

OPINION NO. 82-003

Syllabus:

1. Pursuant to R.C. 117.01 and 117.10, the Bureau of Inspection and Supervision of Public Offices in the Office of the Auditor of State may audit the accounts of public moneys held by the officers of institutions within the Department of Mental Health, regardless of whether such moneys are state general fund moneys or whether they have been appropriated by the legislature.
2. Money accounted for in individual patient accounts authorized by R.C. 5119.35 and in Industrial and Entertainment Funds created pursuant to R.C. 5119.36, and held in trust for the benefit of patients of institutions within the Department of Mental Health, are "public moneys" for purposes of R.C. 117.01 and 117.10 and are, therefore, subject to examination by the Bureau of Inspection and Supervision of Public Offices.
3. Pursuant to R.C. 117.01, the expense of examinations made by the Bureau of Inspection and Supervision of Public Offices of the accounts of public moneys of the Department of Mental Health must be paid to the Bureau on statements rendered by the Auditor of State.
4. The Department of Mental Health must bear those costs of examinations of its accounts made by the Bureau of Inspection and Supervision of Public Offices which are enumerated in R.C. 117.15.

To: Myers R. Kurtz, Director, Department of Mental Health, Columbus, Ohio
By: William J. Brown, Attorney General, March 1, 1982

I have before me your request for my opinion concerning the propriety of charges made by the Auditor of State to your office for examination expenses. Although you have requested an informal opinion the questions raised appear to be of general applicability to all departments of state government and I have, thus, decided to respond formally. Your specific questions are as follows:

1. Does the Auditor have any statutory authority for auditing nongeneral revenue funds of the Department of Mental Health that have not been appropriated by the legislature?
2. If he does have such authority, which nongeneral revenue funds that have not been appropriated by the legislature may he audit?
3. What is the statutory authority for the Auditor to charge this department for [an audit of] nongeneral revenue funds that have not been appropriated by the legislature?
4. If there is statutory authority for question #3, what types of nongeneral funds that have not been appropriated by the legislature can the Auditor charge us for auditing?
5. Is section 117.05 of the Revised Code the statutory authority that determines the allowable expenses for which the Auditor may charge this Department, i.e. compensation of state examiners, their expenses, and the cost of typing reports?
6. If not, what is the statutory authority that details the allowable

expenses for which the Auditor may charge the Department and what does it allow?

7. Whether or not there is statutory authority for the Auditor to charge this Department for audits, is there any statutory authority for this department to dispute the amount of the Auditor's charges?
8. If there is statutory authority per question #7, what is the procedure for disputing the charges?

You have stated, by way of background information, that your particular concern is with charges made by the Auditor for the cost of examining funds which are internally controlled by individual institutions of your Department. You have described the two funds which are of concern to you as follows:

the Client Fund consists of money received from social security, Veteran's Administration, Railroad Retirement, private pensions and from friends and relatives of patients. The use of this fund is regulated by section 5119.35 of the Revised Code and Administrative Rule 5122-9-05. The funds are [placed in individual accounts and] held in trust for each client for his personal needs such as health and beauty aids, commissary purchases and other goods that will help him live as normal life as possible within the institution. The Industrial and Entertainment Fund consists of commissary profits, interest on savings, donations, sales activities, and vending machine commissions. This fund is authorized by section 5119.36 of the Revised Code and is regulated by Administrative Rule 5122-9-08. The use of this fund is limited to purchases which exclusively benefit clients and cannot be used for the benefit of any staff member. The use of the money is primarily for recreation and entertainment including supplies, equipment and maintenance, films, Christmas decorations and presents, and books and magazines.

In answering your first and second questions I am assuming that the nongeneral revenue funds not appropriated by the legislature which are of concern to you are the two funds indicated above.

The Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State is required by R.C. 117.01 to "inspect and supervise the accounts and reports of all public offices as provided in sections 117.01 to 117.19 of the Revised Code." "Public office" as defined by R.C. 117.01(A) for purposes of R.C. Chapter 117 means, inter alia, any state agency. "State Agency" means every organized body, office, agency, or institution established by the laws of the state for the exercise of any function of state government." R.C. 117.01(B). The Department of Mental Health and the institutions under its jurisdiction which exercise the functions set forth in R.C. Chapter 5119 are clearly "public offices" the accounts of which the Bureau must inspect pursuant to R.C. 117.01. See 1938 Op. Att'y Gen. No. 3517, vol. III, p. 2471. See also 1941 Op. Att'y Gen. No. 3651, p. 234. The statute speaks in general terms requiring the inspection of "the accounts and reports" of such offices without limitation as to type of account. Specifically, it does not limit such inspection to general revenue funds or funds appropriated by the legislature.

It appears from your inquiry that you do not view accounts of the Client and Industrial and Entertainment funds as accounts of the particular institutions since the moneys in those funds are merely held in trust by the officials in charge of the institutions. 1956 Op. Att'y Gen. No. 7631, p. 944; 1921 Op. Att'y Gen. No. 1994, vol. I, p. 301; R.C. 5119.35 (money or property deposited with managing officers of institutions on patients' behalf "shall remain in the hands of such officers in appropriate accounts for use accordingly"). To the contrary, R.C. 117.10, which

describes the procedures for filing and enforcing the reports of examinations made by the Bureau, clearly indicates that all public moneys are subject to examination. R.C. 117.10 defines "public money" to include "all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance, order or otherwise. . . ." As you indicated in your request, the moneys in question are collected by the officers in charge of the institutions in accordance with R.C. 5119.35 (funds and property of patient) and 5119.36 (Industrial and Entertainment Fund; Commissary Fund). They, therefore, come within the definition of public moneys which are subject to examination as set forth in R.C. 117.01 and 117.10.

In additional support of this conclusion, I have previously opined that the definition of public money set forth in R.C. 117.10 encompasses money donated from a private source and held in trust by a public official. 1980 Op. Att'y Gen. No. 80-060 (student activity funds derived from a private source are public funds since they are received by a public official, under color of law); 1975 Op. Att'y Gen. No. 75-079 (development funds received from private sources and held in trust by Ohio State University are "public money" pursuant to R.C. 117.10). One of my predecessors explained the public aspect of moneys in the Commissary Fund and the Entertainment and Amusement Fund held by officials of the Ohio State Reformatory, opining: "the funds in question are public monies in the sense that the public has an interest in their proper disbursement and use, they are not public funds in the sense that they belong to the state, or to the people of the state." 1941 Op. No. 3651 at 253.¹ Based on the foregoing, I conclude that, pursuant to R.C. 117.01 and 117.10, the Bureau of Inspection and Supervision of Public Offices in the office of the Auditor of State may audit the accounts of all public moneys held by the officers of institutions within the Department of Mental Health, regardless of whether such moneys are state general fund moneys or whether they have been appropriated by the legislature. Specifically, the Bureau, pursuant to R.C. 117.01 and 117.10, may audit the accounts of the Department of Mental Health which have been created pursuant to R.C. 5119.35 and 5119.36.

Your third and fourth questions concern the authority of the Auditor of State to charge for the costs incurred in auditing the accounts of the Department of Mental Health. The authority of the Auditor of State to charge certain state agencies for the expense of examinations made by the Bureau was granted by the legislature in Am. H.B. 204, 113th Gen. A. (1979) (eff. July 30, 1979). That amendment to R.C. 117.01 provides as follows:

The expense of bureau examinations of state agencies that are supported in whole or in part by special accounts or other nongeneral revenue fund money from which appropriations are made, except those agencies assessed under appropriations legislation for all services provided to such agencies by the attorney general, auditor of

¹But see 1956 Op. No. 7631 (wherein one of my predecessors opined that Industrial and Entertainment funds administered by wardens and superintendents of various state institutions are not public moneys for purposes of the Uniform Depository Act, R.C. Chapter 135). According to the Uniform Depository Act, "public moneys" are those which come "lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision." R.C. 135.01. In 1956 Op. No. 7631 my predecessor opined at 945: "Obviously, these [Industrial and Entertainment] funds are not in the possession of the Treasurer of State but are in the possession and custody of the heads of institutions which administer them." Since the definitions of "public money" in R.C. 135.01 for purposes of the Uniform Depository Act and in R.C. 117.10 for purposes of examination by the Bureau of Inspection and Supervision of Public Offices differ, I do not feel bound by my predecessor's determination that Industrial and Entertainment funds are not "public moneys."

state, and treasurer of state, shall be paid to the bureau on statements rendered by the auditor of state.

As I stated above, the Department of Mental Health is a "state agency" for purposes of R.C. 117.01. R.C. 117.01(B); see 1979 Op. Att'y Gen. No. 79-015 (Department of Mental Health and Retardation is an instrumentality or "other agency" of the state for purposes of R.C. Chapter 3307). The language of R.C. 117.01 does not require that the expenses of Bureau examinations of all state agencies be paid by such agencies to the Bureau; rather, only those agencies which "are supported in whole or in part by special accounts or other nongeneral revenue fund money from which appropriations are made" must pay for the expense of the examination for their accounts. The Department of Mental Health is supported at least in part by such special revenue. For example, appropriations are made from the State and Federal Special Revenue Funds. Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981); Am. H.B. 204.

R.C. 117.01 exempts from payments any agency which has already been assessed for services by the Attorney General, Auditor of State, and Treasurer of State under appropriations legislation. One such agency is the Department of Liquor Control. Am. H.B. 694, section 92 (uncodified) is illustrative of the type of assessment contemplated by the General Assembly in R.C. 117.01. Section 92 provides:

There is hereby appropriated from any moneys in the state treasury to the credit of the Liquor Control Fund, and not otherwise appropriated, \$1,365,897 for the fiscal year ending June 30, 1982, and \$1,441,021 for the fiscal year ending June 30, 1983, which shall be transferred to the General Revenue Fund for reimbursement of centralized services as set forth in Section 99 of this act.

Am. H.B. 694, section 99 (uncodified) defines "centralized services" to include "all services provided by the Attorney General, Auditor of State, Treasurer of State, and any other agencies receiving General Revenue Funds providing such services." The appropriations legislation for the Department of Mental Health which is contained in Am. H.B. 694, section 52 (uncodified) does not contain an assessment of the type contemplated by R.C. 117.01 and exemplified by the above referenced portion of section 92. Therefore, I conclude that the Department is not exempted from the payment provision in R.C. 117.01. In specific answer to your third and fourth questions, R.C. 117.01 authorizes the Auditor of State to charge the Department of Mental Health for the expense of examinations of the Department's nongeneral revenue funds that have not been appropriated by the legislature.²

Your fifth and sixth questions relate to the determination of the cost of Bureau examinations of your Department. You ask whether R.C. 117.05 controls the determination of these costs. R.C. 117.05 deals with a uniform system of

² Although the records of funds held by officers of institutions pursuant to R.C. 5119.35 and 5119.36 are to be audited, such funds may not be used to pay for the expense of Bureau examinations. Funds held pursuant to R.C. 5119.35 are paid over on behalf of a particular patient and must be used accordingly. Similarly, funds held pursuant to R.C. 5119.36 in the Industrial and Entertainment Fund of an institution may be used "only for the entertainment and welfare of patients." When spending trust moneys, an officer trustee is bound by the limitations set forth in the instrument creating the trust. Shuster v. The North American Mortgage Loan Co., 139 Ohio St. 315, 40 N.E.2d 130 (1942). Since the payment of the expense of the examination made by the Bureau of Inspection and Supervision of Public Offices does not appear to be contemplated in either R.C. 5119.35 or 5119.36, funds held pursuant to such sections may not be used for the payment of such expenses. Cf. 1945 Op. Att'y Gen. No. 254, p. 255 (express provision of law is required in order to charge special tax funds with the cost of Bureau examinations).

accounting to be established by the Auditor of State and makes no provision for charges of any type. I assume, therefore, that you intended to ask whether R.C. 117.15 controls the expenses which may be billed to your Department by the Bureau. R.C. 117.15 deals with the cost of operation of the Bureau of Inspection and Supervision of Public Offices, and with regard to the distribution of the costs of Bureau examinations of "public offices" R.C. 117.15 provides:

The necessary expenses of the maintenance and operation of the administrative office of the bureau of inspection and supervision of public offices shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. The total amount of compensation paid state examiners, their expenses, the cost of employees assigned to assist the state examiners, the cost of experts employed pursuant to section 117.03 of the Revised Code, and the cost of typing, reviewing, and copying reports shall be borne by the public office to which such state examiners are so assigned by the chief inspector and supervisor or deputy inspectors and supervisors of public offices, except that annual vacation and sick leave of state examiners, employees, and typists shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. State examiners shall be compensated by the taxing district or other public office under examination for activities undertaken pursuant to division (B) of section 117.03 and division (D) of section 117.091 of the Revised Code. (Emphasis added.)

While R.C. 117.01 requires that the expense of bureau examinations of state agencies be paid to the Bureau of Inspection and Supervision of Public Offices on statements rendered by the Auditor of State, it does not specify what costs are to be included within such expense. Such costs are, however, clearly set forth in R.C. 117.15 for all public offices. Since, as I concluded above, the Department of Mental Health is a "public office" for purposes of R.C. Chapter 117, it is responsible for payment of the costs enumerated in R.C. 117.15 when billed therefor by the Auditor of State pursuant to R.C. 117.01.

Your seventh and eighth questions concern the procedure for disputing charges made by the Auditor for the cost of Bureau examinations. I am not aware of any administrative procedure or specific statutory scheme by virtue of which such charges may be disputed by your Department. If, in fact, it is your belief that the Auditor has abused his discretion with regard to the amount charged for the expenses of examinations made by the Bureau of Inspection and Supervision of Public Offices, and the matter cannot be resolved by your department and the Auditor's office, it appears that a court of competent jurisdiction would provide the appropriate forum for the resolution of your dispute.

In summary, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 117.01 and 117.10, the Bureau of Inspection and Supervision of Public Offices in the Office of the Auditor of State may audit the accounts of public moneys held by the officers of institutions within the Department of Mental Health, regardless of whether such moneys are state general fund moneys or whether they have been appropriated by the legislature.
2. Money accounted for in individual patient accounts authorized by R.C. 5119.35 and in the Industrial and Entertainment Funds created pursuant to R.C. 5119.36, and held in trust for the benefit of patients of institutions within the Department of Mental Health, are "public moneys" for purposes of R.C. 117.01 and 117.10 and are, therefore, subject to examination by the Bureau of Inspection and Supervision of Public Offices.

3. Pursuant to R.C. 117.01, the expense of examinations made by the Bureau of Inspection and Supervision of Public Offices of the accounts of public moneys of the Department of Mental Health must be paid to the Bureau on statements rendered by the Auditor of State.
4. The Department of Mental Health must bear those costs of examinations of its accounts made by the Bureau of Inspection and Supervision of Public Offices which are enumerated in R.C. 117.15.