July 26, 2001

OPINION NO. 2001-033

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

You have requested an opinion concerning the authority of a county veterans service commission under R.C. 5901.03(E) to expend funds for "outreach programs." Your specific questions are:

1. What is the legal definition of an outreach program [for purposes of R.C. 5901.03(E)]?

2. May a program sponsored or funded by another agency or entity be an outreach program for purposes of compliance with [R.C.] 5901.03(E)?

3. May [a county veterans service commission] fund or subsidize programs which assist veterans [and] which are sponsored by other veterans groups or programs under the auspices of [R.C.] 5901.03(E)?

4. Are there any other sections of [R.C.] Chapter 5901 which would restrict the ability of a county veterans' service commission from sponsoring, funding, subsidizing, or otherwise contributing to outside agency programs for the service of veterans and designating such services as an outreach program under [R.C.] 5901.03(E)?

Before addressing your questions, let us begin with a brief examination of the statutory scheme governing the operation and functions of county veterans service commissions.

Pursuant to R.C. 5901.02, each county has a veterans service commission composed of five members. Because a county veterans service commission is a creature of statute, it "has only those powers that it has been expressly given by statute and those that are necessarily implied from the express powers." 1996 Op. Att'y Gen. No. 96-040 at 2-155.

Among the duties of a veterans service commission is that of "[e]stablishing programs of outreach and coordination with other agencies to enhance available services to *veterans* within the county." R.C. 5901.03(E) (emphasis added).[1] *See generally* R.C. 5901.01(A) and (B) (providing separate definitions of the word "veteran" for different purposes within R.C. Chapter 5901).

The manner in which a county funds its veterans service commission is set forth in R.C. 5901.11, which requires the veterans service commission to determine each year, in an itemized manner, the probable amount the commission will need to provide aid and financial assistance to eligible persons. The commission then submits its proposed budget to the board of county commissioners for review. R.C. 5901.11. Finally, the board of county commissioners "shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to raise the amount that the board approves." *Id*. *See generally* R.C. 5705.05(E) (including "the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines" among the purposes for which a county may impose the general levy for current expense). The revenues of the levy described in R.C. 5901.11 are then appropriated by the county commissioners to the veterans service commission. Apart from this appropriation, we are aware of no other source from which a county veterans service commission draws its funds. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-103 at 2-506 and 2-507 (overruled, in part, on other grounds by 1998 Op. Att'y Gen. No. 98-029).

Because a veterans service commission is a county body that is funded through the proceeds of a tax levy, the moneys so provided to the commission are public funds of the county that are subject to numerous provisions of law concerning the manner in which those funds may be used. *See generally, e.g.*, Ohio Const. art. XII, § 5 ("[n]o tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); R.C. 5705.38(C) (stating, in part, "[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"); R.C. 5705.41 (setting forth restrictions on the appropriation and expenditure of funds by subdivisions and taxing authorities, including counties and boards of county commissioners, such as prohibiting expenditures without a proper appropriation for that purpose or other than by a proper warrant drawn against an appropriate fund, and requiring a certificate of available funds for certain contracts and orders).

With this general background in mind, let us turn to your first question, which asks for a legal definition of the term "outreach program," as those words are used in R.C. 5901.03(E). It is well settled that, "[t]he polestar of construction and interpretation of statutory language is legislative intention. In determining that intention courts look to the language employed and to

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[1] *See also* R.C. 5901.15 (adoption of rules for the provision of immediate assistance to persons qualified for such assistance under R.C. 5901.02-.14).

the purpose to be accomplished." *State ex rel. Francis v. Sours*, 143 Ohio St. 120, 124, 53 N.E.2d 1021, 1023 (1944). Let us, therefore, examine the precise language of R.C. 5901.03(E).

R.C. 5901.03(E) describes the nature of the programs that a veterans service commission must establish thereunder as those of "outreach and coordination with other agencies" for the express purpose of "enhanc[ing] available services to veterans within the county." The words "outreach" and "coordination," as used in R.C. 5901.03(E), are not defined by statute. We must, therefore, construe them in accordance with their commonly understood meanings. R.C. 1.42. According to *The American Heritage Dictionary* (2d college ed. 1982) 883, the noun "outreach" is defined, in part, as meaning, "[a] systematic attempt to provide services beyond conventional limits, as to particular segments of a community: *an educational outreach to adult illiterates*." "[O]utreach," however, is only one characteristic of such programs, and must be read in the context of the language of R.C. 5901.03(E) in its entirety. *See generally Commerce & Industry Insurance Co. v. City of Toledo*, 45 Ohio St. 3d 96, 102, 543 N.E.2d 1188, 1196 (1989) ("words and phrases in a statute must be read in context of the whole statute").

R.C. 5901.03(E) also describes the programs a veterans service commission must establish thereunder as programs of "coordination with other agencies." As defined in *The American Heritage Dictionary* at 321, the intransitive verb "coordinate" means, "[t]o work together harmoniously." Thus, when read in its entirety, R.C. 5901.03(E) describes the types of programs a veterans service commission must establish as those that make a systematic attempt, working together with other agencies, to increase available services to a particular segment of the community, specifically, veterans within the county. *See generally Lake Shore Electric Ry. Co. v. Public Utilities Comm'n*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (one may not "read into a statute new provisions which will render it definite, when the Legislature itself has given a definition which is wholly indefinite").

In answer to your first question, we thus conclude that the type of program a veterans service commission has a duty to establish under R.C. 5901.03(E) is a program that makes a systematic attempt, working together with other agencies, to increase available services specifically to veterans within the county.

Your second question asks whether a program sponsored or funded by another agency or entity may qualify as an outreach program for purposes of R.C. 5901.03(E). Background information accompanying your request indicates that your concern is whether a program created by an entity other than the veterans service commission may qualify as a program established by a veterans service commission under R.C. 5901.03(E). For example, certain agencies that provide housing, medical, or other services to persons in need of those services, some of whom may be veterans, have requested donations from the veterans service commission.

Again, we must rely upon the language of R.C. 5901.03(E) to address this concern. R.C. 5901.03(E) imposes upon a veterans service commission a duty to *establish* programs of the type described therein. According to *The American Heritage Dictionary* at 465-66, "establish" means, among other things, "[t]o found … [t]o introduce and put … into force." Thus, a

program that has been founded or created by another entity to provide certain services to those in need of such services, some of whom may be veterans, is not a program established by the veterans service commission pursuant to R.C. 5901.03(E).

We do not mean to suggest, however, that a veterans service commission may not establish its own program under which it works together or coordinates with such an agency in an effort to make that agency's services more readily available to veterans within that county. Rather, such a cooperative endeavor between the veterans service commission and another agency to enhance available services for veterans in the county appears to be precisely the type of program contemplated by R.C. 5901.03(E).

In answer to your second question, we find that a program founded by an agency or entity other than a veterans service commission is not a program established by a veterans service commission for purposes of R.C. 5901.03(E). Pursuant to R.C. 5901.03(E), however, a veterans service commission may establish a program in which it works with or coordinates its efforts with those of another agency in order to increase the availability of services to veterans within the county.

Your third question asks whether R.C. 5901.03(E) authorizes a veterans service commission to fund or subsidize programs that assist veterans and that are sponsored by veterans groups or other programs.[2] Again, from the background information provided with your request, we understand your concern to be whether a veterans service commission may donate funds to a veterans group or other program that assists individuals, some of whom may be veterans, through the provision of medical, housing, or other types of services.

It has long been the practice that statutes providing assistance to veterans are liberally construed in favor of the veterans. 1944 Op. Att'y Gen. No. 7249, p. 684, 688 (soldiers' relief [now veterans assistance] "grows out of the humane impulse to relieve distress due to poverty, disease and other misfortune…. [T]he well established principle [is] that relief acts are to be liberally construed"); 1944 Op. Att'y Gen. No. 6951, p. 306, 311 ("the statutes under consideration, being designed for the purpose of affording relief to '*all* needy soldiers, sailors and marines' who have served in the military forces of the nation, are entitled to have a liberal construction").

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[2] We wish to emphasize that this opinion does not address the authority of a veterans service commission to enter into a contract or agreement with another agency for the provision of services as otherwise authorized by statute, *see, e.g.*, R.C. 5901.03(H) (duty of veterans service commission to enter into contracts or other agreements "determined by the commission to be most cost-effective" for the transportation of veterans to and from veterans administration medical centers); R.C. 5901.25 (veterans service commission may be required, "upon application and with the approval of the family or friends of the deceased, to contract, at a fair and reasonable price" for the burial of a veteran).

At the same time, however, we must bear in mind the well-established principle applicable to all county entities, including a veterans service commission, that, "[a]ll public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law." *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one). *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) ("[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").

Moreover, "[i]n case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power." *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph three). For the reasons that follow, we do not believe that the act of making an unrestricted grant or donation of funds to a veterans group or other agency is encompassed within the language of R.C. 5901.03(E).

Pursuant to R.C. 5901.03(E), a veterans service commission has a duty to establish programs of outreach and coordination with other agencies for the purpose of enhancing the availability of services to veterans in the county. We find no language within R.C. 5901.03(E) that suggests that a donation of funds to an organization of any type is within the authority of a veterans service commission acting thereunder. *Cf.* R.C. 303.53 (stating in part, "[a]ny public body, for the purpose of aiding in the planning, undertaking, or carrying out of a county renewal project located within an area in which such public body is authorized to act, may, upon such terms, with or without consideration as it may determine: … lend, grant, or contribute funds to a county"); R.C. 307.281 (stating in part, "[t]he board of county commissioners of any county may make contributions of moneys … to any board of park commissioners established pursuant to [R.C. Chapter 1545] for the expenses of park planning, acquisition, management, and improvement").

Had the General Assembly intended that a veterans service commission enhance available services to veterans within the county through the donation of funds to an organization that itself provides services to veterans, it could easily have worded R.C. 5901.03(E) in a manner that would have clearly expressed that intention. *See generally Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) (the General Assembly, "[h]aving used certain language in the one instance and wholly different language in the other, it will … be presumed that different results were intended"). Because R.C. 5901.03(E) requires a veterans service commission to enhance available services to veterans in the county explicitly through the establishment of programs of outreach and coordination with other agencies, we do

not believe that R.C. 5901.03(E) authorizes a veterans service commission simply to donate funds to other agencies or entities, even those that provide services to veterans in the county.[3]

In answer to your third question, we conclude, therefore, that R.C. 5901.03(E) does not authorize a veterans service commission to donate its funds to a veterans organization or any other agency. Should the General Assembly wish to modify the existing statutory provisions and authorize a veterans service commission to donate its funds to veterans organizations or other agencies, it could do so through appropriate legislation.[4]

Because of our answer to your third question, it is not necessary to address your final question concerning possible restrictions on the authority of a veterans service commission to make such donations.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. The type of program a veterans service commission has a duty to establish under R.C. 5901.03(E) is a program that makes a systematic attempt, working together with other agencies, to increase available services specifically to veterans within the county.

2. A program founded by an agency or entity other than a veterans service commission is not a program established by a veterans service commission for purposes of R.C. 5901.03(E). Pursuant to R.C. 5901.03(E), however, a veterans service commission may establish a program in which it works

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[3] This opinion does not suggest that the use of public funds for the assistance of veterans does not serve a public purpose. In fact, the court in *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955), failed to declare unconstitutional an act of the General Assembly that appropriated state funds, the release of which was conditioned upon the filing of expenditure reports, to certain veterans organizations for the rehabilitation of war veterans and the promotion of patriotism. *See generally Auditor of Lucas County v. State ex rel. Boyles*, 75 Ohio St. 114, 78 N.E. 955 (1906) (public relief may be provided for the blind, but limitations must be placed on such relief to insure it is used by needy individuals for support); 1971 Op. Att'y Gen. No. 71-044 (syllabus) ("[a] municipality may not make an outright, unrestricted gift of funds to a nongovernmental organization, regardless of whether or not such organization may be generally engaged in performing a beneficial, public purpose"). Instead, this opinion concludes only that the General Assembly has not, through the enactment of R.C. 5901.03(E), authorized a veterans service commission to donate its moneys to agencies or organizations, including those that may provide services to veterans.

[4] One such statute is R.C. 307.66. This statute permits a board of county commissioners, a board of township trustees, and the legislative authority of a municipal corporation to appropriate a sum of money to the veterans organizations named therein for the purpose of defraying the expenses those organizations incur in the observance of memorial day each year.

with or coordinates its efforts with those of another agency in order to increase the availability of services to veterans within the county.

3. R.C. 5901.03(E) does not authorize a veterans service commission to donate its funds to a veterans organization or any other agency.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

July 26, 2001

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS: 2001-033

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