February 17, 2010

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
Cambridge, Ohio 43725-0640

SYLLABUS: 2010-005

A county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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OPINION NO. 2010-005

The Honorable Daniel G. Padden
Guernsey County Prosecuting Attorney
139 West Eighth Street
P.O. Box 640
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Dear Prosecutor Padden:

You have submitted a request for an opinion of the Attorney General on the following question: "May the county recoup any portion of printing and/or mailing costs for tax bills from the individual taxing entities?" For purposes of this opinion, we will assume that you have used the term "taxing entities" to refer to "taxing authorities," as defined in R.C. 5705.01(C) (meaning the boards or legislative authorities of subdivisions or districts with the power to levy taxes under R.C. Chapter 5705). For the reasons that follow, we conclude that a county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills.

To answer your question, we begin with a brief review of the statutory scheme governing the manner in which property owners are notified of the taxes levied on their properties and the manner in which such taxes are collected. R.C. 319.28 requires the county auditor each year to prepare, in duplicate, a "general tax list of real and public utility property in the county," containing the names of the owners of each parcel of property within the county and a description and valuation of each property and improvements.

In accordance with R.C. 319.30(A):

> *After receiving from officers and authorities empowered to determine the rates or amounts of taxes to be levied for the various purposes authorized by law, statements of the rates and sums to be levied for the current year, the county auditor shall proceed to determine the sums to be levied upon each tract and lot of real property,* adding, except as provided under [R.C. 319.48] for tracts and lots on the real property tax suspension list, the taxes of any previous year that have been omitted or that are delinquent, including the penalties and interest thereon, and upon the amount of public utility property listed on the general tax

> list and duplicate in the county, in the name of each public utility, which shall be assessed equally on all property subject to such taxes, and entered in one or more columns, in such manner and form as the tax commissioner prescribes. The auditor shall enter as separate items any interest required to be so entered under [R.C. 323.121(B)(1), (2), or (3)]. (Emphasis added.)

See 2005 Op Att'y Gen. No. 2005-024 at 2-250 ("[r]eal property taxes must be assessed and collected on the basis of the location of the property, with appropriate amounts levied for each of the subdivisions or other taxing units within which the territory is located"). *See generally* 1993 Op. Att'y Gen. No. 93-019 at 2-103 ("[e]ach parcel of land in Ohio may be located in, and subject to taxation by, a variety of overlapping political subdivisions or other taxing units").

As further specified in R.C. 319.28, "[o]n or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer." The duplicate of the list prepared by the county auditor that is given to the county treasurer is known as the treasurer's general duplicate of real and public utility property. R.C. 319.28(A).

The county treasurer's duties with respect to the preparation and mailing of tax bills are set forth in R.C. 323.13, in pertinent part, as follows:

> Except as provided in [R.C. 323.134], immediately upon receipt of any tax duplicate from the county auditor, but not less than twenty days prior to the last date on which the first one-half taxes may be paid without penalty as prescribed in [R.C. 323.12 or R.C. 323.17], the county treasurer *shall cause to be prepared and mailed or delivered* to each person charged on such duplicate with taxes or to an agent designated by such person, the tax bill prescribed by the commissioner of tax equalization under [R.C. 323.131]. When taxes are paid by installments, the county treasurer *shall mail or deliver* to each person charged on such duplicate or the agent designated by such person, a second tax bill showing the amount due at the time of the second tax collection. The second half tax bill shall be mailed or delivered at least twenty days prior to the close of the second half tax collection period. (Emphasis added.) [1]

R.C. 323.13 thus imposes upon the county treasurer a mandatory duty to "cause to be prepared and mailed or delivered" the tax bills for the taxes listed on the treasurer's duplicate. 1958 Op Att'y Gen. No. 3137, p. 713 (syllabus) ("[t]he county treasurer has a mandatory duty, under the provisions of [R.C. 323.13], immediately upon receipt of any tax duplicate from the county

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[1] Under R.C. 323.08, if the county treasurer does not publish the schedule of tax rates, tax reduction factors, and effective tax rates for properties on the tax list and duplicate, the county treasurer may include a copy of this schedule with tax bills as they are mailed.

auditor, to prepare and mail or deliver a tax bill to each person charged on such duplicate. . . . Where taxes are paid by installments as provided in [R.C. 323.43], it is the duty of the county treasurer annually to prepare and mail to the taxpayer a second tax bill showing the amount of such installment due at the time of the second semi-annual tax collection"). In accordance with R.C. 323.12, the county treasurer is also responsible for accepting payment of those taxes.[2]

At specified times throughout the year, the county treasurer is required to settle with the county auditor for the various taxes the treasurer has collected. R.C. 321.24.[3] Thereafter, the county treasurer, upon warrant of the county auditor, distributes to the taxing units the amounts collected by the treasurer, as prescribed by R.C. 321.31, and to municipalities, as prescribed by R.C. 321.33. *See generally* R.C. 321.34-.341 (circumstances in which moneys in county treasury may be paid or advanced to local authorities).

With this background in mind, we now turn to your specific question—whether the county may recover from taxing authorities within the county the costs of printing and mailing tax bills. Although not specifically addressing the recovery of printing and mailing costs incurred by the county treasurer in printing and mailing tax bills, 2001 Op Att'y Gen. No. 2001-024 addressed a similar question and concluded that:

> 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. (1982 Op. Att'y Gen. No. 82-011, syllabus, paragraph 1, approved and followed.)

2001 Op Att'y Gen. No. 2001-024 (syllabus). The opinion reasoned that a board of county commissioners, as a creature of statute, has only those powers granted by the General Assembly, either expressly or by necessary implication. *See Geauga County Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 582, 621 N.E.2d 696 (1993); *State ex rel. Shriver v. Bd. of*

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[2] R.C. 4503.06-.0611 establish a similar procedure to be followed by the county auditor and county treasurer in the collection of taxes from the owners of manufactured or mobile homes that are not taxed as real property.

[3] R.C. 321.24(F) requires the Tax Commissioner to pay each county a sum from the state's property tax administration fund, R.C. 5703.80, to supplement the fees and percentages that the county auditor and county treasurer would have received but for the tax reduction provided by R.C. 319.302. Such payment "shall be credited upon receipt to the county's undivided income tax fund, and the county auditor shall transfer to the county general fund from the amount thereof the total amount of all fees and charges which the auditor and treasurer would have been authorized to receive had such section not been in effect and that amount had been levied and collected as taxes. The county auditor shall distribute the amount remaining among the various taxing districts in the county as if it had been levied, collected, and settled as real property taxes." R.C. 321.24(F).

Comm'rs, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Moreover, the power of a board of county commissioners to enter into financial transactions "must be clear and distinctly granted." *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916). Finding no statute granting a board of county commissioners authority to charge public bodies for administrative services provided by the county, 2001 Op Att'y Gen. No. 2001-024 found that the county commissioners possessed no such authority.

In the situation you describe, the county would like to recoup the cost of printing and mailing tax bills from the taxing authorities on whose behalf the county treasurer collects taxes. We find no statute, however, that authorizes the board of county commissioners, the county auditor or the county treasurer to collect from the taxing authorities within the county any of the costs of preparing or mailing tax bills. In the absence of a statute authorizing the county or one of its officers to charge taxing authorities for the county treasurer's costs in printing and mailing tax bills under R.C. 323.13, neither the county commissioners nor any other county officer may impose such a charge. *See* 2001 Op Att'y Gen. No. 2001-024 at 2-135 ("[b]y statute, the county auditor and county treasurer are given various powers and duties, and the county is given the responsibility of funding their activities. When services of the county auditor and treasurer are provided pursuant to statute to public bodies outside the county's general budget, those services are provided as part of the general powers and duties of the auditor and treasurer. The cost of those services cannot be charged to the public bodies that receive them unless there is statutory authority to impose such a charge" (citations omitted)). Instead, such costs are to be considered part of the operating costs of the county treasurer's office. *See* 1963 Op. Att'y Gen. No. 555, p. 557 (the cost of drawing warrants and the cost of envelopes in which they are mailed to individual recipients are part of the county auditor's operating expenses and are properly charged to the county auditor's appropriation, rather than to the department for which the warrants are issued).

As a final matter, we note that the General Assembly has enacted a scheme through which a county recoups a portion of the costs it incurs in the collection of taxes on behalf of the taxing authorities within the county. Specifically, R.C. 319.54(C) creates the real estate assessment fund, containing a sum "[f]rom all moneys collected by the county treasurer on any tax duplicate of the county, other than estate tax duplicates, and on all moneys received as advance payments of personal property and classified property taxes" to be "apportioned ratably by the auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, municipal corporations, and school districts." The real estate assessment fund is designed to defray certain costs incurred by the county auditor and county board of revision, as described in R.C. 325.31(B), including the assessment and valuation of property and the preparation of tax lists and duplicates. The cost of preparing and mailing tax bills, however, is not one of the authorized uses of moneys in the real estate assessment fund. Had the General Assembly intended to authorize a county to recoup from the various taxing authorities in the county the costs of the county treasurer's preparation and mailing of tax bills, it could easily have included those expenses in R.C. 325.31(B) as costs that may be paid from the real estate assessment fund or enacted legislation that otherwise authorized such recoupment. *See* 2010 Op Att'y Gen. No. 2010-001, slip op. at 4 (although the General Assembly has

authorized counties to impose charges for providing certain services, in the absence of a statute authorizing a county to charge for "space or utilities, or a fee for indirect costs, overhead, or centralized or support services," the county has no such authority). *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Based upon the foregoing, it is my opinion, and you are hereby advised that a county has no authority to recoup from taxing authorities within the county any portion of the cost of printing or mailing tax bills.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General