June 13, 2011

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
Courthouse
West Union, Ohio 45693

SYLLABUS: 2011-020

R.C. 3719.21 does not authorize the payment of fines or forfeited bail to a board of county commissioners or the expenditure of fines or forfeited bail for the costs incurred in the housing and care of inmates charged with or convicted of drug offenses.

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OPINION NO. 2011-020

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street
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Dear Prosecutor Kelley:

You have asked whether, pursuant to R.C. 3719.21, a board of county commissioners may "share drug fine funds to assist in paying for housing and care of inmates associated with drug offenses."

R.C. 3719.21 controls the disposition of fines and forfeited bail collected under R.C. Chapter 2925 (drug offenses), R.C. Chapter 3719 (controlled substances), and R.C. 2923.42 (participation in a criminal gang). Pursuant to R.C. 3719.21:

> Except as provided in [R.C. 2923.42(C), R.C. 2923.44(B), R.C. 2925.03(D)(1), (F) and (H), R.C. 2925.02(D)(1), R.C. 2925.04(D)(1), R.C. 2925.05(D)(1), R.C. 2925.11(E)(1), R.C. 2925.13(F), R.C. 2925.36(F), R.C. 2925.22(D), R.C. 2925.23(H), R.C. 2925.37(M), R.C. 2925.42(B), R.C. 2929.18(B), R.C. 3719.99(D), R.C. 4729.65(B)(1), and R.C. 4729.99(E)(3) and (I)(4)], the clerk of the court *shall pay all fines or forfeited bail* assessed and collected under [R.C. Chapter 2925, R.C. Chapter 3719, and R.C. 2923.42], within thirty days, *to the executive director of the state board of pharmacy, and the executive director shall deposit the fines into the state treasury to the credit of the occupational licensing and regulatory fund*. (Emphasis added.)

In other words, fines and forfeited bail money collected pursuant to R.C. Chapter 2925, R.C. Chapter 3719, and R.C. 2923.42 must be paid to the executive director of the State Board of Pharmacy and deposited in the occupational licensing and regulatory fund, unless otherwise excepted from this requirement. The exceptions listed in R.C. 3719.21 require the payment of collected fines and forfeited bail into specified funds other than the occupational licensing and regulatory fund.

The plain language of R.C. 3719.21 requires the payment of fines and forfeited bail collected under the specified provisions to the executive director of the State Board of Pharmacy for deposit into the occupational licensing and regulatory fund within the state treasury. Where, as here, nothing in

R.C. 3719.21 authorizes the payment of the collected fines or forfeited bail to a board of county commissioners, such moneys may not be paid directly to a board of county commissioners.

Further, none of the exceptions listed in R.C. 3719.21 authorize the payment of the collected fines or forfeited bail directly to a board of county commissioners. Most of the statutory provisions listed as exceptions in R.C. 3719.21 require the clerk of court to pay collected fines to law enforcement agencies of a county, township, municipal corporation, park district created pursuant to R.C. 511.18 or R.C. 1545.04, or of the state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. R.C. 2923.42(C); R.C. 2923.44(B); R.C. 2925.03(D)(1), (F); R.C. 2925.02(D)(1); R.C. 2925.04(D)(1); R.C. 2925.05(D)(1); R.C. 2925.11(E)(1); R.C. 2925.13(E);[1] R.C. 2925.36(F); R.C. 2925.22(D); R.C. 2925.23(H); R.C. 2925.37(M); R.C. 2925.42(B); R.C. 2929.18(B); R.C. 3719.99(D); R.C. 4729.99(E)(3).

Two of the other exceptions in R.C. 3719.21 require that fines be paid to eligible alcohol and drug addiction programs. R.C. 2925.03(H); R.C. 2929.18(B)(4). Pursuant to these provisions, the court imposing the fine must specify in the judgment that imposes the fine one or more alcohol and drug addiction programs for the support of which the fine money is to be used. Finally, the remaining exceptions listed in R.C. 3719.21 require that fines and forfeited bail be deposited in the state treasury to the credit of the State Board of Pharmacy drug law enforcement fund. R.C. 4729.65(B)(1); R.C. 4729.99(I)(4).

In sum, neither the general provisions of R.C. 3719.21 nor the statutes listed as exceptions in R.C. 3719.21 authorize direct payment of fines or forfeited bail to a board of county commissioners. Accordingly, we conclude that R.C. 3719.12 does not authorize the payment of fines or forfeited bail to a board of county commissioners. Therefore, a board of county commissioners is not authorized, pursuant to R.C. 3719.21, to expend such funds for the costs incurred in the housing and care of inmates charged with or convicted of drug offenses.

Although R.C. 3719.21 does not authorize the direct payment of moneys to a board of county commissioners, we also consider whether the State Board of Pharmacy may pay those moneys to a board of county commissioners. We similarly consider whether the entities that receive moneys pursuant to the exceptions listed in R.C. 3719.21 may pay those moneys to a board of county commissioners.

First we consider whether the State Board of Pharmacy may pay moneys deposited in the occupational licensing and regulatory fund pursuant to R.C. 3719.21 to a board of county

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[1] Division (F) of R.C. 2925.13 is listed as an exception in R.C. 3719.21. This provision relates to premises or real estate that constitute a nuisance subject to abatement; it does not relate to the payment of fines or forfeited bail. Division (E) of R.C. 2925.13, however, does pertain to the payment of fines or forfeited bail. It thus appears that the General Assembly intended to exempt fines disbursed pursuant to R.C. 2925.13(E) from the provisions of R.C. 3719.21. *See* 1997 Op. Att'y Gen. No. 97-058, at 2-355 n.4.

commissioners for costs incurred in the housing and care of inmates charged with or convicted of drug offenses. R.C. 3719.21 requires the executive director of the Board to deposit such fines and forfeited bail into the state treasury to the credit of the occupational licensing and regulatory fund created pursuant to R.C. 4743.05.

R.C. 4743.05 states, in relevant part:

> Except as otherwise provided in [R.C. 4701.20, R.C. 4723.062, R.C. 4723.082, and R.C. 4729.65], all money collected under Chapters 3773., 4701., 4703., 4709., 4713., 4715., 4717., 4723., 4725., 4729., 4732., 4733., 4734., 4736., 4741., 4753., 4755., 4757., 4758., 4759., 4761., 4766., 4771., 4775., 4779., and 4781. of the Revised Code shall be paid into the state treasury to the credit of the occupational licensing and regulatory fund, *which is hereby created for use in administering such chapters*. (Emphasis added.)

Accordingly, moneys deposited into the occupational licensing and regulatory fund pursuant to R.C. 3719.21 are used to administer R.C. Chapter 3773, which governs boxing, discharging firearms, and dueling, and many provisions of R.C. Title 47, which regulates occupations and professions. There is no authority in either R.C. 3719.21 or in R.C. 4743.05 for the State Board of Pharmacy to transfer moneys from the occupational licensing and regulatory fund to a board of county commissioners for costs incurred in the housing and care of inmates charged with or convicted of drug offenses.

Further, none of the exceptions listed in R.C. 4743.05 authorize the payment of moneys from the occupational licensing and regulatory fund to a board of county commissioners. R.C. 4701.20 requires the deposit of moneys into the occupational licensing and regulatory fund. R.C. 4723.062 and R.C. 4723.082 require the deposit of moneys into the nursing special issue fund. Moneys comprising that fund are used to pay for the costs of implementing a program for nurses related to patient safety and health care issues. *Id.* And R.C. 4729.65 requires the deposit of moneys into the State Board of Pharmacy drug law enforcement fund to subsidize the drug law enforcement efforts of the State Board of Pharmacy.

Accordingly, the State Board of Pharmacy does not have the authority to transfer money from the occupational licensing and regulatory fund to a board of county commissioners for the purpose of paying for the housing and care of inmates. Moreover, none of the exceptions listed in R.C. 4743.05 authorize the payment of moneys to a board of county commissioners.

Finally, we consider whether the entities that receive moneys pursuant to the exceptions listed in R.C. 3719.21 may pay those moneys to a board of county commissioners. These statutory provisions, each discussed in detail below, require that moneys received under each provision be used for specific purposes.

Eligible alcohol and drug addiction programs that receive moneys pursuant to R.C. 2925.03(H) or R.C. 2929.18(B)(4) must use such moneys "only for the alcohol and drug addiction services identified in the application for certification under [R.C. 3793.06] or in the application for a

license under [R.C. 3793.11] filed with the department of alcohol and drug addiction services." R.C. 2925.03(H)(3). These provisions clearly do not authorize these programs to distribute money to a board of county commissioners for costs incurred in the housing and care of inmates.

Law enforcement agencies that receive moneys pursuant to R.C. 2923.42(C) and R.C. 2923.44(B) must use these moneys to subsidize the agencies' law enforcement efforts that pertain to criminal gangs. Similarly, law enforcement agencies that receive moneys pursuant to the following provisions must use those moneys to subsidize the agencies' law enforcement efforts that pertain to drug offenses: R.C. 2925.03(D)(1), (F); R.C. 2925.02(D)(1); R.C. 2925.04(D)(1); R.C. 2925.05(D)(1); R.C. 2925.11(E)(1); R.C. 2925.13(E); R.C. 2925.36(F); R.C. 2925.22(D); R.C. 2925.23(H); R.C. 2925.37(M); R.C. 2925.42(B); R.C. 2929.18(B); R.C. 3719.99(D); and R.C. 4729.99(E)(3). Finally, the State Board of Pharmacy must use moneys received pursuant to R.C. 4729.65(B)(1) "solely to subsidize the drug law enforcement efforts" of the State Board of Pharmacy.

The State Board of Pharmacy or a law enforcement agency that receives moneys pursuant to these provisions has the discretion to determine whether a specific expenditure is for an activity consistent with a purpose authorized by statute, *i.e.*, law enforcement efforts that pertain to criminal gangs or law enforcement efforts that pertain to drug offenses. *See* 1989 Op. Att'y Gen. No. 89-090, at 2-429. Nevertheless, the exercise of discretion must be reasonable and within the limitations set by statute. *See id.* We do not believe that the use of such moneys by a board of county commissioners for costs incurred in the housing and care of inmates charged with or convicted of drug offenses is consistent with the specific purposes permitted by the statutes referenced above, *i.e.*, law enforcement efforts that pertain to criminal gangs or law enforcement efforts that pertain to drug offenses. Additionally, it is well settled in Ohio that "[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county." *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). Accordingly, we conclude that fines collected pursuant to these provisions may not be paid to a board of county commissioners for costs incurred in the housing and care of inmates charged with or convicted of drug offenses.

In sum, it is my opinion, and you are hereby advised that R.C. 3719.21 does not authorize the payment of fines or forfeited bail to a board of county commissioners or the expenditure of fines or forfeited bail for the costs incurred in the housing and care of inmates charged with or convicted of drug offenses.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General