February 21, 2002

OPINION NO. 2002-005

The Honorable Robert A. Fry
Hancock County Prosecuting Attorney
222 Broadway, Room 104
Findlay, Ohio 45840

Dear Prosecutor Fry:

You have requested an opinion whether the positions of county auditor and director of a county workforce development agency established under R.C. 330.04(B) within the same county are compatible. The board of county commissioners has adopted a resolution establishing a workforce development agency to provide workforce development activities for Hancock County.[1] The workforce development agency is a separate county agency under the direct

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[1] R.C. 330.02 provides that "[a] county that is eligible to be designated as a local workforce investment area pursuant to the 'Workforce Investment Act of 1998,' 112 Stat. 936, 29 U.S.C.A. 2801, as amended, but does not request such designation, may administer and enforce workforce development activities in accordance with [R.C. Chapter 6301]." *See generally* R.C. 6301.01(E) (as used in R.C. Chapter 6301, "[w]orkforce development activity" means a program, grant, or other function the primary goal of which is to enhance the productivity and competitiveness of the state's economy, improve the quality of the state's workforce, help individuals maximize their employment opportunities, help employers acquire or retain skilled workers, or help develop or enhance the skills of incumbent workers). In order to discharge this duty, the board of county commissioners is required to adopt a resolution establishing or designating a workforce development agency to provide workforce development activities for the county. R.C. 330.04; *see* R.C. 307.981(B). *See generally* 29 U.S.C. § 2811 (Supp. V 1999) (the purpose of a county workforce development agency is "to provide workforce investment activities … that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation").

control of the board of county commissioners and administered by a director appointed by the board of county commissioners.[2]

It is well settled that two public positions are incompatible when one position is subordinate to, or in any way a check upon, the other. *State ex rel. Attorney General v. Gebert*, 12 Ohio C.C. (n.s.) 274, 275, 21 Ohio C.C. Dec. 355, 356 (Cir. Ct. Franklin County 1909); 1990 Op. Att'y Gen. No. 90-021 at 2-80; 1949 Op. Att'y Gen. No. 963, p. 610, at 612. Prior opinions of the Attorney General have advised that a county auditor is a check upon any other public position that is responsible for accounting for county moneys, receiving or paying out moneys from the county treasury, or authorizing claims that are payable from the county treasury. 1949 Op. Att'y Gen. No. 963, p. 610; 1920 Op. Att'y Gen. No. 1778, vol. II, p. 1280; *see* 1912 Op. Att'y Gen. No. 621, vol. I, p. 351; 1912 Op. Att'y Gen. No. 33, vol. I, p. 141; 1911 Op. Att'y Gen. No. 486, vol. II, p. 1608. In order to determine whether the county auditor is a check upon the director of a county workforce development agency established under R.C. 330.04(B), we must review the statutes governing the accounting, depositing, and disbursement of moneys in the county treasury and the funding of county workforce development agencies.

Pursuant to R.C. 9.38, a person who is a county public official is required to deposit all public moneys received by him with the county treasurer for deposit into the county treasury. *See* R.C. 321.05 (all public moneys in the possession of the county treasurer must be at all times kept in the county treasury); 1983 Op. Att'y Gen. No. 83-055 (syllabus, paragraph two) ("[e]xcept as otherwise provided in R.C. 5153.33, moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare must be paid into the county treasury pursuant to R.C. 117.17 [now R.C. 9.38]"). Except as to moneys collected on the tax duplicate, the county auditor is required to "certify all moneys into the county treasury, specifying by whom to be paid, what fund to be credited, charge the treasurer with such moneys, and preserve a duplicate of the certificate in his office." R.C. 319.13; *see* R.C. 321.12.

After public moneys have been deposited into the county treasury, the county auditor is responsible for accounting for such moneys. In this regard, the county auditor certifies that the amount of money required to be paid by the county under a contract or order has been lawfully appropriated and is in the county treasury or in the process of collection. R.C. 5705.41; *see* 1969 Op. Att'y Gen. No. 69-076. In addition, the county auditor is required to prepare a monthly statement of the county's finances. R.C. 319.15. The monthly financial statement must include "the amount of money received to the credit of each fund and account, the amount disbursed

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[2] R.C. 330.04(B) authorizes a board of county commissioners to establish, as the workforce development agency, "[a] separate agency under the direct control of the board and administered by an official appointed by the board." *See generally* R.C. 330.05 (a board of county commissioners that has designated or established a workforce development agency under R.C. 330.04 shall enter into a contract with the agency that specifies the workforce development activities the agency is to provide and establish standards for the agency's operation).

from each, the balance remaining to the credit of each, and the balance of money in the treasury and depository." *Id.* The county auditor is also required to prepare a yearly financial report of the county finances in the form prescribed by the Auditor of State. R.C. 319.11.

Before moneys in a county treasury may be disbursed, the county auditor must issue warrants on the county treasurer authorizing the disbursements. R.C. 307.55; R.C. 319.16. The county auditor may issue "warrants … on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys." R.C. 319.16; *see* R.C. 307.55. When a county auditor issues a warrant, he shall keep a record of the warrant "showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund." R.C. 319.16.

A county auditor may, however, refuse to issue a warrant on the county treasurer authorizing a disbursement. R.C. 319.16 provides, in part:

> The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of mental retardation and developmental disabilities, so authorized by law. If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter is presented, the auditor shall notify the board, officer, or tribunal who presented the voucher.

In light of the aforementioned statutory provisions, it is apparent that a county auditor is responsible for maintaining the financial records of the county, certifying moneys into the county treasury, and issuing warrants for all moneys payable from the county treasury.

Let us now review the statutes governing the funding of a county workforce development agency established under R.C. 330.04(B). Funding for county workforce development agencies is provided by R.C. 6301.03. This statute provides in pertinent part:

> (A) In administering the "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C.A. 2801, as amended, the "Wagner-Peyser Act," 48 Stat. 113 (1933), 29 U.S.C.A. 49, as amended, the funds received pursuant to those acts, and the workforce development system, the director of job and family services may make allocations and payment of funds for the local administration of the workforce development activities established under this chapter….
>
> (B) The director shall allocate to local areas all funds required to be allocated to local areas pursuant to the "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C.A. 2801, as amended.

*See* R.C. 5101.21(D)(7), (E). *See generally* 29 U.S.C. § 49(e) (1994 & Supp. V 1999) (allotting funds to states for employment service activities); 29 U.S.C. § 2852 (Supp. V 1999) (allotting funds to states for the purpose of providing workforce investment activities for youth activities);

29 U.S.C. § 2862 (Supp. V 1999) (allotting funds to states for the purpose of providing workforce investment activities for adults and dislocated workers). Moneys allocated to a county workforce development agency that is established under R.C. 330.04(B) are deposited into the county workforce development fund in the county treasury. R.C. 6301.03(B)(2); *see* R.C. 9.38; R.C. 321.05.

Because the moneys of a county workforce development agency established under R.C. 330.04(B) are deposited into the county treasury, a county auditor is required to account for the moneys of the agency, *see* R.C. 319.11; R.C. 319.15; R.C. 5705.41, certify the moneys of the agency into the county treasury, *see* R.C. 319.13; R.C. 321.12, and issue warrants authorizing the disbursement of the agency's moneys from the county treasury, *see* R.C. 307.55; R.C. 319.16. The paramount objectives of a county auditor in performing these duties are to accurately and independently account for the moneys of the county workforce development agency, and to ensure that such moneys are correctly deposited into the county workforce development fund in the county treasury and legally disbursed therefrom. Accordingly, the county auditor is a check upon any official of a county workforce development agency who is responsible for depositing, disbursing, managing, or accounting for the moneys of the agency. 1949 Op. Att'y Gen. No. 963, p. 610; 1920 Op. Att'y Gen. No. 1778, vol. II, p. 1280; *see* 1912 Op. Att'y Gen. No. 621, vol. I, p. 351; 1912 Op. Att'y Gen. No. 33, vol. I, p. 141; 1911 Op. Att'y Gen. No. 486, vol. II, p. 1608.

With respect to the position of director of a county workforce development agency, it is axiomatic that the director is required to oversee the general day-to-day operations of the agency. *See* R.C. 329.02 ("the county director of human services shall have full charge of the county department of human services"); R.C. 340.04 (the executive director of a county board of alcohol, drug addiction, and mental health services is required to "[s]upervise services and facilities provided, operated, contracted, or supported by the board"); R.C. 4112.12(E) (the executive director of the Commission on African-American Males "shall supervise the commission's activities and report to the commission on the progress of those activities. The executive director shall do all things necessary for the efficient and effective implementation of the duties of the commission"); R.C. 4121.03(B) (the executive director of the Industrial Commission shall "[a]ct as chief administrative officer for the commission"). This responsibility includes the duty to monitor the agency's receipt and expenditure of moneys from the agency's county workforce development fund in the county treasury. *See generally* R.C. 329.02 (the county director of human services shall prepare the annual budget estimate of the county department of human services and submit it to the board of county commissioners); R.C. 340.04(I) (the executive director of a county board of alcohol, drug addiction, and mental health services may issue warrants for the payment of board obligations). In addition, the director is responsible and answerable for the activities and spending of the agency. *See generally In re: The Dismissal of Roger D. Osborn*, Case No. CA-1009, 1992 Ohio App. LEXIS 4364, at *40 (Ashland County Aug. 20, 1992) (unreported) (the chief executive officer of a board of alcohol, drug addiction, and mental health services board is "charged with overseeing the general effectiveness of the agencies with which the Board contracts").

It thus follows that the director of a county workforce development agency established under R.C. 330.04(B) is an official of the agency who is responsible for managing and accounting for the moneys of the agency. The county auditor thus acts as a check upon the director of the county workforce development agency. *See* 1949 Op. Att'y Gen. No. 963, p. 610; 1920 Op. Att'y Gen. No. 1778, vol. II, p. 1280. Therefore, the positions of county auditor and director of a county workforce development agency established under R.C. 330.04(B) within the same county are incompatible.

Based on the foregoing, it is my opinion, and you are hereby advised that the positions of county auditor and director of a county workforce development agency established under R.C. 330.04(B) within the same county are incompatible.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 21, 2002

The Honorable Robert A. Fry
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222 Broadway, Room 104
Findlay, Ohio 45840

SYLLABUS: 2002-005

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