June 22, 1998

OPINION NO. 98-022

The Honorable Jonathan P. Hein
Darke County Prosecuting Attorney
Courthouse
Greenville, Ohio 45331

Dear Prosecutor Hein:

You have requested an opinion regarding permissible uses of public funds of a county law library association under R.C. 3375.54. Specifically, you ask:

> Pursuant to R.C. 3375.54, may a county law library association expend funds received or retained pursuant to R.C. 3375.50-.53 and R.C. 3375.56 for the purchase of a video camera and related equipment, which would be used by the law library association to make and view educational videotapes on legal topics and which would also be used by members of the local bar association to make and present videotapes for trial purposes?

The county law library association has indicated that videotapes would be made of simple hearings and legal procedures. These videotapes would then be available to patrons of the law library to educate clients and potential witnesses and also to increase the public's knowledge of legal proceedings. Videotapes of live continuing legal education presentations arranged by the local bar association would be made to preserve a record of the programs and be available to patrons for review and repeat presentations. In addition to these educational uses, your request states that the video camera and related equipment would be available to members of the local bar association for trial purposes, such as videotaping depositions and other evidence.[1] Statutory patrons of the law library, as designated in R.C. 3375.48 and R.C. 3375.55, would have free access to the video equipment. The proposed purchase and uses of the video equipment are permitted under the law library association's charter, bylaws, rules, and regulations.

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[1] Ohio R. Civ. P. 40 provides that testimony and such other evidence as appropriate may be presented at trial by videotape. Videotape depositions are authorized by Ohio R. Civ. P. 30(B)(3). Procedures for conducting videotape depositions and videotape trials are set out by rule 13 of the Rules of Superintendence for the Courts of Ohio. *See also* Sup. R. 12 (establishing conditions for the recording of court proceedings by electronic means).

A county law library association is a private entity organized either as a private association or as a nonprofit corporation under R.C. 1713.28. *See* 1986 Op. Att'y Gen. No. 86-102 at 2-565. The expenditure of any private funds held by a law library association is governed exclusively by the association's charter, bylaws, rules, or regulations. *See Van Wert County Law Library Ass'n v. Stuckey*, 42 Ohio Op. 1, 8, 94 N.E.2d 32, 45 (C.P. Van Wert County 1949); 1988 Op. Att'y Gen. No. 88-104 at 2-512; 1986 Op. Att'y Gen. No. 86-102 at 2-566 and 2-567. However, a law library association also receives public moneys that are allocated yearly from various court fines, penalties, and bail forfeitures. *See* R.C. 3375.50 (municipal courts); R.C. 3375.51 (county courts); R.C. 3375.52 (courts of common pleas and probate courts); R.C. 3375.53 (any court within the county). Pursuant to R.C. 3375.56, the association may retain a percentage of the unencumbered balance of the public moneys allocated in the preceding year. Such retained funds retain their character as public moneys. 1989 Op. Att'y Gen. No. 89-068 at 2-310 (citing *Greene County Law Library Ass'n v. Ferguson*, No. CA 1139 (Ct. App. Greene County Dec. 24, 1980) (unreported)); *accord* 1992 Op. Att'y Gen. No. 92-012 at 2-42.

It is firmly established that the public moneys received by a law library association pursuant to R.C. 3375.50-.53 and retained pursuant to R.C. 3375.56 may be expended only for the purposes set forth in R.C. 3375.54. 1988 Op. Att'y Gen. No. 88-104 (syllabus, paragraph two); *accord* 1995 Op. Att'y Gen. No. 95-029 at 2-145; 1992 Op. Att'y Gen. No. 92-012 at 2-39. R.C. 3375.54 states:

> *The money that is paid to the board of trustees of a law library association under sections 3375.50 to 3375.53 of the Revised Code shall be expended* in the support and operation of the law library association and *in the purchase, lease, or rental of* lawbooks, a computer communications console that is a means of access to a system of computerized legal research, microform materials and equipment, *videotape materials and equipment*, audio or visual materials and equipment, and other services, materials, and equipment *that provide legal information or facilitate legal research*. (Emphasis added.)

R.C. 3375.54 thus provides that the provision of legal information and the facilitation of legal research are legitimate purposes for the expenditure of public funds of a law library association. R.C. 3375.54 also expressly recognizes that "videotape materials and equipment" are included in the class of items that can serve those purposes. Under an earlier version of R.C. 3375.54, 1973 Op. Att'y Gen. No. 73-071 concluded that a law library association had no authority to use the public moneys allocated under R.C. 3375.50-.53 to purchase videotape equipment for either educational purposes or trial purposes.[2] The authority of a law library association to expend public funds at that time, however, was limited to "the purchase of lawbooks" and "maintenance of

[2] The law library association involved in 1973 Op. Att'y Gen. No. 73-071, like the law library association involved in your request, wished to purchase videotape equipment for both purposes. The only distinction is that in the 1973 opinion, the association intended to acquire its educational videotapes from other sources, rather than make its own. *Id.* at 2-261.

[the] law library association." *See* 1939 Ohio Laws 453, 455 (Am. S.B. 46, approved May 26, 1939). This language was construed as limiting expenditures of public moneys to the acquisition of materials directly associated with legal research. *See* 1973 Op. Att'y Gen. No. 73-071 at 2-262 and 2-263; *see also* 1969 Op. Att'y Gen. No. 69-082 at 2-177 ("[t]he obvious purpose of Section 3375.54 ... is to authorize the library trustees to expend funds to provide means for legal research"). The opinion observed that videotape equipment is not used either as a primary source in legal research or as means of access to primary sources. Thus, even though the use of video equipment to provide legal information and instruction could be construed as an educational "library-related" use, this use was not sufficiently related to legal research to justify acquisition of the equipment with public funds. 1973 Op. Att'y Gen. No. 73-071 at 2-263. The opinion further concluded that, even if R.C. 3375.54 were interpreted expansively to include educational uses, use of video equipment as an aid to attorneys in their trial preparation and presentation could not be characterized as an educational use. *Id.* at 2-263 and 2-264.

As previously noted, the language of R.C. 3375.54 now includes the provision of legal information as a legitimate purpose for the expenditure of public funds by a law library association and expressly authorizes the purchase of "videotape materials and equipment" for that purpose. The addition of this language to the statute was intended to expand the authority of law library associations. *See* 1979-1980 Ohio Laws, Part II, 3030 (Am. Sub. H.B. 559, eff. Jan. 15, 1981); Ohio Legislative Service Comm'n, *Summary of Enactments, August 1979 - December 1980* at 450 (1981). Subsequent to the enactment of Am. Sub. H.B. 559, 1989 Op. Att'y Gen. No. 89-068 advised at 2-313 that continuing legal education programs "can be characterized as services which provide legal information," for purposes of R.C. 3375.54, and that the lease or rental of video equipment in connection with such programs is also authorized. *See also* 1991 Op. Att'y Gen. No. 91-060 (syllabus) ("[l]aw seminars conducted under the direction of a county bar association for the purposes of educating its members in changes in the law or the provision of other legal information may be considered 'services' under R.C. 3375.54 for which a county law library association may expend funds received or retained pursuant to R.C. 3375.50-.53 and R.C. 3375.56"). In a more recent opinion, we have stated directly that, "[b]ased upon the current language of R.C. 3375.54 permitting the purchase, lease, or rental of videotape materials and equipment, 1973 Op. Att'y Gen. No. 73-071 is hereby overruled *to the extent it pertained to the purchase or lease of such equipment to be used for library purposes.*" 1995 Op. Att'y Gen. No. 95-017 at 2-95 n.2 (emphasis added).

Consistent with the expanded language of R.C. 3375.54 and these subsequent opinions, we conclude that a county law library association has authority under R.C. 3375.54 to expend public moneys for the purchase of a video camera and related equipment to be used for recording or viewing videotapes that provide information or instruction on law-related topics. These purposes may include recording videotapes of hearings and court procedures that would be available for the instruction of clients, potential witnesses, and the general public, and recording videotapes of continuing legal education programs presented by the local bar association that would be available for future presentations to attorneys and review by patrons of the law library.

Use of the equipment for trial purposes, however, must be considered separately. Neither

1995 Op. Att'y Gen. No. 95-017 nor 1989 Op. Att'y Gen. No. 89-068 found it necessary to reconsider the conclusion in 1973 Op. Att'y Gen. No. 73-071 that the use of video equipment for trial purposes cannot be characterized as either legal research or an educational use. It is our view that this conclusion remains valid under the current language of R.C. 3375.54. A law library association does not provide legal information or facilitate legal research by making video equipment available to members of the local bar association for trial purposes. Providing access to modern technological means of recording and presenting evidence is a service that is more analogous to providing access to a court reporter. While this may be a valuable and desirable purpose of a law library association in its private capacity, it is not a purpose that justifies the expenditure of public funds under R.C. 3375.54. *See generally State v. McKelvey*, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967) (statutes authorizing the expenditure of public moneys should be strictly construed); *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948); *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918).

We also recognize, however, that the existence of a private purpose does not constitute a bar to the use of public funds in situations where there is a primary public purpose. On this point, 1989 Op. Att'y Gen. No. 89-068 states at 2-312 n.4 as follows:

> The fact that the expenditures of public funds for the provision of a law library and related services to public officials may simultaneously serve additional purposes of the law library association is, of course, entirely acceptable. *See Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (syllabus, paragraph [three]) (holding that additional benefit to private parties does not invalidate a legitimate public purpose). As a private organization, a law library association may have any number of purposes in addition to serving public officials. I note, for example, many law library associations are formed to provide services to the local bar as well as to public officials. What is prohibited is the use of public funds for any purpose which is totally unrelated and separable from the statutory purpose which is the basis for the public funding.

See also 1991 Op. Att'y Gen. No. 91-060 at 2-294 and 2-295. In determining the proper relationship between a private and public purpose, "[i]t is well settled that if the primary object of an expenditure ... is to subserve a public purpose, the expenditure is legal although it may also involve *as an incident* an expenditure which, standing alone, would not be lawful." *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 324, 98 N.E.2d 835, 837 (1951) (emphasis added); *accord In re Annexation of 118.7 Acres*, 52 Ohio St. 3d 124, 130, 556 N.E.2d 1140, 1145 (1990); 1994 Op. Att'y Gen. No. 94-001 at 2-5.

Accordingly, R.C. 3375.54 does not authorize a law library association to expend funds received or retained under R.C. 3375.50-.53 and R.C. 3375.56 for the primary purpose of acquiring a video camera and related equipment to be used by attorneys for trial purposes. However, if a county law library association has purchased a video camera and related equipment with public funds primarily for purposes authorized under R.C. 3357.54, the association may permit local

attorneys and statutory patrons of the law library to use the video camera and related video equipment for trial purposes, if that use is incidental to the statutorily authorized purposes for which the law library association has purchased the camera and equipment.

It is, therefore, my opinion, and you are hereby advised that:

1. Pursuant to R.C. 3375.54, a county law library association may expend public moneys received or retained under R.C. 3375.50-.53 and R.C. 3375.56 for the purchase of a video camera and related equipment to be used for recording or viewing videotapes that provide information or instruction on law-related topics.

2. R.C. 3375.54 does not authorize a county law library association to expend funds received or retained under R.C. 3375.50-.53 and R.C. 3375.56 for the primary purpose of acquiring a video camera and related equipment to be used for trial purposes by local attorneys and statutory patrons of the law library. However, if a county law library association has purchased a video camera and related equipment with public funds primarily for purposes authorized under R.C. 3357.54, the association may permit local attorneys and statutory patrons of the law library to use the video camera and related equipment for trial purposes, if that use is merely incidental to the statutorily authorized purposes for which the law library association purchased the camera and equipment.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

June 22, 1998

The Honorable Jonathan P. Hein
Darke County Prosecuting Attorney
Courthouse
Greenville, Ohio 45331

SYLLABUS: 98-022

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2. R.C. 3375.54 does not authorize a county law library association to expend funds received or retained under R.C. 3375.50-.53 and R.C. 3375.56 for the primary purpose of acquiring a video camera and related equipment to be used for trial purposes by local attorneys and statutory patrons of the law library. However, if a county law library association has purchased a video camera and related equipment with public funds primarily for purposes authorized under R.C. 3357.54, the association may permit local attorneys and statutory patrons of the law library to use the video camera and related equipment for trial purposes, if that use is merely incidental to the statutorily authorized purposes for which the law library association purchased the camera and equipment.