March 9, 2009

The Honorable Thomas L. Stierwalt
Sandusky County Prosecuting Attorney
100 North Park Avenue
Fremont, Ohio 43420

SYLLABUS: 2009-007

A board of county commissioners does not possess statutory authority to impose upon, or collect from, the RECLAIM Ohio or youth services grant funds distributed to the county's juvenile court a sum for administrative or indirect costs the county may incur in providing central support services for the administration of the RECLAIM Ohio or youth services grant funds that pass through the county to its juvenile court.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

March 9, 2009

OPINION NO. 2009-007

The Honorable Thomas L. Stierwalt
Sandusky County Prosecuting Attorney
100 North Park Avenue
Fremont, Ohio 43420

Dear Prosecutor Stierwalt:

You have requested the opinion of the Attorney General concerning the authority of the county commissioners to charge the Sandusky County Court of Common Pleas, Juvenile and Probate Division, for certain costs associated with support services the county provides to the court's juvenile and probate division with respect to certain grant moneys provided by the state to that division of the court through the county. We have stated your questions as follows:

1. Does a board of county commissioners have authority to bill and collect from a juvenile court administrative or indirect costs associated with providing central support services for the administration of the RECLAIM Ohio or Youth Services grant funds that pass through Ohio counties to the juvenile court?

2. If the county has such authority, may the county commissioners bill and collect administrative and indirect costs that have not been included in the funding application that has been approved by the state under 16 Ohio Admin. Code 5139-67-05(A) and that are not reflected in the "program administration" standard program area, as that term is used in 16 Ohio Admin. Code 5139-67-05(J) for that year?

3. If the county has authority to bill and collect the costs described in the first question, does the fact that the county used general funds to cover administrative and indirect costs associated with such grant moneys in past years preclude the county from seeking reimbursement in the future for such previous expenses?

For the reasons that follow, we conclude that a board of county commissioners has no authority to charge to, or collect from, the county's juvenile court administrative or indirect costs

the county incurs in providing central support services for the administration of the RECLAIM Ohio or youth services grant funds that pass through the county to its juvenile court.[1]

I. Background

A. "Youth Services Grant" Funds - R.C. 5139.34

R.C. 5139.34(A) authorizes the General Assembly to appropriate money to the Department of Youth Services ("DYS" or "the Department") "for the purpose of granting state subsidies to counties." Grants made by DYS under R.C. 5139.34 are commonly referred to as a county's "youth services grant," 16 Ohio Admin. Code 5139-67-01(B) (2007-2008 Supp.).

R.C. 5139.34(B)(1) entitles a county to receive each year a minimum sum of fifty thousand dollars as its basic youth services grant. A county may be entitled to an additional sum of money in accordance with R.C. 5139.34(B)(2). As prescribed by R.C. 5139.34(A), "[a] county *or* the juvenile court that serves a county shall use state subsidies granted to the county pursuant to this section only in accordance with [R.C. 5139.43(B)(2)(a) and (3)(a)] and the rules pertaining to the state subsidy funds that the department adopts pursuant to [R.C. 5139.04(D)]." The general purpose for which a county and its juvenile court may use youth services grant funds is "to aid in the support of prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children or delinquent children or for children who are at risk of becoming unruly children or delinquent children," R.C. 5139.43(B)(2)(a)(i).

B. "RECLAIM Ohio" Funds - R.C. 5139.41 and R.C. 5139.43

R.C. 5139.41 provides for the General Assembly to make an appropriation to DYS for the care and custody of felony delinquents. The general purposes for which DYS may use these appropriated sums include the funding of operational costs for, among other things, "[i]nstitutions and the diagnosis, care, or treatment of felony delinquents at facilities pursuant to contracts entered into under [R.C. 5139.08]," R.C. 5139.41(A)(1), and "[c]ounty juvenile courts that administer programs and services for prevention, early intervention, diversion, treatment, and rehabilitation services and programs that are provided for alleged or adjudicated unruly or

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[1] The Department of Youth Services ("DYS" or "the Department") possesses authority to make a number of grants to counties for various purposes. *See, e.g.*, R.C. 5139.33(A) (grants "to encourage counties to use community-based programs and services for juveniles who are adjudicated delinquent children for the commission of acts that would be felonies if committed by an adult"). Your request, however, concerns only two specific grants, the youth services grant made in accordance with R.C. 5139.34 and the RECLAIM Ohio allocation made in accordance with R.C. 5139.41 and R.C. 5139.43. This opinion will, therefore, address the authority of a board of county commissioners to charge and collect the costs you describe that are associated only with the youth services grant and the RECLAIM Ohio allocation.

delinquent children or for children who are at risk of becoming unruly or delinquent children," R.C. 5139.41(A)(3).

DYS may, in turn, distribute these sums to the counties in accordance with R.C. 5139.43. These grants are commonly referred to as the RECLAIM Ohio allocation. *See* 16 Ohio Admin. Code 5139-67-02(F) (2007-2008 Supp.); *see also* rule 5139-67-01(X). R.C. 5139.43(B)(2)(a)(ii) describes the general purposes for which a juvenile court may use its RECLAIM Ohio allocation, as follows:

> The moneys in the fund that were *disbursed to the juvenile court* pursuant to [R.C. 5139.41(B)] and deposited pursuant to division (B)(1) of this section in the fund shall be used to provide programs and services for the training, treatment, or rehabilitation of felony delinquents that are alternatives to their commitment to the department, including, but not limited to, community residential programs, day treatment centers, services within the home, and electronic monitoring, and shall be used in connection with training, treatment, rehabilitation, early intervention, or other programs or services for any delinquent child, unruly child, or juvenile traffic offender who is under the jurisdiction of the juvenile court.
>
> The fund also may be used for prevention, early intervention, diversion, treatment, and rehabilitation programs that are provided for alleged or adjudicated unruly children, delinquent children, or juvenile traffic offenders or for children who are at risk of becoming unruly children, delinquent children, or juvenile traffic offenders. Consistent with division (B)(1) of this section, a county and the juvenile court of a county shall not use any of those moneys for capital construction projects. (Emphasis added.)

Unlike R.C. 5139.34, which imposes limitations and requirements upon both the county and the county's juvenile court in the expenditure of youth services grant funds, R.C. 5139.43(B)(2)(a)(ii) states that RECLAIM Ohio funds are disbursed solely to the juvenile court.

C. Youth Services Grants and RECLAIM Ohio Funds

Although the General Assembly has established the grants you describe as separate entities, the grants share certain common features. Of particular importance to the questions you raise are the process by which such grant moneys are distributed by DYS and the manner in which the funds are held and disbursed once received by a county.

1. Agreement and Application for Funds

In order to obtain a youth services grant or RECLAIM Ohio funds, a county and its juvenile court must submit an annual grant agreement and application for funding for the

combined purposes of both grants. R.C. 5139.34(C)(1) (youth services grant)[2]; R.C. 5139.43(B)(3)(a) (RECLAIM Ohio allocation).[3] Once DYS has approved a county's agreement and application for funding, DYS may then distribute youth services grant or RECLAIM Ohio funds to the county. R.C. 5139.43(B)(3)(a). Once the moneys are distributed to a county,

> the *juvenile court and the county* served by the juvenile court may expend the state subsidy funds granted to the county pursuant to [R.C. 5139.34] only in

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[2] R.C. 5139.34(C)(1) states:

> Prior to a county's receipt of an annual grant pursuant to this section, the *juvenile court* that serves the county *shall prepare, submit, and file* in accordance with [R.C. 5139.43(B)(3)(a)] *an annual grant agreement and application for funding* that is *for the combined purposes of, and that satisfies the requirements of, this section and [R.C. 5139.43]*. In addition to the subject matters described in [R.C. 5139.43(B)(3)(a)] or in the rules that the department adopts to implement that division, the annual grant agreement and application for funding shall address fiscal accountability and performance matters pertaining to the programs, care, and services that are specified in the agreement and application and for which state subsidy funds granted pursuant to this section will be used. (Emphasis added.)

[3] R.C. 5139.43(B)(3) states, in pertinent part:

> In accordance with rules adopted by the department pursuant to [R.C. 5139.04(D)], *each juvenile court and the county served by that juvenile court shall* do all of the following that apply:
>
> (a) *The juvenile court shall prepare an annual grant agreement and application for funding that satisfies the requirements of this section and [R.C. 5139.34]* and that pertains to the use, upon an order of the juvenile court and subject to appropriation by the board of county commissioners, of the moneys in its felony delinquent care and custody fund for specified programs, care, and services as described in division (B)(2)(a) of this section, shall submit that agreement and application to the county family and children first council, the regional family and children first council, or the local intersystem services to children cluster as described in sections 121.37 and 121.38 of the Revised Code, whichever is applicable, and shall file that agreement and application with the department for its approval. The annual grant agreement and application for funding shall include a method of ensuring equal access for minority youth to the programs, care, and services specified in it. (Emphasis added.)

See generally R.C. 5139.04(D) (requiring DYS to "[a]dopt rules that regulate its organization and operation, that implement sections 5139.34 and 5139.41 to 5139.43 of the Revised Code, and that pertain to the administration of other sections of this chapter").

> accordance with division (B)(2)(a) of this section, the rules pertaining to state subsidy funds that the department adopts pursuant to [R.C. 5139.04(D)], and the approved agreement and application.

Id. (emphasis added). Thus, the manner in which a county and its juvenile court may expend the grant funds are limited not only by R.C. 5139.43(B)(2)(a) and the rules adopted by DYS for such grants, but also by the county's approved grant agreement and application for funding. It follows, therefore, that an expenditure that is authorized by the statutory and regulatory scheme for these grants may nonetheless, depending upon the content of a particular county's approved agreement and application for funds, be an impermissible use of such funds by that county.

2. County Treasury's Felony Delinquent Care and Custody Fund

The statutory schemes governing youth services grant and RECLAIM Ohio funds require the county treasurer to establish in the county treasury the felony delinquent care and custody fund into which youth services grant and RECLAIM Ohio funds are to be deposited. R.C. 5139.43(B)(1). *See* R.C. 5139.34(C)(2). *See generally* R.C. 5705.10(D) (stating, in part, "all revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose"). Moneys placed in a county's felony delinquent care and custody fund may be paid out of such account for only those purposes authorized by statute.

II. Authority of Board of County Commissioners to Charge to and Collect from Sums Distributed by the State to the County's Juvenile Court under R.C. 5139.34 and R.C. 5139.43 for Support Services Provided by the County

We now turn to your first question, which asks whether a board of county commissioners may "bill and collect from a juvenile court administrative or indirect costs associated with providing central support services for the administration of the RECLAIM Ohio or youth services grant funds that pass through Ohio counties to the juvenile court." You have informed us that your concern is not only whether the county commissioners possess authority to impose these charges upon the county's juvenile court, but also whether a juvenile court may use portions of these grant moneys to pay the costs charged by the county commissioners.

In answering any question about the powers or duties of a board of county commissioners, we must begin with the proposition that a board of county commissioners is a creature of statute. Thus, whether such board may charge to and collect the sums you describe from a juvenile court depends, in part, upon whether the board is authorized by statute to do so. *See generally State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus) (stating, in part, "[a] board of county commissioners is a creature of statute alone. . . .

Such board possesses only such power and jurisdiction as are conferred expressly by statutory enactment").[4]

Because your questions concern the authority of a board of county commissioners vis-à-vis the county's juvenile court, we must also bear in mind the following principle, summarized in 2005 Op. Att'y Gen. No. 2005-028 at 2-292, as follows:

> The powers of a county's board of commissioners in relation to the county's courts . . . are not determined solely by statute, but are also limited by the principle that, "[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers." *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph one). *See generally State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955) (syllabus, paragraph one) ("[t]he legislative, executive and judicial branches of government are separate and distinct and neither may impinge upon the authority or rights of the others; such branches are of equal importance; and each in exercising its

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[4] 2001 Op. Att'y Gen. No. 2001-024 addressed a similar question concerning the authority of a board of county commissioners to charge a juvenile court for administrative costs and to assess these costs against moneys distributed to that court by the Department of Youth Services. As concluded in the syllabus of that opinion:

> 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.)

See also, e.g., 2005 Op. Att'y Gen. No. 2005-028 (syllabus, paragraph 1) ("[a] board of county commissioners has no authority to impose upon a juvenile court a charge for rental of space for the court's operations, whether such space is in the courthouse or in another county building").

You have identified two specific types of grant moneys provided to the county by DYS. This opinion will discuss the specific characteristics of those grants. In addition, you have not described the nature of the "administrative or indirect costs associated with providing central support services for the administration" of the grant moneys you describe, and thus it is not possible to determine whether the board of county commissioners possesses authority to collect for specific costs that the board includes in that description. This opinion will, however, address the statutory scheme governing the purposes for which and the manner in which such grant moneys may be used, including possible categories of expenditures that may include the types of costs you mention.

> prerogatives and authority must have regard for the prerogatives and authority of the others").

We must, therefore, determine whether a board of county commissioners possesses statutory authority to charge to and collect from the county's juvenile court "administrative or indirect costs associated with providing central support services for the administration of the RECLAIM Ohio or Youth Services grant funds."

A. No Express Statutory Authority

Examination of the statutory scheme concerning the youth services grant and RECLAIM Ohio programs reveals no express statutory authority for a board of county commissioners to charge the county's juvenile court for the types of costs you describe or for a juvenile court to pay the county from these grant funds for such costs. Rather, as will be explained below, when the General Assembly intends that moneys it appropriates to DYS to fund these grants be used for administrative costs, it has expressly so provided.

B. No Implied Statutory Authority

1. Statutory Limitation on Use of County's Felony Delinquent Care and Custody Fund

One indication that the General Assembly did not intend to authorize youth services grant or RECLAIM Ohio funds to be used to pay a board of county commissioners for the types of costs you describe lies in the prohibition against the use of youth services grant moneys

> to reduce, any *usual annual increase in county funding* that the juvenile court is eligible to receive *or the current level of county funding* of the juvenile court and of any programs, care, or services for alleged or adjudicated delinquent children, unruly children, or juvenile traffic offenders or for children who are at risk of becoming delinquent children, unruly children, or juvenile traffic offenders.

R.C. 5139.34(C)(4) (emphasis added). A similar provision is found in R.C. 5139.43(B)(1) concerning a county's use of RECLAIM Ohio funds.[5] Thus, the General Assembly has clearly

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[5] R.C. 5139.43(B)(1) states, in part, that RECLAIM Ohio funds, "*shall not be used to reduce*, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, or juvenile traffic offenders." (Emphasis added.) *See* 16 Ohio Admin. Code 5139-67-03(G) and (H) (2007-2008 Supp.) (stating that grant funds received by a county "[s]hall be in addition to, and not be used to reduce, any usual annual increase in county funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, juvenile traffic offenders or non-adjudicated youth supported by county moneys; [and] [s]hall be

expressed its intention that DYS's distribution of these grant funds to a county is to supplement, not replace, a county's current or normally anticipated increase in funding of the county's juvenile court and its programs. *See generally* 2005 Op. Att'y Gen. No. 2005-028 (syllabus, paragraph 2) ("[a] board of county commissioners has a duty to appropriate funds requested by a juvenile court, so long as such funds are reasonable and necessary to the court's administration of its business, whether or not the program for which such funds are requested is a 'traditional' juvenile court program").

In addition, the statutory schemes governing both grants prohibit the reversion of any moneys from the county's felony delinquent care and custody fund to the county's general fund at the end of a fiscal year, requiring instead that moneys in such fund remain there and be carried over to the next fiscal year. R.C. 5139.34(C)(4) (youth services grant); R.C. 5139.43(B)(1) (RECLAIM Ohio allocation). As further required by R.C. 5139.43(B)(1), "[t]he moneys disbursed to the juvenile court pursuant to [R.C. 5139.41(B)] and deposited pursuant to this division in the felony delinquent care and custody fund shall not be commingled with any other county funds except state subsidy funds granted to the county pursuant to [R.C. 5139.34]." The General Assembly has thus imposed a number of restrictions on a county's handling of DYS grant funds to ensure that such sums are used for only those purposes prescribed by R.C. 5139.34 or R.C. 5139.43, and not for other county purposes.[6]

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in addition to, and not be used to supplant, county funds"); 16 Ohio Admin. Code 5139-67-05(H) (2007-2008 Supp.) (stating that grant funds received by a county "shall be in addition to, and shall not be used to supplant, existing county funding or any usual annual increase in county funding of the juvenile court or any program or service for delinquent children, unruly children, juvenile traffic offenders or non-adjudicated youth funded by the county").

[6] Rule 5139-67-03 similarly provides, in part:

> [Youth services grant and RECLAIM Ohio] funds received by the county:
> (A) Shall not be commingled with any other funds;
> . . .
> (E) Shall not revert to the county general fund at the end of any fiscal year;
> (F) Shall carry over from the end of any fiscal year to the next fiscal year in the felony delinquent care and custody fund;
> (G) Shall be in addition to, and not be used to reduce, any usual annual increase in country funding that the juvenile court is eligible to receive or the current level of county funding of the juvenile court and of any programs or services for delinquent children, unruly children, juvenile traffic offenders or non-adjudicated youth supported by county moneys;
> (H) Shall be in addition to, and not be used to supplant, county funds.

2. Express Authority for DYS to Use Funds for Administrative Expenses

Further indication that the General Assembly did not intend to authorize a board of county commissioners to charge a juvenile court for administrative expenses of the county associated with the administration of youth services grant funds or RECLAIM Ohio funds disbursed to a county lies in R.C. 5139.41(A). Concerning DYS's authority to expend sums appropriated to it for the care and custody of felony delinquents, R.C. 5139.41(A) states in pertinent part:

> The appropriation made to the department of youth services for care and custody of felony delinquents shall be expended in accordance with the following procedure that the department shall use for each year of a biennium. The procedure shall be consistent with [R.C. 5139.41-.43] and shall be developed in accordance with the following guidelines:
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> (A) The line item appropriation for the care and custody of felony delinquents shall provide *funding for operational costs for* the following:
>
> . . . .
>
> (4) *Administrative expenses the department incurs* in connection with the felony delinquent care and custody programs described in section 5139.43 of the Revised Code.
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> (B) From the appropriated line item for the care and custody of felony delinquents, the department, with the advice of the RECLAIM advisory committee established under [R.C. 5139.44], shall allocate annual operational funds for county juvenile programs, institutional care and custody, community corrections facilities care and custody, and *administrative expenses incurred by the department* associated with felony delinquent care and custody programs. (Emphasis added.)

That the General Assembly expressly authorized DYS to use a portion of its appropriation to pay for certain of its operational costs, including administrative expenses, connected to the RECLAIM Ohio program indicates its awareness that the Department may incur expenses in its administration of this program.[7]

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[7] The General Assembly did not enact an analogous provision authorizing the use of youth services grant funds, R.C. 5139.34, for administrative expenses of either DYS or the grantees of such funds.

We also note that rule 5139-67-05(J) states: "Administrative or indirect costs charged to a program are limited to those essential to the management of the grant and should be reflected in the 'program administration' standard program area." For purposes of 16 Ohio Admin. Code Chapter 5139-67 (2007-2008 Supp.), the term "administrative costs" means "those costs related to the overall administration of the grant," 16 Ohio Admin. Code 5139-67-01(A) (2007-2008

By contrast, the General Assembly did not authorize such grant moneys to be used to pay a board of county commissioners for any such administrative costs or expenses. In addition, the General Assembly did not authorize a board of county commissioners to charge a juvenile court for such costs or expenses. *See* note 4, *supra*. Had the General Assembly intended that a board of county commissioners be able to collect from the grant funds awarded to a juvenile court under R.C. 5139.43 or R.C. 5139.43 for indirect or administrative costs of the county for its administration of such funds, the General Assembly could easily have included language that would authorize the county commissioners to impose such charges and the use of the grant funds for those purposes. *See generally Meeks v. Papadopulos*, 62 Ohio St. 2d 187, 191-92, 404 N.E.2d 159 (1980) ("the General Assembly, in enacting a statute, is assumed to have been aware of other statutory provisions concerning the subject matter of the enactment even if they are found in separate sections of the Code"); *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).

III. Summary

In answer to your first question, we conclude that a board of county commissioners does not possess statutory authority to impose upon, or collect from, the RECLAIM Ohio or youth services grant funds distributed to the county's juvenile court a sum for administrative or indirect costs the county may incur in providing central support services for the administration of the RECLAIM Ohio or youth services grant funds that pass through the county to its juvenile court.

Because we have found no authority for a board of county commissioners to impose upon the county's juvenile court a charge for the administrative or indirect costs you describe, it is not necessary to address your remaining questions.

Supp.), while "indirect costs" are defined as "a fixed charge by the county for handling the grant and providing payroll and other related services," rule 5139-67-01(O).

The definition of "indirect costs," rule 5139-67-01(O), thus suggests that a county or its board of county commissioners, acting on behalf of the county, may be entitled to recover from the county's youth services grant or RECLAIM Ohio funds "a fixed charge by the county for handling the grant and providing payroll and other related services," rule 5139-67-01(O). Whether youth services grant or RECLAIM Ohio funds may be used for "administrative costs" or "indirect costs," as those terms are defined in rule 5139-67-01, however, is a different question from whether a board of county commissioners possesses statutory authority to charge a juvenile court for such costs. *See generally Jones v. Comm'rs of Lucas County*, 57 Ohio St. 189, 48 N.E. 882 (1897) (syllabus, paragraph 1) (stating, in part, "[t]he board of county commissioners represents the county, in respect to its financial affairs, only so far as authority is given to it by statute").

IV. Conclusion

Based upon the foregoing, it is my conclusion, and you are hereby advised that a board of county commissioners does not possess statutory authority to impose upon, or collect from, the RECLAIM Ohio or youth services grant funds distributed to the county's juvenile court a sum for administrative or indirect costs the county may incur in providing central support services for the administration of the RECLAIM Ohio or youth services grant funds that pass through the county to its juvenile court.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General