

March 21, 2016

The Honorable Joseph R. Burkard  
Paulding County Prosecuting Attorney  
112 ½ Water Street  
Paulding, Ohio 45879

SYLLABUS:

2016-010

The judges of a court of common pleas, in the reasonable exercise of their discretion, may expend moneys generated by the court's special projects fee imposed pursuant to R.C. 2303.201(E)(1) to purchase incentives that reward a participant's compliance with the terms of the court's drug court program, provided the judges determine that the incentives contribute to the efficient operation of the court.



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OPINION NO. 2016-010

The Honorable Joseph R. Burkard  
Paulding County Prosecuting Attorney  
112 ½ Water Street  
Paulding, Ohio 45879

Dear Prosecutor Burkard:

You have requested an opinion whether a court of common pleas may use moneys in the court's special projects fund to purchase incentives that reward a participant's compliance with the terms of the court's drug court program. You have explained that the incentives include "a gift card, a book, a container of candy, personal hygiene products, etc."

In administrative matters, a court of common pleas acts as a creature of statute, "having such power as is expressly delegated by the General Assembly together with such implied power as is necessary to carry into effect the power expressly granted." 2011 Op. Att'y Gen. No. 2011-047, at 2-381 (quoting 1938 Op. Att'y Gen. No. 2308, vol. II, p. 821, at 824); *accord* 2015 Op. Att'y Gen. No. 2015-015, at 2-162. To authorize an expenditure of moneys, a court of common pleas shall have "clear and distinct authority[.]" 2011 Op. Att'y Gen. No. 2011-047, at 2-381.

R.C. 2303.201(E)(1) provides, in pertinent part:

The court of common pleas may determine that, *for the efficient operation of the court*, additional funds are necessary to acquire and pay for *special projects of the court*, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the court of common pleas offers or requires a special program or additional services in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service....

All moneys collected under [R.C. 2303.201(E)(1)] shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon

an order of the court, subject to an appropriation by the board of county commissioners, in an amount no greater than the actual cost to the court of a project. (Emphasis added.)

R.C. 2303.201(E)(1) authorizes a court of common pleas to impose two types of fees in addition to court costs: (1) a fee to acquire and pay for special projects of the court (“special projects fee”), and (2) a charge to cover special programs or additional services that are offered by the court in cases of a specific type (“special program or service fee”). Moneys collected from either fee are deposited in the county treasury in a general special projects fund or a fund for each type of special project. R.C. 2303.201(E)(1). You have informed us that the moneys in the Paulding County Court of Common Pleas’ special projects fund were generated from a “special projects fee.” The Paulding County Court of Common Pleas does not assess or collect a special program or service fee in cases for which participation in the drug court program is offered or required. Accordingly, the moneys in the court’s special projects fund were generated by a special projects fee. Thus, we will determine whether moneys generated by the court’s special projects fee may be used to purchase incentives for the court’s drug court program as a special project of the court.

The language of R.C. 2303.201(E)(1) indicates that the General Assembly intends that a court of common pleas determine whether a particular expenditure constitutes a special project of the court that contributes to the efficient operation of the court. Whether purchasing incentives that reward compliance with the terms of a court of common pleas’ drug court program is a special project of the court that contributes to the efficient operation of the court is a determination within the reasonable exercise of discretion by the judges of the court of common pleas. *See* 2012 Op. Att’y Gen. No. 2012-015, at 2-126 (“[o]n numerous occasions, the Attorney General has been asked whether moneys from ... various funds may be used for a specific expenditure. In response, the Attorney General has consistently advised: (1) the determination of whether an expenditure satisfies a particular statutory purpose lies in the discretion of the officer or governmental entity having the power to make the expenditure, and (2) that discretion must be exercised in a reasonable manner”). As a matter that has been entrusted to the discretion of the judges of a court of common pleas, it is beyond the scope of an Attorney General opinion to definitively determine whether purchasing incentives to reward compliance with the terms of a court of common pleas’ drug court program is a special project of the court that contributes to the efficient operation of the court. *See* 2009 Op. Att’y Gen. No. 2009-048, at 2-357 (“the Attorney General is not authorized to use the opinion-rendering function to exercise on behalf of a public official discretion that has been reposed in that official”). This opinion, therefore, addresses general principles of law applicable to a court’s determination of whether its special projects fund moneys may be expended for a particular purpose.

Numerous Attorney General opinions have addressed expending moneys generated by a court’s special projects fee for various purposes. *See, e.g.*, 2015 Op. Att’y Gen. No. 2015-015; 2012 Op. Att’y Gen. No. 2012-039; 2011 Op. Att’y Gen. No. 2011-047; 2009 Op. Att’y Gen. No. 2009-001; 2001 Op. Att’y Gen. No. 2001-006 (explained by 2015 Op. Att’y Gen. No. 2015-015); 1997 Op. Att’y Gen. No. 97-049. Those opinions elucidate two general principles regarding the expenditure of moneys generated by a special projects fee. First, the special project shall be a project established or operated by the court that collected the special projects fee. 2015 Op. Att’y Gen. No. 2015-015, at 2-

162 (“[a] special project of the court ... must have a sufficient connection to the court so that it constitutes a project ‘of the court’”); 2011 Op. Att’y Gen. No. 2011-047 (syllabus, paragraph 3) (“[a] court of common pleas may not use special project fund moneys collected pursuant to R.C. 2303.201(E)(1) to provide financial assistance to a veterans treatment court operated by a municipal court”); 2009 Op. Att’y Gen. No. 2009-001 (syllabus, paragraph 1) (“R.C. 1901.26(B)(1) does not authorize the Madison County Municipal Court to donate special projects fund moneys collected thereunder to private or county programs that are neither established nor operated by that court”). *But see* 2012 Op. Att’y Gen. No. 2012-039, at 2-345 to 2-346 (distinguishes 2009 Op. Att’y Gen. No. 2009-001 (syllabus, paragraph 1) and concludes special projects fund moneys may be used to purchase supplies for a community service program to which the court sentences offenders even though the community service program is not operated or established by the court).

Second, the special project shall contribute to the efficient operation of the court. 2015 Op. Att’y Gen. No. 2015-015 (syllabus) (“[a] court of common pleas may expend moneys in the court’s special projects fund to hire personnel to provide additional security at the entrance to the court house, within the court house generally, or whenever personnel of the sheriff’s office are not immediately available to secure a courtroom, provided the court determines that the provision of additional security benefits the efficient operation of the court”); 2012 Op. Att’y Gen. No. 2012-039 (syllabus) (“[t]he judges of a county court, in the reasonable exercise of their discretion, may use moneys in a special projects fund ... to purchase trees, tree grates, bricks, sand, sod, and related materials that will be installed or placed upon public property by persons participating in a community service program, provided the program contributes to the efficient operation of the court”); 1997 Op. Att’y Gen. No. 97-049 (syllabus, paragraph 1) (“[s]hould a municipal court decide that the appointment of an additional bailiff ... is a special project that would benefit the efficient operation of the court, the hiring of such additional bailiff may be funded with ... special projects fund moneys”). Thus, a court of common pleas may expend moneys generated by the court’s special projects fee when the expenditure constitutes a special project of the court that contributes to the efficient operation of the court. The answer to your question, therefore, hinges upon whether purchasing incentives rewarding compliance with the terms of a drug court program constitutes a special project of a court of common pleas that contributes to the efficient operation of the court.

A court of common pleas, when certified by the Ohio Supreme Court, may operate a “specialized docket,” which is a “particular session of court that offers a therapeutically oriented judicial approach to providing court supervision and appropriate treatment to individuals[.]” Ohio Sup. R. 36.20(A). One type of specialized docket is a drug court. *See* 2011 Op. Att’y Gen. No. 2011-047, at 2-375 n.2 (“[t]here are nearly 150 ‘specialized dockets’ operating in Ohio, including drug courts, mental health courts, drunk driving courts, domestic violence courts, child support enforcement courts, re-entry courts, sex offender courts, and veterans courts”).

The Ohio Supreme Court has established specialized docket standards that “set forth minimum requirements for the certification and operation of all specialized dockets.” Ohio Sup. R. App. I. Along with those standards are “recommended practices that each specialized docket is encouraged to follow.” *Id.* According to Standard 10, “[i]mmediate, graduated, and individualized incentives and sanctions shall govern the responses of a specialized docket to a specialized docket

participant's compliance or noncompliance." Ohio Sup. R. App. I. Under division (C) of the recommended practices that correspond to Standard 10, "[g]ifts of inspirational items, including books, pictures, and framed quotes; ... [g]ift cards for restaurants, movie theaters, recreational activities, or personal care services; ... [g]ifts of small personal care items, hobby or pet supplies, plants, or small household items" are recommended as incentives for a participant's compliance. Ohio Sup. R. App. I, Recommended Practices (C)(8), (10), (11). The incentives that you mentioned in your letter are consistent with Standard 10 and the accompanying recommended practices.

Insofar as the drug court program is operated by the Paulding County Court of Common Pleas, it is reasonable for the judges of the court to determine that the purchase of incentives to reward compliance with the terms of the drug court program constitutes a special project of the court. Furthermore, to the extent that the standards for the operation of a specialized docket set forth by the Ohio Supreme Court require incentives in response to a participant's compliance with the terms of the program, it is reasonable for the judges of a court of common pleas that operates a drug court to determine that incentives that reward compliance contribute to the efficient operation of the court of common pleas.

R.C. 2303.201(E)(1) does not require a court of common pleas that operates a drug court program to pay the costs of purchasing incentives to reward a participant's compliance with moneys generated by a separate special program or service fee that is assessed in cases for which participation in the court's drug court program is offered or required. The second paragraph of R.C. 2303.201(E)(1) states, in pertinent part, "[i]f the court of common pleas offers or requires a special program or additional services in cases of a specific type, the court by rule *may* assess an additional charge in a case of that type ... to cover the special program or service." (Emphasis added.) It is well established that the word "may" in a statute is "generally construed to make the provision in which it is contained optional, permissive, or discretionary" unless the context indicates that a contrary meaning is intended by the General Assembly. 2000 Op. Att'y Gen. No. 2000-005, at 2-23 (quoting *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 107-08, 271 N.E.2d 834 (1971)); *accord* 1999 Op. Att'y Gen. No. 99-038, at 2-241. There is nothing in the language of R.C. 2303.201 that indicates that the second paragraph of R.C. 2303.201(E)(1) should be construed as mandatory.

Other provisions of R.C. 2303.201 confirm that the use of the word "may" in R.C. 2303.201(E)(1) should be accorded its ordinary meaning. In addition to division (E)(1), "may" is used in divisions (A)(1) and (B)(1) of R.C. 2303.201. *See* R.C. 2303.201(A)(1) ("[t]he court of common pleas ... may determine that for the efficient operation of the court additional funds are required to computerize the court, to make available computerized legal research services, or to do both"); R.C. 2303.201(B)(1) ("[t]he court of common pleas ... may determine that, for the efficient operation of the court, additional funds are required to make technological advances in or to computerize the office of the clerk of the court of common pleas"). The word "shall" is used in divisions (C) and (D) of R.C. 2303.201. *See* R.C. 2303.201(C) ("[t]he court of common pleas shall collect the sum of twenty-six dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies"); R.C. 2303.201(D) ("the court of common pleas shall collect the sum of thirty-two dollars ... in each new action or proceeding for annulment, divorce, or dissolution of marriage for the purpose of funding shelters for victims of domestic

violence”). The General Assembly’s use of “shall” and “may” within the same statute is an indication that the terms are not synonymous and that each should be given their ordinary meanings. 2000 Op. Att’y Gen. No. 2000-005, at 2-23 to 2-24 (“[t]he proximity of these terms ... raises a presumption that these terms are to be accorded their common, ordinary meanings”); 1999 Op. Att’y Gen. No. 99-038, at 2-242 (“[t]he juxtaposition of the terms ‘shall’ and ‘may’ thus raises a presumption that these terms be accorded their ordinary meaning”).

In addition, courts of common pleas “possess all powers necessary to secure and safeguard the free and untrammled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (syllabus, paragraph 2). To preserve the separation of powers among the branches of government, courts of common pleas have substantial autonomy in assessing their funding needs and making decisions in financial matters. See *State ex rel. Maloney v. Sherlock*, 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶25 (“[c]ommon pleas courts and their divisions have inherent power to order funding that is reasonable and necessary to the courts’ administration of their business”); *State ex rel. Donaldson v. Alfred*, 66 Ohio St. 3d 327, 329, 612 N.E.2d 717 (1993) (“[t]he determination of necessary administrative expenses rests solely with the court”); *State ex rel. Weaver v. Lake Cnty. Bd. of Comm’rs*, 62 Ohio St. 3d 204, 205, 580 N.E.2d 1090 (1991) (“a board of county commissioners must provide the funds requested by a court of common pleas unless the board can show that the requested funding is unreasonable and unnecessary”); *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 420-21, 423 N.E.2d 80 (1981) (“the courts possess inherent powers to effectuate an orderly and efficient administration of justice without being financially or procedurally inhibited by the General Assembly” (footnote omitted)); *State ex rel. Foster v. Bd. of Cnty. Comm’rs of Lucas Cnty.*, 16 Ohio St. 2d 89, 92, 242 N.E.2d 884 (1968) (“the 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. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches”).

There may be practical reasons why a court of common pleas may elect to assess a special projects fee rather than a special program fee to pay for certain costs that the court incurs in relation to operating the court’s drug court program. A special program or service fee is assessed in only cases of the particular type for which the program or service is offered or required. R.C. 2303.201(E)(1). In contrast, a special projects fee is assessed “on the filing of each criminal cause, civil action or proceeding, or judgment by confession.” *Id.* Due to the nature of the cases in which participation in a drug court program may be offered, and the financial circumstances of the participants in those cases, imposing an additional special program or service fee in those cases may not be productive or equitable. Courts operating specialized docket programs are in the best position to determine the most efficient and effective manner by which to fund such programs. The Ohio Supreme Court recognizes the need for flexibility in the specialized docket programs standards and the importance of allowing individual courts to adapt their programs to the needs and resources of their communities. In the overview of Appendix I of the Rules of Superintendence for the Courts of Ohio, the court states that “[w]hile the standards seek to create a minimum level of uniform practices for specialized dockets, they still allow local specialized dockets to innovate and tailor their specialized docket to respond to

local needs and resources.” Therefore, the judges of a court of common pleas that operates a drug court program may exercise reasonable discretion to determine whether certain costs of its drug court program shall be paid for through a special projects fee or a special program or service fee.

Based upon the foregoing, it is my opinion, and you are hereby advised that the judges of a court of common pleas, in the reasonable exercise of their discretion, may expend moneys generated by the court’s special projects fee imposed pursuant to R.C. 2303.201(E)(1) to purchase incentives that reward a participant’s compliance with the terms of the court’s drug court program, provided the judges determine that the incentives contribute to the efficient operation of the court.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General