October 1, 2009

The Honorable David W. Phillips
Union County Prosecuting Attorney
Union County Justice Center
221 West Fifth Street
Third Floor, Suite 333
Marysville, Ohio 43040

SYLLABUS: 2009-038

1. If the personal vehicle of a county employee sustains damage while being driven by the employee in conducting county business, the board of county commissioners has no authority to reimburse the employee for her resulting expenses, including the deductible for which she is responsible under her insurance policy, unless the board is the employee's appointing authority.

2. If the personal vehicle of an employee of a county probate and juvenile court sustains damage while being driven by the employee in conducting court business, the probate and juvenile court judge may authorize reimbursement of the employee for her resulting expenses, including the deductible for which she is responsible under her insurance policy.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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OPINION NO. 2009-038

The Honorable David W. Phillips
Union County Prosecuting Attorney
Union County Justice Center
221 West Fifth Street
Third Floor, Suite 333
Marysville, Ohio 43040

Dear Prosecutor Phillips:

You have asked whether a board of county commissioners is authorized to pay the amount of the deductible on an employee's automobile insurance policy when the employee is required to use his personal vehicle in the performance of his county job duties and is involved in an accident while on county business. You have explained that Union County does not own a fleet of county vehicles. Instead, appointing authorities require county employees to use their personal vehicles if they need to travel in the performance of their job duties. Employees are required by the county to maintain vehicle liability insurance and their personal insurance is considered primary coverage.

An employee of the Union County Probate and Juvenile Court recently was involved in an automobile collision while engaged in court business. The personal vehicle of the employee was damaged, and her insurance carrier will pay most of her loss under the collision coverage of her policy. The employee's policy has a five hundred dollar deductible, however, and the board of county commissioners has asked whether it may reimburse the employee for that amount. The board asserts that the employee would not have incurred the risk of the accident if she had not been engaged in county business, and similarly, that if the county owned its own vehicles, and the employee had been involved in an accident while driving a county-owned vehicle, she would have suffered no out-of-pocket loss. The board also asserts that it is more cost effective to authorize payment of the deductible than to maintain a fleet of county vehicles.

It is well-established that a board of county commissioners has only those powers conferred by statute, either expressly or by necessary implication. *See State ex rel. Shriver v. Board of Comm'rs*, 148 Ohio St. 277, 74 N.E. 2d 248 (1947). The board of county commissioners may expend public funds only pursuant to clear statutory authority and any doubt

as to the authority to make an expenditure must be resolved against the expenditure. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916).

We are unaware of any statute that authorizes a board of county commissioners to pay the deductible under an employee's insurance policy, or otherwise make an employee whole, for damage sustained by the employee's personal vehicle while being driven in the course of the employee's county duties. This lack of authority is in contrast to the ample authority enjoyed by counties to purchase liability insurance for employees. Counties, other political subdivisions, and the State are authorized by R.C. 9.83 to purchase insurance to protect officials and employees "against liability for injury, death, or loss to person or property that arises out of the operation of an automobile … by the officers or employees while engaged in the course of their employment or official responsibilities." R.C. 9.83 has been interpreted as authorizing a board of county commissioners to procure insurance protecting county employees against liability arising from the use of their private automobiles in the performance of their duties for the county. 1980 Op. Att'y Gen. No. 80-102; 1972 Op. Att'y Gen. No. 72-007. *See also* 1967 Op. Att'y Gen. No. 67-007 (syllabus) ("[a] township may purchase liability insurance to cover volunteer firemen in the operation of their personal automobiles, while such operation is in behalf of the township, and in the course of its business"); 1960 Op. Att'y Gen. No. 1535, p. 481 (syllabus, paragraph 1) (under R.C. 3375.401, which authorizes a board of library trustees to purchase insurance insuring officers and employees against liability for damage or injury to persons and property, including wrongful death, "occasioned by the operation of a motor vehicle *owned or operated* by said library," a library board may "procure policies of insurance insuring officers and employees of the library against liability occasioned by the operation of motor vehicles owned by such officers and employees when such motor vehicles are being driven for and on behalf of the library").

A board of county commissioners may also rely on R.C. 307.44 as authority to procure insurance insuring officers and employees against liability for damage or injury to persons and property, including wrongful death, "occasioned by the operation of a motor vehicle … owned or operated by the county." *See also* R.C. 307.441(E) (authorizing a board of county commissioners to "procure a policy or policies of insurance insuring any county employee against liability arising from the performance of the county employee's official duties"). R.C. 307.44 and R.C. 307.441(E) also have been interpreted as authorizing a board of county commissioners to purchase liability insurance to cover employees using their personal vehicles in the performance of their official duties. 1980 Op. Att'y Gen. No. 80-102; 1972 Op. Att'y Gen. No. 72-007.

If the General Assembly had intended to authorize a board of county commissioners to pay the costs incurred by a county employee when his personal automobile is damaged while being driven on county business, it could have easily enacted language expressing that intent. *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 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). Because it has not, we conclude that the board of county commissioners has no authority to pay the employee's deductible.

Although you have asked about the authority of the board of county commissioners to pay an employee's deductible, we note that the employee's appointing authority, the juvenile and probate court judge, has both the statutory[1] and inherent[2] authority to pay the expenses of the court's employees, and thus may authorize the reimbursement of court employees whose personal vehicles are damaged while being used to conduct court business. *See* 1981 Op. Att'y Gen. No. 81-048 at 2-190 (a county board with the statutory authority to ensure that employees "are properly reimbursed for actual and necessary expenses incurred in the performance of official duties" has the authority to reimburse employees for damage done to their personal property by clients of the board). *See also* 1983 Op. Att'y Gen. No. 83-029 at 2-110 to 2-111 (the Director of Transportation, under his "broad [statutory] authority to control the operation of his Department and the duties of Department employees," and pursuant to his statutory authority "to prescribe such regulations as he deems necessary for the government of his Department, the conduct of the Department's employees, and the preservation of property pertaining thereto," has the implied authority to establish a policy for reimbursing employees for the loss of their

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[1] *See* R.C. 2101.11(B)(1)(a) ("*each appointee of a probate judge … shall receive such* compensation and *expenses* as the judge determines and shall serve during the pleasure of the judge" (emphasis added)); R.C. 2151.13 (a juvenile court judge "may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and *fix their* duties, compensation, and *expense allowances*") (emphasis added)). *See also* Ohio Const. art. IV, § 4(C) (probate judges "shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts").

[2] *See State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶ 29 ("'[i]n the absence of an abuse of discretion on the part of the judge of the Probate Court in making up the annual budget … the Board of County Commissioners is obligated to appropriate annually such sum of money as will meet all the administrative expenses of such court which the judge thereof deems necessary, *including such salaries of court appointees as the judge shall fix and determine*'"); *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 329, 612 N.E.2d 717 (1993) ("[t]he determination of necessary administrative expenses rests solely with the court"); *State ex rel. Lake County Bd. of Comm'rs v. Hoose*, 58 Ohio St. 3d 220, 221, 569 N.E.2d 1046 (1991) ("[a] court of common pleas in this state has the inherent authority to require funding which is reasonable and necessary to the administration of the court's business"); *State ex rel. Slaby v. Summit County Council*, 7 Ohio App. 3d 199, 208, 454 N.E.2d 1379 (Summit County 1983) ("regardless of statutory authorization, the judges of the courts of common pleas and their divisions have the inherent authority to determine in the first instance, in the exercise of sound discretion, the sum of money reasonable and necessary for the efficient operation of the court, and absent an abuse of discretion in the determination of such sum, may proceed either in contempt or mandamus to receive the necessary funding from their respective counties").

personal tools used in the performance of their official duties if he "reasonably determine[s]" that reimbursement is "necessary for the efficient operation of his Department").

Similarly, a board of county commissioners is authorized by R.C. 305.17 to "fix the compensation" of the persons it appoints or employs, "which, with their reasonable expenses, shall be paid from the county treasury upon the allowance of the board." The board, like any appointing authority with the power to pay its employees' expenses, may reimburse its employees for damage sustained by the employees' personal automobiles while being used for county business. We recommend that any appointing authority that decides to reimburse its employees for damage to their personal vehicles promulgate a formal policy regarding the reimbursement of expenses associated with the operation of employees' personal vehicles rather than approach each instance individually.

In conclusion, it is my opinion, and you are advised that:

1. If the personal vehicle of a county employee sustains damage while being driven by the employee in conducting county business, the board of county commissioners has no authority to reimburse the employee for her resulting expenses, including the deductible for which she is responsible under her insurance policy, unless the board is the employee's appointing authority.

2. If the personal vehicle of an employee of a county probate and juvenile court sustains damage while being driven by the employee in conducting court business, the probate and juvenile court judge may authorize reimbursement of the employee for her resulting expenses, including the deductible for which she is responsible under her insurance policy.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General