August 25, 2009

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

SYLLABUS: 2009-031

A county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 may rotate on a monthly basis the public safety answering points that will receive moneys disbursed to the county from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B).

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

August 25, 2009

OPINION NO. 2009-031

The Honorable Sherri Bevan Walsh
Summit County Prosecuting Attorney
53 University Avenue, 6th Floor
Akron, Ohio 44308-1680

Dear Prosecutor Walsh:

You have requested an opinion concerning the use of moneys from the wireless 9-1-1 government assistance fund to finance the operation of public safety answering points (PSAP).[1] As explained in your letter, "[a] recommendation was made by the Summit County 9-1-1 Technical Advisory Committee suggesting to fund the 4 primary PSAPs with the highest wireless 9-1-1 call volume and rotating monthly the 5th PSAP between the other Summit County Primary 9-1-1 PSAPs." In light of this recommendation, you wish to know whether a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 may rotate on a monthly basis the PSAPs that will receive moneys from the wireless 9-1-1 government assistance fund.

Resolution of your question requires an examination of the provisions of law governing the distribution of moneys from the wireless 9-1-1 government assistance fund. Pursuant to R.C. 4931.63(B), the General Assembly "created the wireless 9-1-1 government assistance fund, which shall be in the custody of the treasurer of state but shall not be part of the state treasury."

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[1] In the context of a countywide 9-1-1 system, a "public safety answering point" is "a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider." R.C. 4931.40(P).

Moneys in the wireless 9-1-1 government assistance fund are derived from the periodic remittances of the wireless 9-1-1 charge remaining after the Ohio 9-1-1 coordinator makes the deposit required by R.C. 4931.63(A) into the wireless 9-1-1 administrative fund.[2] R.C. 4931.63(B).

The Treasurer of State is required to disburse moneys from the wireless 9-1-1 government assistance fund "solely upon order of the [Ohio 9-1-1] coordinator as authorized under [R.C. 4931.64]" until the fund is depleted. R.C. 4931.63(B); *see also* R.C. 4931.61(A); R.C. 4931.64(A). Under R.C. 4931.64(B), the responsibilities of the Ohio 9-1-1 coordinator with regard to the disbursement of moneys from the wireless 9-1-1 government assistance fund are as follows:

> The Ohio 9-1-1 coordinator, in accordance with this division and not later than the last day of each month, shall disburse the amount credited as remittances to the wireless 9-1-1 government assistance fund during the second preceding month, plus any accrued interest on the fund. Such a disbursement shall be paid to each county treasurer.[3] The amount to be so disbursed monthly to a particular

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[2] R.C. 4931.61 imposes a wireless 9-1-1 charge of 28 cents per month on each wireless telephone number of a wireless service subscriber who has a billing address in Ohio. Every wireless service provider and reseller of wireless service is required to collect the wireless 9-1-1 charge and, except as provided in R.C. 4931.62, remit the charges it collects to the Ohio 9-1-1 coordinator for deposit into the wireless 9-1-1 administrative fund and the wireless 9-1-1 government assistance fund. R.C. 4931.61-.63. Except for the percentage of the wireless 9-1-1 charge that the chairperson of the Public Utilities Commission determines is to be deposited into the wireless 9-1-1 administrative fund, all wireless 9-1-1 charges that are remitted to the Ohio 9-1-1 coordinator are to be deposited into the wireless 9-1-1 government assistance fund. R.C. 4931.63.

[3] A county is not entitled to receive disbursements from the wireless 9-1-1 government assistance fund unless it has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70. *See* R.C. 4931.64. Instead, the Ohio 9-1-1 coordinator "shall retain in the wireless 9-1-1 government assistance fund an amount equal to what would otherwise be paid as the county's disbursements under [R.C. 4931.64(B)] if it had adopted such a final plan, plus any related accrued interest, to be set aside for that county." R.C. 4931.64(C)(2). And, if the county notifies the Ohio 9-1-1 coordinator prior to January 1, 2010, that the county has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70, "the coordinator shall disburse and pay to the county treasurer, not later than the last day of the month following the month the notification is made, the total amount so set aside for the county plus any related accrued interest." *Id.* Any money and interest retained and not disbursed as authorized under R.C. 4931.64(C) must be made available for disbursement as provided in R.C. 4931.64(B) on January 1, 2010. *Id.*

> county shall be a proportionate share of the wireless 9-1-1 government assistance fund balance based on the ratio between the following:
>
> (1) The number of wireless telephone numbers determined for the county by the coordinator pursuant to [R.C. 4931.64(A)];
>
> (2) The total number of wireless telephone numbers assigned to subscribers who have billing addresses within this state. To the extent that the fund balance permits, the disbursements to each county shall total at least ninety thousand dollars annually. (Footnote added.)

R.C. 4931.64(B) thus requires the Ohio 9-1-1 coordinator to make monthly disbursements from the wireless 9-1-1 government assistance fund to a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70.

When a county receives a monthly disbursement under R.C. 4931.64(B), the county treasurer "*shall* disburse, in accordance with the allocation formula set forth in the final plan, the amount the county so received to *any* other subdivisions in the county that pay the costs of a public safety answering point providing wireless enhanced 9-1-1 under the plan." R.C. 4931.64(D) (emphasis added). Nothing in R.C. 4931.64(D) indicates a legislative intent to accord the terms "shall" and "any" a meaning other than their common, ordinary meanings. Accordingly, R.C. 4931.64(D) requires a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 to distribute monthly, in accordance with the allocation formula set forth in the final plan, moneys the county receives from the wireless 9-1-1 government assistance fund to all the subdivisions that pay the costs of a PSAP. *See generally Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St. 3d 532, 534, 605 N.E.2d 368 (1992) ("when it is used in a statute, the word 'shall' denotes that compliance with the commands of that statute is *mandatory*" unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage); 2000 Op. Att'y Gen. No. 2000-046 at 2-283 ("[w]here a statute uses the word 'any' to modify a noun without selection, distinction, or limitation, it is presumed that the legislative intent is that the noun modified by 'any' be treated as a whole class without division into smaller classes, and that 'any' may be equated to mean 'all' or 'every' in that context, especially where the statute uses mandatory language").

The mandatory duty imposed on a county under R.C. 4931.64(D) is subject, however, to the language of R.C. 4931.651. This statute states:

> On or after March 1, 2009, payment of costs specified in [R.C. 4931.65(A)-(D)] and so payable from a disbursement under [R.C. 4931.64] *shall be limited* to those specified and payable costs incurred after that date *for not more than five public safety answering points of the particular 9-1-1 system*. (Emphasis added.)

R.C. 4931.651 thus limits a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 to disbursing moneys it receives from the

wireless 9-1-1 government assistance fund to pay the costs of no more than five PSAPs per month. In other words, every month a county may only pay the costs of five or fewer PSAPs from moneys disbursed to the county from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B).

Nothing in R.C. 4931.651 or elsewhere in the Revised Code mandates that the county pay the costs of the same PSAPs every month. Absent such a requirement, officials of a countywide 9-1-1 system may use their discretion in determining whether to rotate monthly the PSAPs that receive funding from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B). *See generally State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, 112 N.E. 138 (1915) (where an officer has been given no clear direction on a particular matter, the officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing his duties), *aff'd, State ex rel Davis v. Hildebrant*, 241 U.S. 565 (1916); *State ex rel. Attorney General v. Morris*, 63 Ohio St. 496, 512, 59 N.E. 226 (1900) (if it should be found that certain things are authorized to be done by public officials, "and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption would be that the general assembly intended that it might be performed in a reasonable manner, not in conflict with any law of the state").

In fact, given a county's duty under R.C. 4931.64(D) to provide funding from the wireless 9-1-1 government assistance fund to all the PSAPs operated by subdivisions in the county's 9-1-1 system, it appears quite reasonable for a county to rotate monthly the PSAPs that receive funding from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B) when the countywide 9-1-1 system has more than five PSAPs. By doing this, the county ensures that all the PSAPs operated by subdivisions in the county's 9-1-1 system receive funding from the wireless 9-1-1 government assistance fund, as required by R.C. 4931.64(D). It is, therefore, an acceptable practice for a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 to rotate on a monthly basis the PSAPs that will receive moneys disbursed to the county from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B).

Based on the foregoing, it is my opinion, and you are hereby advised that a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 under R.C. 4931.40-.70 may rotate on a monthly basis the public safety answering points that will receive moneys disbursed to the county from the wireless 9-1-1 government assistance fund under R.C. 4931.64(B).

Respectfully,

RICHARD CORDRAY
Ohio Attorney General