

**OPINION NO. 2012-039****Syllabus:**

2012-039

The judges of a county court, in the reasonable exercise of their discretion, may use moneys in a special projects fund established under R.C. 1907.24(B)(1) 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. (2009 Op. Att’y Gen. No. 2009-001 (syllabus, paragraph 1), distinguished.)

---

**To: Ryan Styer, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio**

**By: Michael DeWine, Ohio Attorney General, November 14, 2012**

You have requested an opinion whether moneys in a county court’s special projects fund established under R.C. 1907.24(B)(1) may be used 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. For the following reasons, a county court has this authority.

**Authority of a County Court to Expend Moneys**

A county court is a creature of statute that is vested with judicial and administrative powers. *See* R.C. Chapter 1907; *Gallagher v. Billmaier*, 79 Ohio Law Abs. 417, 421, 154 N.E.2d 472 (Ct. App. Lucas County 1958); *Williams v. Bjork*, 112 Ohio Misc. 2d 57, 60, 753 N.E.2d 995 (Ashtabula County Ct. 2001). *See generally Zangerle v. Ct. of Common Pleas of Cuyahoga County*, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (syllabus, paragraph 2) (“[c]ourts of general jurisdiction, whether named in the Constitution or established pursuant to the provisions thereof,

possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government”). When acting in an administrative capacity, a county court has the powers expressly delegated by the General Assembly and the implied authority necessary to carry into effect the powers expressly delegated. *See State ex rel. Hawke v. Le Blond*, 108 Ohio St. 126, 135, 140 N.E. 510 (1923); *Gallagher v. Billmaier*, 79 Ohio Law Abs. at 421; *Williams v. Bjork*, 112 Ohio Misc. 2d at 60; 2011 Op. Att’y Gen. No. 2011-047 at 2-381.

A county court must have clear and distinct authority to act in financial transactions. *See State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2011 Op. Att’y Gen. No. 2011-047 at 2-381. And, any doubt regarding a financial expenditure of a county court must be resolved “in favor of the public and against the grant of power.” *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917) (syllabus, paragraph 3); *see* 2011 Op. Att’y Gen. No. 2011-047 at 2-381; *see, e.g.*, 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”); 2001 Op. Att’y Gen. No. 2001-006 (syllabus) (“[a] court of common pleas may not use fees generated pursuant to R.C. 2303.201(E)(1) to pay the county sheriff for security services that the sheriff is required by R.C. 311.07(A) to provide to the court”).

#### **Authority of a County Court to Acquire and Pay for Community Service Programs**

Your particular inquiry concerns the authority of a county court to expend moneys it collects under R.C. 1907.24(B)(1). This statute authorizes a county court to impose certain costs, in addition to all other court costs, to provide funding for various projects, programs, or services of the court:

The county court 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.

All moneys collected under division (B) of this section 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 in

an amount no greater than the actual cost to the court of a project.  
(Emphasis added.)

A county court thus may use moneys in its special projects fund established under R.C. 1907.24(B)(1) to pay for special projects of the court. The language of R.C. 1907.24(B)(1) demonstrates further that the General Assembly intended to allow a county court to use moneys in its special projects fund to pay for a “community service program[]” when the court determines that the program will contribute to the efficient operation of the court.<sup>1</sup> See generally *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) (“[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court’s only task is to give effect to the words used”).

The term “community service program,” as used in R.C. 1907.24(B)(1), is not statutorily defined. However, the term has acquired a particular meaning when used in the context of county court proceedings. See generally *State ex rel. Comm. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. City of Lakewood*, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362, at ¶20 (“[i]t is a fundamental rule of statutory construction that statutes relating to the same subject matter should be construed together” (quoting *State ex rel. Thurn v. Cuyahoga County Bd. of Elections*, 72 Ohio St. 3d 289, 294, 649 N.E.2d 1205 (1995))); *State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) (“[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law”).

R.C. 1907.02(A)(1) vests a county court with jurisdiction to conduct proceedings in “misdemeanor cases.” Except as otherwise provided by law, a county court “that imposes a sentence upon an offender for a misdemeanor may

<sup>1</sup> As explained later in this opinion, the criminal sentencing laws of Ohio explicitly authorize a county court to use community service programs in the sentencing of persons who are convicted of, or plead guilty to, a misdemeanor. See R.C. 2929.27(A)(3); see also R.C. 2919.22(F); R.C. 2929.28(B); R.C. 2951.02(B); R.C. 2951.041(D). Nevertheless, pursuant to R.C. 1907.24(B)(1), the judges of a county court, in the reasonable exercise of their discretion, must determine whether a particular community service program contributes to the efficient operation of the court before using special project moneys to pay for the program. See generally 2012 Op. Att’y Gen. No. 2012-015 at 2-126 (“[t]he Revised Code establishes many funds or categories of moneys that, like the law enforcement trust fund in R.C. 2981.13, are meant to benefit a particular office or governmental entity and are to be used for a particular purpose. On numerous occasions, the Attorney General has been asked whether moneys from these 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” (citations omitted)).

impose on the offender any sanction or combination of sanctions under [R.C. 2929.24-.28].” R.C. 2929.22(A); *see* R.C. 2929.25(A).

Pursuant to R.C. 2929.27(A)(3), a county court has the authority in certain instances to impose, as a sanction, a term of “community service” when imposing a sentence upon a person who is convicted of, or pleads guilty to, a misdemeanor. *See* R.C. 2919.22(F); R.C. 2929.28(B); *see also* R.C. 2951.02(B) (a county court “may permit any offender convicted of a . . . misdemeanor to satisfy the payment of a fine imposed for the offense . . . by performing supervised community service work as described in this division if the offender requests an opportunity to satisfy the payment by this means and if the court determines that the offender is financially unable to pay the fine”); R.C. 2951.041(D) (in certain cases, a county court may grant a person’s request for intervention in lieu of conviction and require the person to perform community service). Guidelines for imposing a term of community service are set forth in R.C. 2951.02. This statute provides, in relevant part:

If an offender is convicted of or pleads guilty to a misdemeanor, the court may require the offender, as a condition of the offender’s sentence of a community control sanction, to perform supervised community service work in accordance with this division . . . . The supervised community service work shall be under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions of the state, or agencies of the state or any of its political subdivisions, or under the authority of charitable organizations that render services to the community or its citizens, in accordance with this division . . . .

. . . .

The supervised community service work that may be imposed under this division shall be subject to the following limitations:

. . . .

(2) An agency, political subdivision, or charitable organization must agree to accept the offender for the work before the court requires the offender to perform the work for the entity.

. . . .

(4) Community service work that a court requires under this division shall be supervised by an official of the agency, political subdivision, or charitable organization for which the work is performed or by a person designated by the agency, political subdivision, or charitable organization. The official or designated person shall be qualified for the supervision by education, training, or experience, and periodically shall report, in writing, to the court and to the offender’s probation officer concerning the conduct of the offender in performing the work.

*See generally* R.C. 307.932(H)(4)(d) (“[i]f the administrator of [a community

alternative sentencing] center determines that community service is appropriate and if the eligible offender will be confined for more than ten days at the center, the eligible offender may be required to participate in community service activities approved by the political subdivision served by the court . . . . Community service activities required under this division shall be supervised by the court or an official designated by the board of county commissioners or affiliated group of boards of county commissioners that established and is operating the center”); 1982 Op. Att’y Gen. No. 82-041 (syllabus) (“[p]olitical subdivisions and agencies which accept the services of persons on probation to perform community services pursuant to R.C. 2951.02(G) [(now R.C. 2951.02(B))], and which do not provide any compensation or remuneration to such individuals, are not required to make contributions to either the workers’ compensation fund or the unemployment compensation fund on behalf of those individuals”).

R.C. 2951.02(B) authorizes a county court to require a person to perform supervised community service in a program established by (1) a health district, park district, county, municipal corporation, township, or other political subdivision of the state, (2) an agency of the state or any of its political subdivisions, or (3) a charitable organization that renders services to the community or its citizens. In other words, a county court may require a person who is convicted of, or pleads guilty to, a misdemeanor to participate in a community service program established pursuant to R.C. 2951.02(B).

Reading R.C. 1907.24(B)(1) in conjunction with the provisions of law authorizing a county court to impose a term of community service indicates that the term “community service programs,” as used in R.C. 1907.24(B)(1), refers to community service programs established pursuant to R.C. 2951.02(B). *See State ex rel. Comm. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. City of Lakewood*, 100 Ohio St. 3d 252, at ¶20; *State v. Moaning*, 76 Ohio St. 3d at 128. *See generally* R.C. 1.42 (“phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly”). A county court therefore may use moneys in a special projects fund established under R.C. 1907.24(B)(1) to pay for the community service programs described in R.C. 2951.02(B).<sup>2</sup>

#### **Authority of a County Court to Purchase Supplies and Equipment for a Community Service Program**

Although a county court has authority to use a special projects fund established under R.C. 1907.24(B)(1) to finance community service programs, nothing in the Ohio Constitution, Revised Code, Ohio Rules of Criminal Procedure,

<sup>2</sup> No provision of law requires a county court to fund the operations of community service programs used by the court. However, to ensure access to community service programs that will accept persons who are convicted of, or plead guilty to, a misdemeanor, it may be necessary for a county court to provide funding for the programs. Absent such funding, a county court may not have access to enough community service programs to serve the needs of the court.

or Rules of Superintendence for the Courts of Ohio directs the manner in which a county court may use moneys in a special projects fund to provide such financing. This means that the judges of a county court have the discretion and implied power to use special projects fund moneys in whatever manner is reasonably necessary to make community service programs available to persons who are convicted of, or plead guilty to, a misdemeanor. *See Fed. Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917) (“[w]hen a statute clearly confers a grant of power to do a certain thing, without placing any limitations as to the manner or means of doing it, certainly the grantee of such power is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly in the grantee’s interests”); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph 4) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”), *aff’d sub nom. Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916); *State ex rel. Attorney General v. Morris*, 63 Ohio St. 496, 512, 59 N.E. 226 (1900) (if it should be found that certain things are authorized to be done by public officials, “and no statute can be found prescribing the exact mode of performing that duty or thing, the presumption would be that the general assembly intended that it might be performed in a reasonable manner, not in conflict with any law of the state”).

If the judges of a county court, in the reasonable exercise of their discretion, determine that it is prudent to use moneys in a special projects fund established under R.C. 1907.24(B)(1) to directly purchase supplies and equipment for use in a community service program, the county court may do so.<sup>3</sup> *See generally State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); 2004 Op. Att’y Gen. No. 2004-032 at 2-294 (“the prosecuting attorney must exercise discretion in determining the manner in which to meet [his] various obligations”). Accordingly, the judges of a county court, in the reasonable exercise of their discretion, may use moneys in a special projects fund established under R.C. 1907.24(B)(1) to purchase trees, tree grates, bricks, sand, sod, and related materials that will be installed or

<sup>3</sup> It is beyond the scope of the formal opinion process of the Attorney General to definitively determine whether a particular method of funding community service programs from a special projects fund established under R.C. 1907.24(B)(1) is a reasonable exercise of discretion. *See generally* 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”); 2001 Op. Att’y Gen. No. 2001-032 at 2-193 (“the Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials”); 1989 Op. Att’y Gen. No. 89-008 at 2-33 (the Attorney General is not authorized to exercise on behalf of another governmental entity discretion that the General Assembly has granted to that entity).

placed upon public property by persons participating in a community service program, provided the program contributes to the efficient operation of the court.

#### **Applicability of 2009 Op. Att’y Gen. No. 2009-001**

Materials provided in conjunction with your inquiry suggest that 2009 Op. Att’y Gen. No. 2009-001 may support the conclusion that a county court does not have the authority to use moneys in a special projects fund established under R.C. 1907.24(B)(1) to purchase trees, tree grates, bricks, sand, sod, and related materials for use by a community service program. 2009 Op. Att’y Gen. No. 2009-001 considered whether a county municipal court may donate special projects fund moneys collected under R.C. 1901.26(B)(1) to help fund programs that are not established or operated by the court.<sup>4</sup> In that opinion, the county municipal court planned to simply “donate portions of its special projects moneys to programs operated by individuals or entities other than the court. In making such donations, the court would neither acquire something of its own nor pay for any goods or services rendered to the court.” 2009 Op. Att’y Gen. No. 2009-001 at 2-3. Consequently, R.C. 1901.26(B)(1) does not authorize a 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.” *Id.* (syllabus, paragraph 1).

In contrast to the situation addressed in 2009 Op. Att’y Gen. No. 2009-001, your inquiry does not involve a donation of moneys from a special projects fund to a private or public program. Instead, a county court is using moneys from a special projects fund established under R.C. 1907.24(B)(1) to pay for the services of a community service program that will accept persons who are convicted of, or plead guilty to, a misdemeanor. As explained above, R.C. 1907.24(B)(1) expressly authorizes a county court to use moneys in a special projects fund established under R.C. 1907.24(B)(1) to pay for community service programs that will accept persons who are convicted of, or plead guilty to, a misdemeanor.

Moreover, it is presumed that the General Assembly is aware that community service programs used by a county court are operated by (1) health districts, park districts, counties, municipal corporations, townships, and other political

<sup>4</sup> R.C. 1901.26(B)(1) contains language similar to that set out in R.C. 1907.24(B)(1). R.C. 1901.26(B)(1) states in part:

The municipal court 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.

subdivisions of the state, (2) agencies of the state and its political subdivisions, and (3) charitable organizations that render services to the community or its citizens. R.C. 2951.02(B). 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”); *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900) (“[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject”). Given the specific statutory plan governing the operation of community service programs set forth R.C. 2951.02(B), it follows that the General Assembly intended to authorize a county court to use moneys in a special projects fund established under R.C. 1907.24(B)(1) to finance community service programs operated by the private and public entities listed therein.<sup>5</sup> Accordingly, the analysis and conclusions of 2009 Op. Att’y Gen. No. 2009-001 have no application to situations involving the expenditure of moneys in a special projects fund established under R.C. 1907.24(B)(1) to finance community service programs.

#### **Conclusion**

Based on the foregoing, it is my opinion, and you are hereby advised that the judges of a county court, in the reasonable exercise of their discretion, may use moneys in a special projects fund established under R.C. 1907.24(B)(1) 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. (2009 Op. Att’y Gen. No. 2009-001 (syllabus, paragraph 1), distinguished.)