March 9, 2001

OPINION NO. 2001-007

Charles D. Hall, III
Perry Township Law Director
3111 Hilton Street, N.W.
Massillon, Ohio 44646

Dear Law Director Hall:

You have requested an opinion regarding a township's proportionate share of the current operating costs of one of the municipal courts in your county. According to additional information you have provided, we understand your question to be whether cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are included as part of the criminal and civil caseload of Perry Township when calculating the township's proportionate share of the current operating costs of the Massillon Municipal Court under R.C. 1901.026(A).

In order to answer your question, it is first necessary to examine the statutory scheme for funding the Massillon Municipal Court. R.C. 1901.01 establishes a municipal court in the City of Massillon. Pursuant to R.C. 1901.02, the Massillon Municipal Court has jurisdiction within the corporate limits of the City of Massillon, as well as within several townships, including Perry Township, in Stark County.

Because the Massillon Municipal Court is not a county-operated municipal court, *see* R.C. 1901.03(F), and because the court has jurisdiction beyond the city in which it is located, the current operating costs of the Massillon Municipal Court are apportioned in accordance with R.C. 1901.026. Pursuant to R.C. 1901.026(A), the Massillon Municipal Court's current operating costs[1] are to be apportioned among the municipal corporations and limited home rule

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[1] For purposes of R.C. 1901.026, the phrase "operating costs" means:

> the figure that is derived by subtracting the total of all costs that are collected and paid to the city treasury by the clerk of the municipal court pursuant to [R.C. 1901.31(F)] and all interest received and paid to the city treasury in relation to the

government townships[2] within the court's jurisdiction. The proportionate share of each contributing subdivision "is equal to the percentage of the total criminal and civil caseload of the municipal court that arose in that municipal corporation or [limited home rule government] township."[3] R.C. 1901.026(A). R.C. 1901.026(A) further provides as follows:

> For purposes of this section, the *criminal and civil caseload that arose in a municipal corporation or township is the total number of criminal cases filed in the municipal court during the preceding calendar year that arose out of offenses that occurred in the municipal corporation or township and the total number of*

> costs pursuant to [R.C. 1901.31(G)] from the total of the amounts payable from the city treasury for the operation of the court pursuant to [R.C. 1901.10-.12, R.C. 1901.31-.331, and R.C. 1901.36-.38], other than any amounts payable from the city treasury for the operation of the court involving construction, capital improvements, rent, or the provision of heat and light.

R.C. 1901.026(D)(1).

[2] The word "township," as used in R.C. 1901.026 means "a township that has adopted a limited home rule government pursuant to [R.C. Chapter 504]." R.C. 1901.026(D)(2). Pursuant to R.C. 504.01, a township may adopt a limited home rule government under which the township exercises limited powers of local self-government and limited police powers as authorized by R.C. Chapter 504. In this regard, R.C. 504.04(A) provides that a limited home rule government township may "[e]xercise all powers of local self-government within the unincorporated area of the township, other than powers that are in conflict with general laws," and may "[a]dopt and enforce within the unincorporated area of the township local police, sanitary, and other similar regulations that are not in conflict with general laws or otherwise prohibited by [R.C. 504.04(B)]."

The provisions of R.C. 1901.026 thus apply only to townships that have adopted a limited home rule government pursuant to R.C. Chapter 504. You have informed us that Perry Township has adopted a limited home rule government pursuant to R.C. Chapter 504.

[3] The amount determined to be owed by each subdivision pursuant to R.C. 1901.026(A) may be reduced in accordance with R.C. 1901.026(B) by the amount by which such subdivision's share exceeds "the total amount of costs, fees, fines, bail, or other moneys that was disbursed [to the subdivision] by the clerk of the court under [R.C. 1901.31(F)]." Thus, pursuant to R.C. 1901.026(B), "the total amount of costs, fees, fines, bail, or other moneys that was disbursed [to the subdivision] by the clerk of the court under [R.C. 1901.31(F)]" constitutes the maximum amount of the court's operating costs for which a contributing subdivision, other than the municipal corporation in which the court is located, may be liable. The municipal corporation in which the court is located is then responsible for the payment of not only its proportionate share of the court's operating costs but also that part of the proportionate share of costs of any subdivision whose share is reduced by R.C. 1901.026(B).

> *civil cases filed in the municipal court during the preceding calendar year* in which the address of the majority of the defendants that are designated in the caption of the case and that have addresses within municipal corporations or townships within the territory of the court is within the municipal corporation or township or, if there is no majority of such defendants, in which the address of the first such defendant is within the municipal corporation or township. (Emphasis added.)

For purposes of R.C. 1901.026, the term "criminal caseload," when used in regard to a limited home rule government township, means "cases arising from a violation of a township resolution for which a fine is imposed under [R.C. Chapter 504]." R.C. 1901.026(D)(3). R.C. 504.04(A) authorizes a limited home rule government township to adopt resolutions to exercise all powers of local self-government, enforce local police, sanitary and other similar regulations, and supply water and sewer services to township users. Pursuant to R.C. 504.05, a board of township trustees may impose a civil fine for a violation of a township resolution adopted pursuant to R.C. Chapter 504.[4] *See* R.C. 504.04(A). Accordingly, the "criminal caseload" of a limited home rule government township includes only cases arising from violations of a township's resolutions for which a fine is imposed under R.C. Chapter 504.

R.C. 1901.026 does not define the phrase "civil caseload," when used in regard to a limited home rule government township. Where a phrase has not acquired a technical or particular meaning, the phrase is to be construed according to the rules of grammar and common usage. R.C. 1.42. *Black's Law Dictionary* 238 (7th ed. 1999) defines the word "civil" as "[o]f or relating to private rights and remedies that are sought by action or suit, *as distinct from criminal proceedings*[5] <civil litigation>." (Emphasis and footnote added.) The word "caseload" is defined in *Black's Law Dictionary* at 207 as "[t]he volume of cases assigned to a given court, agency, officer, judge, law firm, or lawyer." Thus, as a matter of common usage, the term "civil caseload" refers to legal actions instituted by natural persons or other legal entities to achieve a redress of their rights under the law, as opposed to cases prosecuted by the government for the purpose of convicting and punishing persons who have committed criminal offenses.[6] *See*

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[4] R.C. 504.04(B) provides that no resolution adopted pursuant to R.C. Chapter 504 shall "[c]reate a criminal offense or impose criminal penalties" or "[i]mpose civil fines other than as authorized by [R.C. Chapter 504.]"

[5] *Black's Law Dictionary* 1221 (7th ed. 1999) defines a "criminal proceeding" as "[a] proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial." *See generally In re Jacoby*, 74 Ohio App. 147, 150, 57 N.E.2d 932, 934 (Marion County 1943) ("[a] 'crime' is a wrong which the government notices as injurious to the public, and punishes in what is called a criminal proceeding").

[6] It is well established that the objective in civil and criminal cases is different. In civil cases the objective is to redress or compensate natural persons or other legal entities when their

generally State v. Glenn, 56 Ohio Misc. 2d 1, 4-5, 564 N.E.2d 1149, 1152 (Hamilton County Mun. Ct. 1990) (the state of mind normally distinguishes criminal acts, which are punishable by the state, from civil wrongs, which are actionable by private persons); *City of Bowling Green v. Dickinson*, 19 Ohio Misc. 2d 9, 10, 483 N.E.2d 500, 502 (Bowling Green Mun. Ct. 1984) ("[a] private citizen's pursuit of money damages or other relief is different from the public's vindication of criminal wrongs and the Constitution's protection of accused's rights"). The term typically includes a broad range of legal actions commenced by or against private or governmental parties, such as those to enforce contractual rights and obligations, collect money damages for tortious conduct, and secure rights in property.

We must now consider whether cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are included as part of the criminal or civil caseload of a township for purposes of R.C. 1901.026. R.C. 2925.03 was enacted by the General Assembly to prohibit persons from knowingly selling or offering to sell controlled substances. The statute also prohibits a person from knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing a controlled substance when the person knows or has reasonable cause to believe that the controlled substance is intended for sale or resale. The statute sets forth the offenses of aggravated trafficking in drugs, trafficking in drugs, trafficking in marihuana, trafficking in cocaine, trafficking in L.S.D., trafficking in heroin, and trafficking in hashish. A person convicted of a drug trafficking offense under R.C. 2925.03 is guilty of a felony of the first, second, third, or fourth degree. R.C. 2925.03. The degree of the felony depends on the drug involved, where the crime was committed, and the amount of the drug involved. *Id.*

The General Assembly enacted R.C. 4511.19 to prohibit persons from driving vehicles while under the influence of alcohol or drugs. The statute sets forth the offenses of operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, and

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rights have been violated, whereas in criminal cases the objective is to promote the public safety by punishing persons who commit criminal acts. *State v. Smith*, Case No. 5826, 1978 Ohio App. LEXIS 11193, *13 (Montgomery County Sept. 28, 1978). As explained in William Geldart, *Introduction to English Law* 146 (D.C.M. Yardley ed., 9th ed. 1984):

> CIVIL AND CRIMINAL LAW CONTRASTED. The difference between civil law … and criminal law turns on the difference between two different objects which the law seeks to pursue — redress or punishment. The object of civil law is the redress of wrongs by compelling compensation or restitution: The wrongdoer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss. On the other hand, in the case of crimes, the main object of the law is to punish the wrongdoer; to give him and others a strong inducement not to commit the same or similar crimes, to reform him if possible, and perhaps to satisfy the public sense that wrongdoing ought to meet with retribution.

operating a vehicle with a certain prohibited concentration of alcohol in one's blood, breath, or urine. The penalties for violating R.C. 4511.19 are set forth in R.C. 4511.99(A). Under R.C. 4511.99(A), a person who violates R.C. 4511.19 is guilty of a first degree misdemeanor or a fourth degree felony. A person's prior criminal history determines whether he is guilty of a first degree misdemeanor or a fourth degree felony. R.C. 4511.99(A).

As explained above, for purposes of R.C. 1901.026, the "criminal caseload" of a limited home rule government township includes only cases arising from violations of the township's resolutions for which a fine is imposed under R.C. Chapter 504. R.C. 1901.026(D)(3). For the reasons that follow, neither R.C. 2925.03 nor R.C. 4511.19 is a township resolution for which a fine is imposed under R.C. Chapter 504.

Pursuant to R.C. 504.11, a board of township trustees is required to vote on the passage of each township resolution proposed under R.C. Chapter 504. In addition, a board of township trustees is authorized to impose a civil fine for a violation of a resolution adopted pursuant to R.C. Chapter 504. R.C. 504.05; *see also* R.C. 504.04(A).

A review of R.C. 2925.03 and R.C. 4511.19 discloses that neither was adopted by a board of township trustees pursuant to R.C. 504.11. Rather, R.C. 2925.03 and R.C. 4511.19 were enacted by the General Assembly to protect the public safety and to punish persons engaged in the criminal conduct prohibited therein. 1975-1976 Ohio Laws, Part II, 2311, 2318 (Am. Sub. H.B. 300, eff. July 1, 1976) (enacting R.C. 2925.03); 1941 Ohio Laws 766, 775 (Am. Sub. S.B. 29, approved June 5, 1941) (enacting G.C. 6307-19 (now R.C. 4511.19)). *See generally* Ohio Const. Art. II, § 1 (authorizing the General Assembly to enact laws for the welfare of the citizens of Ohio). Additionally, fines imposed for violations of R.C. 2925.03 and R.C. 4511.19 are not imposed by a board of township trustees pursuant to R.C. 504.05. Instead, fines for violations of R.C. 2925.03 and R.C. 4511.19 have been imposed by the General Assembly in R.C. 2925.03 and R.C. 4511.99(A), respectively.

Because R.C. 2925.03 and R.C. 4511.19 are not township resolutions for which a fine is imposed under R.C. Chapter 504, cases arising from violations of these statutes are not included within R.C. 1901.026(D)(3)'s definition of "criminal caseload." *See generally State ex rel. Boda v. Brown*, 157 Ohio St. 368, 372, 105 N.E.2d 643, 646 (1952) (the express mention of a person, thing, or consequence in a statute implies the exclusion of all others). Accordingly, cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are not included as part of the criminal caseload of a limited home rule government township for purposes of R.C. 1901.026.

In addition, cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are not included as part of the civil caseload of a limited home rule government township for purposes of R.C. 1901.026. The purpose of R.C. 2925.03 and R.C. 4511.19 is to protect the public safety and to punish persons who engage in the criminal activities prohibited in those statutes. Violations of R.C. 2925.03 and R.C. 4511.19 are criminal offenses against the state, and thus the state is responsible for prosecuting persons who violate the provisions of these statutes. *See generally* R.C. 2901.03(A) ("[n]o conduct constitutes a criminal offense against the state unless

it is defined as an offense in the Revised Code"); R.C. 2938.13 (a magistrate or judge may "not permit prosecution of any criminal case by private attorney employed or retained by a complaining witness"); *City of Cleveland v. Ryan*, 106 Ohio App. 110, 112, 148 N.E.2d 691, 692 (Cuyahoga County 1958) ("[i]n a criminal case the sovereign is the party plaintiff"). As such, various public officials are statutorily required to prosecute, on behalf of the state, violations of R.C. 2925.03 and R.C. 4511.19. *See generally* R.C. 309.08(A) (a county prosecuting attorney "shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party"); R.C. 1901.34 (the village solicitor, city law director, or similar chief legal officer of a municipal corporation is required to prosecute state cases brought before a municipal court that has territorial jurisdiction over the municipal corporation); R.C. 2938.13 (county prosecuting attorneys, village solicitors, and city law directors have a duty to either present the case for the state in a criminal prosecution involving a violation of a state statute or ensure that the prosecutorial responsibility is otherwise carried out).

Cases arising from violations of R.C. 2925.03 and R.C. 4511.19 thus are commenced and maintained to punish persons who commit the criminal acts prohibited therein. *See generally State v. Yackley*, 43 Ohio St. 3d 181, 182, 539 N.E.2d 1118, 1119 (1989) ("[a] conviction for drunk driving [under R.C. 4511.19] is a criminal offense"); *State v. Dobbins*, 94APCO2-276, 1994 Ohio App. LEXIS 4137, *8 (Franklin County Sept. 22, 1994) (an examination of the offense set forth in R.C. 4511.19(A)(2) "indicates that the nature of the offense is criminal rather than civil"); *State v. Rowan*, 32 Ohio App. 2d 142, 144, 288 N.E.2d 829, 831 (Summit County 1972) (an undercover law enforcement agent may smoke marijuana "when the purpose of such conduct is to ferret out the illegal drug trade, and bring to justice those engaged in it"). Therefore, these cases are not included as part of the civil caseload of a limited home rule government township for purposes of R.C. 1901.026. *See generally State ex rel. Boda v. Brown*.

It is thus clear that, for purposes of R.C. 1901.026, cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are not included as part of the criminal or civil caseload of a limited home rule government township. Consequently, such cases are not included as part of the criminal and civil caseload of a limited home rule government township when calculating the township's proportionate share of the current operating costs of a municipal court under R.C. 1901.026(A).

Based on the foregoing, it is my opinion, and you are hereby advised that cases arising from violations of R.C. 2925.03 and R.C. 4511.19 are not included as part of the criminal and civil caseload of a limited home rule government township when calculating the township's proportionate share of the current operating costs of a municipal court under R.C. 1901.026(A).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

March 9, 2001

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SYLLABUS: 2001-007

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