

**OPINION NO. 94-059****Syllabus:**

1. When the Ohio Department of Human Services imposes a financial sanction upon a county pursuant to R.C. 2301.35(E)(1), the amount of the sanction must, in accordance with R.C. 2301.35(E)(1), be paid to the county child support enforcement agency either by the board of county commissioners or, if the board of county commissioners does not make payment, by the Tax Commissioner from local government fund moneys allocated to the county.
2. The Ohio Department of Human Services has authority to adopt rules implementing any reasonable interpretation of R.C. 2301.35(E)(1) and

may, in accordance with R.C. Chapter 119, modify its existing rules to achieve that purpose.

3. R.C. 2301.35(E)(1) provides that child support enforcement agencies shall receive the proceeds of sanctions imposed under R.C. 2301.35(E)(1), and any provision of rule that requires the proceeds to be disbursed to the Ohio Department of Human Services is inconsistent with the statutory scheme and exceeds the rulemaking authority granted to the Department.

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To: Arnold R. Tompkins, Director, Ohio Department of Human Services,  
Columbus, Ohio

By: Lee Fisher, Attorney General, September 7, 1994

You have requested an opinion concerning the imposition of financial sanctions under R.C. 2301.35(E)(1). Pursuant to R.C. 2301.35, a county child support enforcement agency is the entity with responsibility for operating a program for support enforcement in the county. The program must comply with Title IV-D of the Social Security Act, as amended, and also with relevant federal rules and specified state statutes. R.C. 2301.35(C); *see* 42 U.S.C.A. §§651-669 (West 1991 & Supp. 1994); 45 C.F.R. §§301.0-307.40 (1993). Each county child support enforcement agency is operated under the supervision of the Ohio Department of Human Services in accordance with the program of child support enforcement established pursuant to R.C. 5101.31. *See* R.C. 2301.35(C). The Ohio Department of Human Services has adopted support enforcement performance standards, rules governing the operation of support enforcement by child support enforcement agencies, and rules establishing financial sanctions for counties that fail to comply with the standards. *See* R.C. 2301.35(D), (E); 15 Ohio Admin. Code Chapters 5101:1-29 to -31.

#### **Financial Sanctions Under R.C. 2301.35(E)(1)**

R.C. 2301.35(E)(1)<sup>1</sup> provides for the imposition of financial sanctions upon a county if the county's child support enforcement agency does not comply with support enforcement performance standards. R.C. 2301.35(E)(1) states:

*On or before December 1, 1987, the state department of human services shall adopt, under Chapter 119, of the Revised Code, support enforcement performance standards and rules establishing financial sanctions for counties that fail to comply with the standards and shall make the standards and rules available*

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<sup>1</sup> R.C. 2301.35(E)(2) provides for financial sanctions in instances in which a child support enforcement agency is substantially out of compliance with requirements governing the timely completion of specified percentages of parentage cases in which the agency or the mother of a child is attempting to establish a parent and child relationship between the child and father of the child. Because your request does not address these financial sanctions, they are not discussed in this opinion. For the same reason, this opinion does not discuss sanctions imposed for failure of a county to fulfill "maintenance of effort" requirements. *See* 15 Ohio Admin. Code 5101:1-31-02; [1993-1994 Ohio Monthly Record, vol. 1] Ohio Admin. Code 5101:1-31-021 at 955-66.

to the public, boards of county commissioners, and child support enforcement agencies. The department shall determine the degree to which each child support enforcement agency is complying with the standards. If the department finds any child support enforcement agency to be substantially out of compliance with the standards, it shall require the agency and the board of county commissioners of the county served by the agency to prepare a plan to bring the agency into compliance with the standards. The plan may include a change in the designation of the child support enforcement agency. *If the plan does not result in compliance with the standards, the department shall impose a financial sanction upon the county. The board of county commissioners shall make a separate appropriation for the child support enforcement agency in the amount of the sanction and transfer that amount to the agency. The child support enforcement agency shall not pay any part of the sanction, and the board of county commissioners shall not decrease county funding for the agency because of the sanction. If the board of county commissioners fails to make the full appropriation and transfer as required by this division, the department shall certify to the tax commissioner the amount of the sanction. The tax commissioner shall deduct that amount from the local government fund distribution to which the county itself would otherwise be entitled and remit the amount directly to the child support enforcement agency to be deposited by the agency into a separate account to be used solely for support enforcement purposes. If the department subsequently determines that the agency has attained substantial compliance with the standards and that the county has appropriated sufficient funds for the agency to maintain its budget at the level necessary to continue to be in substantial compliance, the department shall certify its determination to the tax commissioner, and the tax commissioner shall resume remitting to the county the entire amount of the local government fund distribution. The board of county commissioners may appeal a financial sanction under Chapter 119. of the Revised Code. (Emphasis added.)*

*See also* 15 Ohio Admin. Code 5101:1-29-04.

Pursuant to R.C. 2301.35(E)(1), if the Ohio Department of Human Services finds that a child support enforcement agency is substantially out of compliance with the support enforcement performance standards, the Department must require the agency and the appropriate board of county commissioners to prepare a plan to bring the agency into compliance. If the plan does not result in compliance with the standards, the Department must impose a financial sanction upon the county. R.C. 2301.35(E)(1); *see also* 15 Ohio Admin. Code 5101:1-29-04(E)(1) ("[s]anctions will be imposed annually if the follow-up review indicates noncompliance with the scheduled improvement"); *see generally* *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E. 2d 834 (1971) (in statutory construction, the word "shall" is generally construed as mandatory).

R.C. 2301.35(E)(1) does not specify the nature of the financial sanctions to be imposed, but requires the Department to establish such sanctions by rule. *See, e.g., Black's Law Dictionary* 1341 (6th ed. 1990) (defining "[s]anction" as meaning "[p]enalty or other mechanism of enforcement used to provide incentives for obedience with the law or with rules and regulations"). Pursuant to 15 Ohio Admin. Code 5101:1-31-40, the sanction amount for each failed program area is the dollar amount of the applicable annual state allocation multiplied by a penalty percentage that is dependent upon the degree of deficiency.

Ordinary usage of the word "sanction" suggests that the entity imposing the sanction -- in this case, the Department of Human Services -- will itself collect the amount of the sanction as a penalty. The language of R.C. 2301.35(E)(1) does not, however, support such an interpretation. R.C. 2301.35(E)(1) provides, instead, that the board of county commissioners must make a separate appropriation for the child support enforcement agency in the amount of the sanction and pay that amount directly to the agency for its use.

This interpretation is consistent with the procedure to be followed if the board of county commissioners fails to make the full appropriation and transfer as required by R.C. 2301.35(E)(1). In those circumstances, the Department "shall certify to the tax commissioner the amount of the sanction" and the Tax Commissioner "shall deduct that amount from the local government fund distribution to which the county itself would otherwise be entitled," and pay that amount directly to the child support enforcement agency to be deposited in a separate account to be used solely for support enforcement purposes. R.C. 2301.35(E)(1). Under this procedure, the county suffers the loss of the amount of the sanction from its funds and the agency receives the benefit of the amount of the sanction, to be used for support enforcement purposes. If the Department subsequently determines that the agency has attained substantial compliance with the standards and that the county has appropriated sufficient funds for the agency to maintain substantial compliance, then the Department so notifies the Tax Commissioner, and the Tax Commissioner resumes remitting to the county the entire amount of its local government fund distribution. R.C. 2301.35(E)(1). This resumption is prospective because, during the period when the sanction is certified to the Tax Commissioner, the Tax Commissioner distributes to the child support enforcement agency the amount of the sanction and distributes to the county any remaining amount of local government fund money allocated to the county.

Under the scheme for financial sanctions established by R.C. 2301.35(E)(1), therefore, the amounts of a particular sanction will be paid to the child support enforcement agency either by the board of county commissioners or, if the board of county commissioners does not make payment, by the Tax Commissioner from local government fund moneys allocated to the county. As the statute is construed above, the county will suffer a penalty and the agency will receive a benefit. No money should be paid to the Ohio Department of Human Services.

#### **Rule 5101:31-40**

After you requested an opinion pertaining to sanctions under R.C. 2301.35(E)(1), the Department adopted a rule addressing that matter. See 15 Ohio Admin. Code 5101:1-31-40. Your representatives have requested that this opinion consider rule 5101:1-31-40 as well as the statutory provisions.

In general, a state department or other administrative agency that is empowered to adopt rules implementing statutory provisions has the authority to interpret those provisions in any manner that reasonably carries out the statutory purpose. See, e.g., *Carroll v. Department of Administrative Services*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704, 706 (Franklin County 1983) ("[t]he purpose of administrative rulemaking is to facilitate the administrative agency's placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency"). A court will give deference to rules adopted by an administrative agency, provided that the rules are reasonable and not in direct conflict with statutory provisions. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) ("legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute" (footnote omitted)); *State ex rel. DeBoe v. Industrial*

*Commission*, 161 Ohio St. 67, 67, 117 N.E. 2d 925, 926 (1954) (syllabus, paragraph 1) ("[w]here by statutory authority an administrative agency ... promulgates rules ... governing its activities and procedure, such rules are valid and enforceable unless they are unreasonable or in conflict with statutory enactments covering the same subject matter").

The Ohio Department of Human Services has express statutory authority to adopt, under R.C. Chapter 119, "support enforcement performance standards and rules establishing financial sanctions for counties that fail to comply with the standards." R.C. 2301.35(E)(1). The Department may, accordingly, adopt rules that implement the statutory provisions of R.C. 2301.35 in any reasonable manner that is not inconsistent with the statute. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-037 at 2-145.

Rule 5101:1-31-40 establishes the amounts of sanctions to be imposed. With respect to the procedure to be followed, rule 5101:1-31-40 states:

(D) Division (E)(1) of section 2301.35 of the Revised Code requires the board of county commissioners to make a separate appropriation to the CSEA [child support enforcement agency] in the amount of the sanction. *The CSEA shall disburse the sanction amount to ODHS [Ohio Department of Human Services] within one hundred twenty days of receipt of the appropriation. Division (E)(1) of section 2301.35 of the Revised Code mandates that the CSEA will not pay any part of the sanction*, and that the board of county commissioners will not decrease county funding for the CSEA because of the sanction.

(E) Pursuant to division (E)(1) of section 2301.35 of the Revised Code, if the board of county commissioners fails to make the full sanction appropriation and transfer as required, ODHS shall certify to the tax commissioner the amount of the sanction. *The tax commissioner will then deduct the sanction amount from the local government fund distribution and remit the amount directly to the CSEA to be deposited by the CSEA into a separate account to be used solely for support enforcement purposes.* If ODHS determines in the next program review that the CSEA has attained the scheduled improvement, the department shall certify its determination to the tax commissioner. Division (E)(1) of section 2301.35 of the Revised Code requires the tax commissioner to resume remitting to the county the entire amount of the local government fund distribution.

(F) *Payment of the sanction is a nonreimbursable expenditure and will not be counted toward maintenance of effort expenditures or the nonfederal share required of the CSEA pursuant to rules 5101:1-31-02 and 5101:1-31-71 of the Administrative Code. (Emphasis added.)*

Rule 5101:1-31-40(D)-(F) appears consistent with R.C. 2301.35(E)(1) in all respects except one: after the board of county commissioners makes an appropriation to the agency in the amount of the sanction, division D requires the agency to "disburse the sanction amount to ODHS within one hundred twenty days of receipt of the appropriation." 15 Ohio Admin. Code 5101:1-31-40(D). By providing that the agency shall disburse the sanction amount to the Department, the rule requires the agency to serve as a conduit for payment of the sanction to the Department. This is inconsistent with R.C. 2301.35(E)(1), which provides that the agency, not the Department, shall receive the proceeds of the sanction. The inconsistency, moreover, is a substantial one, for the rule establishes an entirely different recipient of funds that the county is legally obligated to pay as a type of penalty.

Consequently, under R.C. 2301.35(E)(1), the Department has no authority to adopt a rule

requiring that child support enforcement agencies disburse the sanction amounts to the Department. See generally *Hoover Universal, Inc. v. Limbach*, 61 Ohio St. 3d 563, 569, 575 N.E.2d 811, 816 (1991) ("[a] rule that is contrary to statute is invalid" (citing *Kroger Grocery & Baking Co. v. Glander*, 149 Ohio St. 120, 77 N.E.2d 921 (1948)); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*; 1993 Op. Att'y Gen. No. 93-014. It would, accordingly, be appropriate for the Department to reexamine the provisions of R.C. 2301.35(E)(1) and to modify its rules as appropriate to establish a procedure for implementing an interpretation of the statute that accords with its terms. See, e.g., Op. No. 92-037; 1984 Op. Att'y Gen. No. 84-007.

#### **Proposed Withholding of Sanctioned Funds**

Your letter indicates that county child support enforcement agencies "have encouraged the Department to hold the collected sanctions under [R.C. 2301.35(E)(1)] for eventual return." As discussed above, it does not appear that any sanctions under R.C. 2301.35(E)(1) are to be collected or held by the Department at all. The statutory scheme provides for the sanction amounts to be paid by a county directly to a child support enforcement agency for its use. Thus, the issue of "eventual return" is irrelevant to the operation of R.C. 2301.35(E)(1).

#### **R.C. 5101.94**

Your letter of request suggests that R.C. 5101.94 supports the theory that funds forfeited pursuant to R.C. 2301.35(E)(1) are to be collected and held by the Department for later redistribution to the offending county. That statute encourages compliance with particular requirements by providing for moneys to be withheld for future distribution. R.C. 5101.94 states, in part:

(A) If the state department of human services determines that a child support enforcement agency, county children services board, or county department of human services is not complying with any statute governing a program administered by the state department or with any rule adopted by the state department under such a statute, the state department may do one or more of the following:

....

(2) Pursuant to an order issued by the director, *withhold all or part of state or federal funds payable to the agency*, county board, or county department *until the agency, county board, or county department is in compliance with the statute or rules specified in the order....* (Emphasis added.)

Under this provision, moneys may be withheld and not distributed until compliance is achieved. This language is, however, different from the "financial sanction" language of R.C. 2301.35(E)(1), and an order issued by the Director pursuant to R.C. 5101.94(A)(2) is not a financial sanction established by rule pursuant to R.C. 2301.35(E)(1). Because the two statutory schemes thus are simply different from one another, moneys from a financial sanction imposed under R.C. 2301.35(E)(1) cannot be held for future distribution pursuant to R.C. 5101.94(A)(2).

#### **Conclusion**

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. When the Ohio Department of Human Services imposes a financial sanction upon a county pursuant to R.C. 2301.35(E)(1), the amount of the

sanction must, in accordance with R.C. 2301.35(E)(1), be paid to the county child support enforcement agency either by the board of county commissioners or, if the board of county commissioners does not make payment, by the Tax Commissioner from local government fund moneys allocated to the county.

2. The Ohio Department of Human Services has authority to adopt rules implementing any reasonable interpretation of R.C. 2301.35(E)(1) and may, in accordance with R.C. Chapter 119, modify its existing rules to achieve that purpose.
3. R.C. 2301.35(E)(1) provides that child support enforcement agencies shall receive the proceeds of sanctions imposed under R.C. 2301.35(E)(1), and any provision of rule that requires the proceeds to be disbursed to the Ohio Department of Human Services is inconsistent with the statutory scheme and exceeds the rulemaking authority granted to the Department.