private funds, such as contributions from private persons or membership dues, could be used to compensate the trustees if permitted by the provisions governing the association. 1992 Op. Att'y Gen. No. 92-012 at 2-42 to 2-43. Because county LLRBs may still receive funding from private sources, *see* R.C. 307.51(D)(1)(d); R.C. 307.514, it may appear that this conclusion also would permit members of an LLRB to receive compensation from any privately-donated funds. But the conclusion in 1992 Op. Att'y Gen. No. 92-012 was based on the fact that law library associations were private associations rather than public entities; therefore, with respect to private donations, a law library association was "like any other private association and may use such private funds for any proper purpose of the association." *Id.* at 2-43 (quoting *Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 8, 94 N.E.2d 32 (C.P. Van Wert County 1949)). Although county LLRBs may still receive private donations, for the reasons discussed below, these donations nevertheless

constitute public money as defined by R.C. 117.01(C).[2] Because of their nature as public money, they cannot be used to compensate members of a county LLRB. *See* 1992 Op. Att'y Gen. No. 92-012 at 2-42.

R.C. 117.01(C) defines "[p]ublic money" as "any money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office." Unlike the law library associations addressed in 1992 Op. Att'y Gen. No. 92-012, county LLRBs created pursuant to R.C. 307.51 are county agencies rather than private associations. *See* R.C. 307.51; 2010 Op. Att'y Gen. No. 2010-001, slip op. at 3; 2009 Op. Att'y Gen. No. 2009-049 at 2-370 n.5. The county law library resources fund, part of the county treasury, is authorized to receive money donated to a county LLRB. R.C. 307.514. The county treasurer has the duty to accept and deposit any such funds. *See* 1994 Op. Att'y Gen. No. 94-073 at 2-368 ("[i]f a particular governmental entity does not have statutory authority itself to invest and hold moneys that it receives as donations, the moneys must be paid to the appropriate treasurer for deposit and investment"); 1989 Op. Att'y Gen. No. 89-002 at 2-11 (county treasurer has duty pursuant to R.C. 9.38 and 9.39 to accept all deposits of public money and money received under color of office). As defined by R.C. 117.01, money donated to that fund clearly is accepted by an appropriate individual (either a member of the county LLRB or the county treasurer) in his official capacity pursuant to the authority and for the purposes prescribed by law. Private monetary donations to a county LLRB, therefore, are received or collected "under color of office" and qualify as "public money." R.C. 117.01(A); R.C. 117.01(C). *See also* 1986 Op. Att'y Gen. No. 86-067 at 2-367 to 2-369 (gifts, bequests, or devises of real or personal property made in trust to a board of county hospital trustees are public moneys as defined in R.C. 117.01(C)); 1983 Op. Att'y Gen. No. 83-055 at 2-216 (money donated to a county children services board or a county department of welfare constitute public money within the meaning of former R.C. 117.10, later codified at R.C. 117.01(C)); 1980 Op. Att'y Gen. No. 80-060 at 2-237 (money in student activity funds, derived from private contributions, constitutes public money because it is received by public officials under color of law). Accordingly, the conclusion in 1992 Op. Att'y Gen. No. 92-012 that private funds may be used by a private association for any authorized purpose, including compensating trustees of a law library association, is distinguishable. For purposes of this opinion, the relevant conclusion from the 1992 opinion is that public funds could not be used to compensate trustees of a law library association.

Accordingly, I conclude that members of a county law library resources board are not entitled to receive compensation for their service on the LLRB. Because I have concluded that members of a county LLRB are not entitled to compensation, it is not necessary to address the second part of your second question – whether the members of a county LLRB may set the amount of that compensation.

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[2] For purposes of this opinion, it is assumed that any gifts, donations, or bequests have no restrictions or conditions attached.

In sum, it is my opinion, and you are hereby advised that absent express statutory authority, individual members of a county law library resources board are not permitted to receive compensation for their service on the board.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General