June 5, 2006

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, Fourth Floor
Lancaster, Ohio 43130

SYLLABUS: 2006-024

Pursuant to R.C. 321.44(A)(2), a court of common pleas may use moneys in the county probation services fund to pay the compensation of county probation officers.

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OPINION NO. 2006-024

The Honorable David L. Landefeld
Fairfield County Prosecuting Attorney
201 South Broad Street, Fourth Floor
Lancaster, Ohio 43130

Dear Prosecutor Landefeld:

You have requested an opinion whether R.C. 321.44(A)(2) authorizes a court of common pleas to use moneys in the county probation services fund to pay the compensation[1] of county probation officers.[2] Based on the following, a court of common pleas may use moneys in the county probation services fund in this manner.

R.C. 2951.021(A)(1) authorizes a court of common pleas to require a person during a period of community control to pay a monthly supervision fee to the probation agency that has control and supervision over the person or to the clerk of the court for which the probation agency is established:

> If a court places a misdemeanor offender under a community control sanction[3] under [R.C. 2929.26, R.C. 2929.27, or R.C. 2929.28] or places a felony

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[1] As used in this opinion, the term "compensation" includes salary and fringe benefits. *See generally State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 348 N.E.2d 692 (1976) (fringe benefits are a component of compensation for purposes of Ohio Const. art. II, § 20); *State ex rel. Artmayer v. Bd. of Trustees of Delhi Twp.*, 43 Ohio St. 2d 62, 330 N.E.2d 684 (1975) (the terms "salary" and "compensation," as used in Ohio Const. art. II, § 20, are synonymous); 2003 Op. Att'y Gen. No. 2003-019 at 2-154 ("[t]he provision of a fringe benefit is part of the compensation of an individual"); 1983 Op. Att'y Gen. No. 83-004 at 2-22 (compensation has been construed to mean "the number of dollars payable to a public officer"); 1982 Op. Att'y Gen. No. 82-071 at 2-201 ("[i]t is [well settled] that the term 'compensation' includes both wages and fringe benefits").

[2] R.C. 2301.27(A)(1) authorizes a court of common pleas to establish a county department of probation and appoint the department's probation officers.

[3] The phrase "community control sanction" is defined as follows for purposes of R.C. Chapters 2929 and 2951:

> offender under a community control sanction under [R.C. 2929.16, R.C. 2929.17, or R.C. 2929.18] and if the court places the offender under the control and supervision of a probation agency, the court may require the offender, as a condition of community control, to pay a monthly supervision fee of not more than fifty dollars for supervision services. If the court requires an offender to pay a monthly supervision fee and the offender will be under the control of a county department of probation, a multicounty department of probation, or a municipal court department of probation established under [R.C. 1901.33], the court shall specify whether the offender is to pay the fee to the probation agency that will have control over the offender or to the clerk of the court for which the supervision agency is established. If the court requires an offender to pay a monthly probation fee and the offender will be under the control of the adult parole authority, the court shall specify that the offender is to pay the fee to the clerk of the court of common pleas. (Footnote added.)

See generally R.C. 2949.111 (providing for the assignment of moneys paid by a person convicted of, or pleading guilty to, a misdemeanor toward the satisfaction of any supervision fee that a court pursuant to R.C. 2951.021 requires the person to pay for supervision services while under a community control sanction).

Supervision fees collected under R.C. 2951.021 by a county probation department, multicounty probation department, municipal court probation department in a county-operated municipal court, or the clerk of the court of common pleas are deposited into a county probation services fund established in the county treasury of that county pursuant to R.C. 321.44(A)(1).[4] R.C. 2951.021(C). R.C. 321.44(A)(1), in turn, provides, that, if the county has established a county probation department, the moneys in a county probation services fund are to be placed in an account for use by the department:

> "Community control sanction" means a sanction that is not a prison term and that is described in [R.C. 2929.15, R.C. 2929.16, R.C. 2929.17, or R.C. 2929.18] or a sanction that is not a jail term and that is described in [R.C. 2929.26, R.C. 2929.27, or R.C. 2929.28]. "Community control sanction" includes probation if the sentence involved was imposed for a felony that was committed prior to July 1, 1996, or if the sentence involved was imposed for a misdemeanor that was committed prior to January 1, 2004.

R.C. 2929.01(F); *see also* R.C. 2951.01(B) (as used in R.C. Chapter 2951, "community control sanction" has the same meaning as in R.C. 2929.01).

[4] R.C. 321.44(A)(1) requires each county to establish a county probation services fund in its county treasury.

> The [county probation services] fund a county establishes under this division shall contain all moneys paid to the treasurer of the county under [R.C. 2951.021] for deposit into the fund. The moneys paid into the fund shall be deposited by the treasurer of the county into the appropriate account established under divisions (A)(1)(a) to (d) of this section. Separate accounts shall be maintained in accordance with the following criteria in the fund a county establishes under this division:
>
> (a) If a county department of probation is established in the county, a separate account shall be maintained in the fund for the county department of probation.

Provisions governing the use of moneys in a county probation department's account in the county probation services fund are set forth in R.C. 321.44(A)(2), which provides, in pertinent part:

> For any county, if a county department of probation is established in the county …, the board of county commissioners of the county shall appropriate to the county department of probation … all money that is contained in the department's account in the county probation services fund established in the county *for use only for* specialized staff, purchase of equipment, purchase of services, reconciliation programs for offenders and victims, other treatment programs, including alcohol and drug addiction programs certified under [R.C. 3793.06], determined to be appropriate by the chief probation officer of the department of probation, and other similar expenses related to placing offenders under a community control sanction. (Emphasis added.)

Accordingly, a court of common pleas may use moneys in the county probation services fund to pay the compensation of county probation officers if one of the categories of permissible uses set forth in R.C. 321.44(A)(2) encompasses such an expenditure. *See generally State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one) ("all public property and public moneys … constitute a public trust fund.… Said trust fund can be disbursed only by clear authority of law"); 1982 Op. Att'y Gen. No. 82-014 at 2-48 ("[p]ublic funds may be disbursed only by clear authority of law and upon compliance with statutory provisions relating thereto").

R.C. 321.44(A)(2) unequivocally declares that moneys in a county probation services fund may be used for "specialized staff." The term "specialized staff," as used in R.C. 321.44, has not acquired a particular meaning from the General Assembly or the courts. We must therefore construe this term in accordance with "the rules of grammar and common usage." R.C. 1.42.

Merriam-Webster's Collegiate Dictionary 1198 (11th ed. 2005) defines "specialized" to mean "designed, trained, or fitted for one particular purpose or occupation." The word "staff" is defined, *inter alia*, as "the officers chiefly responsible for the internal operations of an institution

or business[;] a group of officers appointed to assist a civil executive or commanding officer[;] … the personnel who assist a director in carrying out an assigned task[.]" *Id.* at 1213. Thus, in common lexicon, the term "specialized staff" denotes personnel trained for a particular occupation that assist an entity in carrying out a particular task assigned to the entity.

A review of the powers, duties, and responsibilities of county probation officers readily discloses that these officers qualify as "specialized staff" for purposes of R.C. 321.44(A)(2). Pursuant to R.C. 2301.27(A)(1), a court of common pleas may establish a county probation department and appoint and supervise the department's probation officers. *See* R.C. 2151.14; *see also* R.C. 2301.29 (a court of common pleas may exercise supervision over the county probation department "by adopting rules that are not inconsistent with law or with the rules of the adult parole authority and that shall be observed and enforced by the probation officers of the department"). *See generally* R.C. 2151.15 ("[w]hen a county department of probation has been established in the county and the juvenile judge does not establish a probation department within the juvenile court as provided in [R.C. 2151.14], all powers and duties of the probation department provided for in [R.C. 2151.01-.54] shall vest in and be imposed upon such county department of probation"). County probation officers prepare presentence investigation reports for the judges of the court of common pleas. *See* R.C. 2151.14; R.C. 2947.06; R.C. 2951.03; *see also* R.C. 2301.27(A)(1). *See generally* Ohio R. Crim. P. 32.2 ("[i]n felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation").

County probation officers are also responsible for supervising on behalf of the court of common pleas persons who are under the supervision and control of the court. *See* R.C. 2151.14; R.C. 2301.28; R.C. 2301.30; R.C. 2951.06; *see also* R.C. 2152.19. In order to perform this task, the county probation department and its probation officers are required to do the following:

> (A) Furnish to each person under a community control sanction or post-release control sanction or on parole under its supervision or in its custody, a written statement of the conditions of the community control sanction, post-release control sanction, or parole and instruct the person regarding the conditions;
>
> (B) Keep informed concerning the conduct and condition of each person in its custody or under its supervision by visiting, the requiring of reports, and otherwise;
>
> (C) Use all suitable methods, not inconsistent with the conditions of the community control sanction, post-release control sanction, or parole, to aid and encourage the persons under its supervision or in its custody and to bring about improvement in their conduct and condition;
>
> (D) Keep detailed records of the work of the department, keep accurate and complete accounts of all moneys collected from persons under its supervision or in its custody, and keep or give receipts for those moneys;

> (E) Make reports to the adult parole authority created by [R.C. 5149.02] that it requires.

R.C. 2301.30; *accord* R.C. 2151.14(A). County probation officers are thus responsible for assisting the court of common pleas in carrying out the court's duty to supervise persons who are under the supervision and control of the court.

While performing this task for the court of common pleas, county probation officers are statutorily vested with certain powers. Under R.C. 2301.27(A)(1), county probation officers "have all the powers of regular police officers." These officers are also conferred specific statutory authority to arrest or apprehend persons under the supervision and control of the court of common pleas. *See* R.C. 2151.14(B); R.C. 2151.31; R.C. 2301.31; 2951.08; *see also* R.C. 2301.29; R.C. 2967.15. In addition, county probation officers may conduct searches of real or personal property of persons under the supervision and control of the court of common pleas, R.C. 2152.19(F); R.C. 2951.02; *see also* R.C. 2301.29; R.C. 2967.131, cause such persons to submit to random drug testing, R.C. 2951.05; *see also* R.C. 2301.29; R.C. 2967.131, collect DNA specimens from such persons, R.C. 2152.74; R.C. 2901.07, and perform such other duties as the court assigns, R.C. 2301.27(A)(1).

Moreover, county probation officers may be authorized to carry firearms:

> The chief probation officer may grant permission to a probation officer to carry firearms when required in the discharge of official duties, if the probation officer has successfully completed a basic firearm training program that is approved by the executive director of the Ohio peace officer training commission. A probation officer who has been granted permission to carry a firearm in the discharge of official duties, annually shall successfully complete a firearms requalification program in accordance with [R.C. 109.801].

R.C. 2301.27(C); *see* 1966 Op. Att'y Gen. No. 66-184.

In light of the duties, responsibilities, and powers of county probation officers, it follows that such officers must possess certain training in probation or community supervision before they may supervise persons who are under the supervision and control of a court of common pleas. *See generally* R.C. 2301.27(A)(1) (a court may not appoint "as a probation officer any person who does not possess the training, experience, and other qualifications prescribed by the adult parole authority"). This training may include, but is not limited to, firearms training or instruction on conducting investigations and interviews; arrest, search, or supervision techniques; recognizing abnormal behavior patterns or dependency on alcohol or drugs of abuse; and the legal aspects of probation or community supervision. Without this training, county probation officers would be unable to effectively assist a court of common pleas in improving the conduct of persons under the supervision and control of the court or protecting the public from such persons. Accordingly, persons who serve as county probation officers are trained to provide probation or community supervision services.

Because county probation officers are specifically trained to provide probation or community supervision services so as to assist a court of common pleas in carrying out the court's duty to supervise persons who are under the supervision and control of the court, such officers are "specialized staff" for purposes of R.C. 321.44(A)(2). As such, R.C. 321.44(A)(2) authorizes a court of common pleas to use moneys in the county probation services fund to pay the compensation of county probation officers.[5]

In conclusion, it is my opinion, and you are hereby advised that, pursuant to R.C. 321.44(A)(2), a court of common pleas may use moneys in the county probation services fund to pay the compensation of county probation officers.

Respectfully,

JIM PETRO
Attorney General

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[5] R.C. 2301.27(A)(3) requires that the salary of a county probation officer "be paid monthly from the county treasury in the manner provided for the payment of the compensation of other appointees of the court." This means that the salary of a county probation officer is paid from the appropriate fund in the county treasury upon the warrant of the county auditor when the court of common pleas has authorized the payment of the salary. *See* R.C. 307.55; R.C. 319.16; *see also* R.C. 9.37; R.C. 9.41.