

May 4, 2020

The Honorable S. Forrest Thompson
Medina County Prosecuting Attorney
60 Public Square
Medina, Ohio 44256

SYLLABUS:

2020-003

1. R.C. 325.33(B) requires that the board of county commissioners and the clerk of courts agree that there is an excess in the certificate of title administration fund before the county budget commission may resolve a dispute regarding the excess.
2. If the clerk of courts does not agree with the board of county commissioners that there is an excess in the certificate of title administration fund, the only remedy available to the board of county commissioners to enable the board to transfer money out of the fund is to petition for a writ of mandamus compelling the clerk of courts to agree that there is an excess.



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OPINION NO. 2020-003

The Honorable S. Forrest Thompson
Medina County Prosecuting Attorney
60 Public Square
Medina, Ohio 44256

Dear Prosecutor Thompson:

You have requested an opinion regarding the relationship between R.C. 325.33 and the certificate of title administration fund (“the Fund”). I have reworded your questions as follows:

1. Does R.C. 325.33(B) require that the board of county commissioners and the clerk of courts agree that there is an excess in the Fund before the county budget commission may resolve a dispute regarding the excess?
2. What is the remedy available to the board of county commissioners to transfer money out of the Fund where the clerk of courts refuses to agree that an excess exists in the Fund?

Background of the Certificate of Title Administration Fund

R.C. 325.33 creates the certificate of title administration fund, which this opinion will call “the Fund.” Certain fees and taxes received by the county clerk of courts related to vehicle title registration are placed into the Fund. R.C. 325.33(A); 1548.06(E)(1);

4503.03(A)(b)(ii); 4503.036(C); 4505.06(B)(2) and (E); 4505.09(C)(2)(d); 4505.103(C); 4505.14(C); 4519.55(B); 4519.63(C). Fees credited to the Fund are used to pay the costs incurred by the clerk of courts in processing titles. R.C. 325.33(A).

R.C. 325.33(B) allows for excess money in the Fund to be transferred to the county general fund, and establishes a procedure to be used by county officials to decide if there is an excess. R.C. 325.33(B) states:

If the board of county commissioners and the clerk of courts agree that the money in the fund exceeds what is needed to pay the costs specified in division (A) of this section, the excess may be transferred to the county general fund and used for other county purposes. If the board of county commissioners and the clerk of courts are unable to agree on the amount of any such excess, the county budget commission shall determine the amount that will be transferred to the county general fund.

Your letter concerns the meaning of this statute.

Does R.C. 325.33(B) require that the board of county commissioners and clerk of courts agree that there is an excess in the Fund before the county budget commission may resolve a dispute regarding the excess?

You first ask whether the clerk of courts and the board of county commissioners must agree that there is an excess of funds before any dispute regarding the excess can be decided by the county budget commission. Again, the statute provides that, “[i]f the board of county commissioners and the clerk of courts are unable to agree *on the amount of any such excess*, the county budget commission shall determine the

amount that will be transferred to the county general fund.” Your question asks whether the county budget commission is able to transfer money to the county general fund when the clerk of courts and the county commissioners are unable to agree that there is an excess in the first place.

The answer to your question is this: unless the clerk of courts and the board of county commissioners agree that there is an excess in the Fund, the statute does not permit the county budget commission to decide how much money to transfer from the Fund to the county general fund. This follows from the plain language of R.C. 325.33(B). That provision has two sentences. The first states that if the clerk of courts and the board of county commissioners *agree* that the funds exceed what is needed to pay the costs of processing titles and performing the duties of a deputy registrar, then funds may be transferred to the county general fund. This sentence provides no authority to transfer the funds if the clerk of courts and the board of county commissioners do not agree that there is an excess of funds. The second sentence sets forth the procedure to be used if the clerk of courts and the board of county commissioners cannot agree on “the amount of any such excess”; more precisely, it says that the county budget commission will decide the amount. This second sentence gives the county budget commission no power to decide whether there is an excess in the first place, nor does it empower the county budget commission to transfer money to the county general fund unless the clerk of court and board of county commissioners first agree there is an excess.

In short, nothing in R.C. 325.33(B) empowers the county budget commission to transfer any excess money out of the Fund unless other actors first decide that there is an excess in the first place. Without amending R.C. 325.33(B), there is no way to resist this conclusion. And amending the statute is a job for the General Assembly.

Is there a remedy available to the board of county commissioners if the clerk of courts does not agree that there is an excess in the Fund?

You next ask if there is a remedy available to the board of county commissioners that enables money in the Fund to be transferred to the county general fund if the clerk of courts does not agree that there is an excess in the Fund.

As discussed above, the county budget commission decides only the amount of an excess in the Fund, not whether an excess exists in the first place. No other language in R.C. 325.33(B) allows the board of county commissioners to compel the county budget commission to decide whether there is an excess. Nor does any language in R.C. 325.33(B) allow the board of county commissioners or county budget commission to transfer money out of the Fund without the clerk of court's first agreeing that there is an excess in the Fund.

No other Revised Code section that references the Fund provides any procedure for the board of county commissioners to transfer money from the Fund to the county general fund. R.C. 1548.06(E)(1); 4503.03(A)(b)(ii); 4503.036(C); 4505.06(B)(2) and (E); 4505.09(C)(2)(d); 4505.103(C); 4505.14(C); 4519.55(B); 4519.63(C). Nor is there any other statute that creates a procedure for the board of county commissioners to transfer money out of the Fund without following the procedure set forth in R.C. 325.33(B).

If, however, the board of county commissioners believes the clerk is abusing his or her discretion when the clerk of courts decides, pursuant to R.C. 325.33(B), that there is not an excess in the Fund, the board of county commissioners could petition for a writ of mandamus to compel the clerk of courts to agree that there is an excess of funds. Mandamus may be used to resolve budgeting disputes between government offices

when no other adequate legal remedy exists. *See State ex rel. Morley v. Lordi*, 72 Ohio St. 3d 510, 511-512, 651 N.E.2d 937 (1995); *State ex rel. Smith v. Culliver*, 186 Ohio App. 3d 534, 2010-Ohio-339, 929 N.E. 2d 465 (5th Dist. 2010); *Geauga Cty. Bd. of Commrs. v. Geauga Cty. Sheriff*, 11th Dist. Geauga No. 2002-G-2484, 2003-Ohio-7201; *State ex rel. Trussell v. Bd. of Cty. Commrs.*, 155 Ohio App. 3d 230, 2003-Ohio-6084 (4th Dist.). The clerk of court's decision regarding whether there is an excess of money in the Fund is a budgeting decision, and as such, is a discretionary duty. *See State ex rel. AFSCME v. Taft*, 156 Ohio App. 3d 37, 2004-Ohio-493, ¶ 59 (3rd Dist.). Because the clerk of court's decision is discretionary, a writ of mandamus may be issued only if the clerk of courts abused his or her discretion. *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St. 3d 247, 249, 673 N.E.2d 1281 (1997). The standard for finding an abuse of discretion is high, and the term "implies an attitude that is unreasonable, arbitrary or unconscionable." *Id.* This opinion takes no position on whether any specific factual situation meets this standard.

You also ask if there is a formula or mechanism that can be used to determine if there is an excess of funds in the Fund. Neither R.C. 325.33 or any other statutes that reference the Fund contain such a formula. However, many of the mandamus cases cited in this opinion also discuss how the court evaluated whether a government office abused its discretion when creating a budget or making a budget request. These cases may be useful to your inquiry. *See State ex rel. Smith v. Culliver*, 186 Ohio App. 3d 534, 2010-Ohio-339, 929 N.E.2d 465 (5th Dist. 2010); *Geauga Cty Bd. of Commrs. v. Geauga Cty. Sheriff*, 11th Dist. Geauga No. 2002-G-2484, 2003-Ohio-7201; *State ex rel. Trussell v. Bd. of Cty. Commrs.*, 155 Ohio App. 3d 230, 2003-Ohio-6084 (4th Dist.); *see also State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.*, 90 Ohio St. 3d 55, 61-62, 734 N.E.2d 811 (2000); *State ex rel. Weaver v. Lake Cty. Bd. of Commrs.*, 62 Ohio St. 3d 204, 206-207, 580 N.E.2d 1090 (1991).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. R.C. 325.33(B) requires that the board of county commissioners and the clerk of courts agree that there is an excess in the certificate of title administration fund before the county budget commission may resolve a dispute regarding the excess.

2. If the clerk of courts does not agree with the board of county commissioners that there is an excess in the certificate of title administration fund, the only remedy available to the board of county commissioners to enable the board to transfer money out of the fund is to petition for a writ of mandamus compelling the clerk of courts to agree that there is an excess.

Respectfully,



DAVE YOST
Ohio Attorney General