January 29, 2009

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

SYLLABUS: 2009-004

A county sheriff who operates a public service answering point as part of a countywide 9-1-1 system has no authority to charge the board of county commissioners, which operates an emergency medical service organization, a fee for dispatching the organization's ambulances.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

January 29, 2009

OPINION NO. 2009-004

The Honorable Robert J. Batchelor
Coshocton County Prosecuting Attorney
318 Chestnut Street
Coshocton, Ohio 43812-1116

Dear Prosecutor Batchelor:

You have asked whether the county sheriff may charge the board of county commissioners, which operates an emergency medical service organization (EMSO), a fee for dispatching emergency medical service ambulances.[1] You have explained that the sheriff operates a "public safety answering point" (PSAP) and dispatches ambulances as part of a countywide 9-1-1 system.[2] 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). *See also* R.C. 4931.41(D)(1) ("[e]ach public safety

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[1] An "emergency medical service organization" is a "public or private organization using first responders, EMTs-basic, EMTs-I, or paramedics, or a combination of first responders, EMTs-basic, EMTs-I, and paramedics, to provide emergency medical services." R.C. 307.05; R.C. 4765.01(H). R.C. 307.05 authorizes a board of county commissioners to "operate an ambulance service organization or emergency medical service organization." An emergency medical service organization (EMSO) that is operated by a board of county commissioners may be administered by the county sheriff. *Id.* In this instance, however, the EMSO is *not* operated by the sheriff.

[2] A "countywide 9-1-1 system" includes "all of the territory of the townships and municipal corporations in the county and any portion of such a municipal corporation that extends into an adjacent county." R.C. 4931.41(A)(1). *See also* 2008 Op. Att'y Gen. No. 2008-014, slip op. at 2-3, n.1. "Every emergency service provider that provides emergency service within the territory of a countywide 9-1-1 system shall participate in the countywide system." R.C. 4931.41(C).

answering point shall be operated by a subdivision and shall be operated constantly").[3] You have explained that the sheriff seeks to charge the county a fixed fee for dispatching the EMSO's ambulances that would reflect an estimate of the actual expenses his office incurs for providing these dispatch services.

In responding to your question, we are guided by the long-standing principle that a county officer may not charge a fee for the performance of his duties in the absence of statutory authorization therefor. *See* R.C. 325.36 ("[n]o salaried county official, shall remit a fee or part thereof, or shall collect a fee other than that prescribed by law"); 2006 Op. Att'y Gen. No. 2006-036 at 2-333 ("absent statutory authority, a county official may not charge a fee for services that he or his office provides"); 2001 Op. Att'y Gen. No. 2001-024 at 2-134 ("unless a statute authorizes a county to charge for services provided in the exercise of statutory powers and duties, the county may not do so"); 1999 Op. Att'y Gen. No. 99-012 at 2-101 ("[t]he authority of the county, its officers, and its agencies is limited to that conferred expressly by statute or by necessary implication therefrom," and "[i]n accord with this principle, a county office or officer may not charge a fee for any service absent express or implied statutory authority to do so"); 1982 Op. Att'y Gen. No. 82-075 (syllabus) ("[a] county sheriff is not authorized to charge a fee for the issuance of a fireworks permit").

The fact that a county officer seeks to assess a fee against another county office or other public body does not obviate the requirement that the officer have statutory authority for imposing the fee.[4] *See* 2001 Op. Att'y Gen. No. 2001-024 (syllabus) ("a board of county commissioners may not charge a public body administrative fees for costs incurred by the county auditor or treasurer, or for utility or rent expenses, unless there is express statutory authorization for the charge or authority implied from an express power"); 1995 Op. Att'y Gen. No. 95-004 at 2-17 ("it is a general rule that, if a county provides a service, the county may not charge the

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[3] A "subdivision" is defined in R.C. 4931.40(M), and includes a county "that provides emergency service within its territory." A "subdivision" also includes a "municipal corporation, township, township fire district, joint fire district, township police district, joint ambulance district, or joint emergency medical services district that provides emergency service within its territory, or that contracts with another municipal corporation, township, or district or with a private entity to provide such service; and a state college or university, port authority, or park district of any kind that employs law enforcement officers that act as the primary police force on the grounds of the college or university or port authority or in the parks operated by the district." *Id.*

[4] Examples of such statutory authority may be found at R.C. 307.806 (a county microfilming board may contract with public entities to provide microfilming services and may charge for such services; "[c]ounty offices may also be charged for such services and the appropriation so charged and the appropriation of the board so credited") and R.C. 307.846 (same for a county automatic data processing board providing automatic data processing services).

political subdivision receiving the service unless there is express statutory authorization for such charge or authority necessarily inferred from an express power"); 1992 Op. Att'y Gen. No. 92-072 at 2-307 ("[i]n the absence of statutory authority, one governmental agency may not charge a second governmental agency for services performed, even if those services benefit the second agency"); 1986 Op. Att'y Gen. No. 86-104 (syllabus, paragraph 2) (a "board of county commissioners may not charge rent for office space it provides to the county children services board"); 1982 Op. Att'y Gen. No. 82-011 (syllabus, paragraph 1) ("[i]f a service is performed for a public office by an office of county government, whether on a mandatory or discretionary basis, a board of county commissioners may not charge the office receiving such service unless there is express statutory authorization for such charge or authority implied from an express power").

Although many statutes authorize county sheriffs to charge fees or receive reimbursement for the performance of a variety of services, we are unaware of any statute that authorizes a county sheriff who operates a PSAP to charge the county a fee to dispatch ambulances or to seek an allowance from the county for the expenses his office incurs in operating the PSAP. For example, R.C. 311.29 authorizes a county sheriff to contract with a municipal corporation, township, board of commissioners of a contiguous county, and other specified public agencies "pursuant to which the sheriff undertakes and is authorized" by the contracting agency "to perform any police function, exercise any police power, or render any police service in behalf of the contracting" agency that the agency "may perform, exercise, or render," and such contracts "shall provide for the reimbursement of the county for the costs incurred by the sheriff for such policing."[5] *See* 1995 Op. Att'y Gen. No. 95-004 at 2-21 (R.C. 311.29 authorizes a county sheriff to contract with a township or municipal corporation under which "the sheriff dispatches the police officers of the township or municipal corporation, and the township or municipal corporation pays the county for the costs it incurs under the contract"). *Cf.* 1986 Op. Att'y Gen. No. 86-105 at 2-575 ("the legislature has specifically provided in R.C. 341.12-.14 a means whereby a county sheriff may provide jail services to another county. Thus, I find it unlikely that the legislature intended that the general language of R.C. 311.29 empowering a sheriff to 'perform any police function, exercise any police power, or render any police service' on behalf of another public authority be interpreted as authorizing the sheriff to provide jail services for another county or other political subdivision"). Other statutes authorize the county sheriff to collect "allowances" for certain expenses. *See, e.g.*, R.C. 325.07 (allowance for certain transportation-related expenses); 1958 Op. Att'y Gen. No. 3039, p. 676 (syllabus, paragraph 2) ("[t]he monthly allowance for transportation facility expense made available to the sheriff by the

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[5] *See also, e.g.*, R.C. 311.17 (setting forth the fees that may be charged by a county sheriff as costs taxed against a judgment debtor "or those legally liable therefor for the judgment"); R.C. 311.171(B) (a county sheriff "may charge a fee each time a person" registers after being sentenced for committing a sexually oriented offense or a child-victim oriented offense); R.C. 311.37(B) (a "sheriff shall be allowed a fee of up to one hundred dollars for collection of the bond" required of transient vendors); R.C. 2923.125 (an applicant for a license to carry a concealed handgun must submit a nonrefundable fee to the county sheriff).

board of county commissioners as provided by [R.C. 325.07], may be expended for the furnishing of emergency ambulance and towing service required for the preservation of the public peace by removing motor vehicles and injured motorists from the public highways"). No statute, however, allows a county sheriff to charge a fee for operating a PSAP.

Not only does a county sheriff lack the statutory authority to charge a fee for operating a PSAP, but to conclude that he may do so would be inconsistent with the statutory schemes for funding 9-1-1 systems and county offices in general. As observed in 2000 Op. Att'y Gen. No. 2000-044, "the General Assembly has carefully constructed a complex, detailed system for funding 9-1-1 systems, making it quite evident that sources of available revenue have been specifically identified and integrated as part of a comprehensive operational and financing scheme." *Id.* at 2-269. Under this statutory funding scheme, a county that operates a public safety answering point must "pay all of the costs associated with establishing, equipping, furnishing, operating, and maintaining that facility," but must "allocate those costs among itself and the subdivisions served by the answering point" as set forth in the final plan establishing the 9-1-1 system.[6] R.C. 4931.41(D)(2). As summarized in 2000 Op. Att'y Gen. No. 2000-044:

> A county may fund its portion of the cost in a number of ways…. it may use general revenue funds, pass an additional sales tax and use tax pursuant to R.C. 5739.026(A)(6) and R.C. 5741.023, or pass a property tax in excess of the ten-mill limitation pursuant to R.C. 5705.19(BB). In the alternative, one or more PSAP's may be financed by charges assessed by the board of county commissioners on improved real property in the county, rather than by an allocation of costs among participating subdivisions. R.C. 4931.51.[7] (Footnote added.)

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[6] The creation, approval, and amendment of a "final plan" implementing a countywide 9-1-1 system is set forth in R.C. 4931.40-.70 and discussed in detail in 2008 Op. Att'y Gen. No. 2008-014. A final plan must include the "location and number of public safety answering points," "[w]hich subdivision will establish, equip, furnish, operate, and maintain a particular public safety answering point," and a "projection of the initial cost of establishing, equipping, and furnishing and of the annual cost of the first five years of operating and maintaining each public safety answering point." R.C. 4931.43(B)(2)-(4).

[7] R.C. 4931.51 reads in part:

> (A)(1) For the purpose of paying the costs of establishing, equipping, and furnishing one or more public safety answering points as part of a countywide 9-1-1 system effective under division (B) of section 4931.44 of the Revised Code and paying the expense of administering and enforcing this section, the board of county commissioners of a county, in accordance with this section, may fix and impose, on each lot or parcel of real property in the county that is owned by a person, municipal corporation, township, or other political subdivision and is improved, or is in the process of being improved, reasonable charges to be paid by

Id. at 2-270. *See* R.C. 4931.41(E) ("[e]xcept to the extent provided in a final plan that provides for funding of a 9-1-1 system in part through charges imposed under section 4931.51 of the Revised Code, each subdivision served by a public safety answering point shall pay the subdivision that operates the answering point the amount computed in accordance with the allocation formula set forth in the final plan"); R.C. 4931.43(B)(5) (a final plan to implement a 9-1-1 system must specify "[w]hether the cost of establishing, equipping, furnishing, operating, or maintaining each public safety answering point should be funded through charges imposed under section 4931.51 of the Revised Code or will be allocated among the subdivisions served by the answering point and, if any such cost is to be allocated, the formula for so allocating it"). "The General Assembly has also provided two options for counties where a final plan has either not been approved or has not been implemented because of a lack of funding." 2000-044 at 2-270. *See* R.C. 4931.52; R.C. 4931.53.

In 2000 Op. Att'y Gen. No. 2000-044, the Attorney General relied upon the comprehensive nature of this funding scheme as support for the conclusion that a county may not, in order to purchase and install a 9-1-1 system, use revenue derived from the portion of a sales tax and use tax levied under R.C. 5739.021 and R.C. 5741.021 to fund "criminal and administrative justice services," even though "criminal and administrative justice services" include "the exercise by the county sheriff of all powers and duties vested in that office by law,"

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each such owner. The charges shall be sufficient to pay only the estimated allowed costs and shall be equal in amount for all such lots or parcels.

(2) For the purpose of paying the costs of operating and maintaining the answering points and paying the expense of administering and enforcing this section, the board, in accordance with this section, may fix and impose reasonable charges to be paid by each owner, as provided in division (A)(1) of this section, that shall be sufficient to pay only the estimated allowed costs and shall be equal in amount for all such lots or parcels. The board may fix and impose charges under this division pursuant to a resolution adopted for the purposes of both divisions (A)(1) and (2) of this section or pursuant to a resolution adopted solely for the purpose of division (A)(2) of this section, and charges imposed under division (A)(2) of this section may be separately imposed or combined with charges imposed under division (A)(1) of this section.

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(F) All money collected by or on behalf of a county under this section shall be paid to the county treasurer of the county and kept in a separate and distinct fund to the credit of the county. The fund shall be used to pay the costs allowed in division (A) of this section and specified in the resolution adopted under that division. In no case shall any surplus so collected be expended for other than the use and benefit of the county.

R.C. 5739.021(I), and, in that instance, a public safety answering point "with the requisite personnel, telecommunications equipment, and telephone network service," was to be situated in the sheriff's office.[8] *Id.* at 2-267 to 2-268. "[I]t is apparent that the General Assembly has carefully and very specifically provided a comprehensive scheme for the funding of a 9-1-1 system, and that it has not included within that scheme revenue from a sales tax and use tax levied pursuant to R.C. 5739.021 and R.C. 5741.021." *Id.* at 2-271.

Likewise, the General Assembly has not included within the 9-1-1 funding scheme authority for a county sheriff operating a PSAP to charge the county a fee for dispatching ambulances. As summarized above, the cost of a 9-1-1 system as a whole is projected and then apportioned among the participating subdivisions, which have a number of specific options for funding their allocated portion of the cost. Nowhere in the scheme are offices of a participating subdivision authorized to charge their own or other participating subdivisions fees to cover the costs their offices incur in operating a PSAP.

This does not mean that the sheriff must operate a PSAP without funding for it. You have explained that moneys in the county's general fund have been appropriated to cover the costs incurred by the sheriff to operate the PSAP. Inclusion of the sheriff's costs as part of the appropriation for his office is consistent with the statutory scheme established for preparation of a county's tax budget, and for funding the operations of the county's various offices and activities. *See, e.g.*, R.C. 5705.28(C)(1) (each county office must file annually "an estimate of contemplated revenue and expenditures for the ensuing fiscal year," in order to assist the board of county commissioners in the preparation of the tax budget); R.C. 5705.29(A)(1) (the county commissioners' tax budget must include each agency's "necessary current operating expenses for the ensuing fiscal year"); R.C. 5705.38 (at the beginning of each fiscal year, the board of county commissioners must pass an appropriation measure that sets forth "separately the amounts appropriated for each office, department, and division"); R.C. 5705.41(B) (the county may spend no money unless the money has been appropriated pursuant to R.C. Chapter 5705). The sheriff may not require the county to pay additional moneys in the form of fees to cover the same costs that are funded in his office's appropriation—certainly not in the absence of a statute authorizing such fee. *See generally* 1995 Op. Att'y Gen. No. 95-004 at 2-17 (a board of county commissioners has no authority to charge a municipal corporation or township for using a countywide public safety communications system under R.C. 307.63, but may levy a tax in excess of the ten-mill limitation under R.C. 5705.19(KK) or use general fund moneys to

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[8] Although 2000 Op. Att'y Gen. No. 2000-044 concluded that the sheriff's operation of a public safety answering point did not fall within the meaning of "criminal and administrative justice services," it did determine that the portion of the sales tax and use tax levied to provide additional general revenue for the county could be used for the purchase and installation of a 9-1-1 system since "the provision of a 9-1-1 system is a proper county purpose." *Id.* at 2-267. *See State ex rel. DiFrangia v. Trumbull County Bd. of Commissioners*, 99 Ohio App. 3d 569, 651 N.E.2d 447 (Trumbull County 1994) (county may use general fund revenues to finance the costs of a 9-1-1 plan).

establish and operate the system); 1963 Op. Att'y Gen. No. 555, p. 557 (the county auditor has the statutory duty to issue warrants on the county treasury, and the county auditor's appropriation, rather than the county departments for which the warrants are issued, should be charged for the cost of drawing the warrants, as well as for the cost of the envelopes in which they are mailed, because the charges are part of the auditor's operating expenses).

In conclusion, it is my opinion, and you are hereby advised, that a county sheriff who operates a public service answering point as part of a countywide 9-1-1 system has no authority to charge the board of county commissioners, which operates an emergency medical service organization, a fee for dispatching the organization's ambulances.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General