

July 30, 2014

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

SYLLABUS:

2014-030

1. When a county law library resources board deems it necessary, and subject to the approval of the board of county commissioners, a county law library resources board may contract with and pay a vendor to digitize public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website. A county law library resources board shall, in the reasonable exercise of its discretion, determine that the expenditure of monies for the contract is necessary to further the board's statutory purposes and responsibilities, does not violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.
2. A county law library resources board may purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library, provided that, in the reasonable exercise of its discretion, the board determines that the purchases are necessary to further the board's statutory purposes and responsibilities, the purchases do not violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and the expenditure of monies to make the purchases is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Opinions Section
Office 614-752-6417
Fax 614-466-0013

30 East Broad Street, 15th Floor
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

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OPINION NO. 2014-030

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

Dear Prosecutor Burkard:

You have requested an opinion regarding the authority of a county law library resources board (LLRB) to contract with a vendor for certain services and to expend its funds to purchase certain items. You ask the following questions:¹

1. May a county law library resources board contract with and pay a vendor to digitize² public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website?³
2. May a county law library resources board purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library?

¹ For ease of analysis we have consolidated your several questions.

² “Digitize” is defined as “to convert (as data or an image) to digital form[.]” *Merriam-Webster’s Collegiate Dictionary*, 349 (11th ed. 2005). Accordingly, for purposes of this opinion, we understand “digitize” to mean the process of converting records from paper form to digital form so that images of the records may be posted on a website. *See id.* (defining “digital” as “**4** : of, relating to, or being data in the form of esp. binary digits ... **7** : ... characterized by electronic and esp. computerized technology”).

³ It is our understanding that the third-party website is a website that is operated by a service provider that is not affiliated with the county recorder, clerk of court, or the law library resources board. The digitized records are saved on the third-party’s server and the information is then accessible to users of the website.

County Law Library Resources Board's Authority to Contract with and Pay a Vendor to Digitize and Post Public Records on a Website

A county LLRB is a creature of statute. *See* R.C. 307.51. Accordingly, “an LLRB may exercise only those powers as are expressly conferred by statute or that necessarily may be implied in order to effect the exercise of an express power[.]” 2011 Op. Att’y Gen. No. 2011-036, at 2-293; *see also State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 47, 117 N.E. 6 (1917) (“[s]uch grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective”). In addition, “[p]ublic money may be expended only by clear authority of law and in compliance with applicable statutory provisions.” 2002 Op. Att’y Gen. No. 2002-031, at 2-206; *accord* 2011 Op. Att’y Gen. No. 2011-036, at 2-289 (quoting 2002 Op. Att’y Gen. No. 2002-031, at 2-206 to 2-207); *see, e.g., State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1). Where there is doubt as to whether an expenditure is authorized, the doubt must be resolved against making the expenditure. *State ex rel. A. Bentley & Sons Co. v. Pierce* (syllabus, paragraph 3); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916).

A critical issue in determining whether an expenditure is lawful is whether the expenditure serves a “public purpose.” 1982 Op. Att’y Gen. No. 82-006, at 2-17. “The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts, and such a determination will not be reversed by the courts unless it is manifestly arbitrary or unreasonable.” 2003 Op. Att’y Gen. No. 2003-019, at 2-150. The enactment of a statute authorizing an expenditure of funds is the General Assembly’s recognition that the expenditure serves a public purpose. 2003 Op. Att’y Gen. No. 2003-019, at 2-151. Furthermore, “[t]he authority of a public body to expend money for a particular purpose ‘may be fairly implied where it is reasonably related to the duties of the public agency.’” *Id.* at 2-152 (quoting *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 470, 423 N.E.2d 105 (1981)). An expenditure that is necessary to the performance of the statutory purposes and responsibilities of a county agency serves a public purpose. *See* 2003 Op. Att’y Gen. No. 2003-019, at 2-151 (“[w]hen the board of education determines that a particular expenditure is authorized by a statute . . . and that the expenditure is necessary for the board to perform its statutory functions, the board is determining that the expenditure is a proper expenditure that serves the public purpose expressed in the statute. A finding that an expenditure is reasonably implied as necessary for the performance of a statutory function thus constitutes a finding that the expenditure serves the public purpose expressed in the statute”). Therefore, to determine whether an LLRB may contract with and pay a vendor to digitize public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website, we first look to the statutes governing an LLRB.

R.C. 307.51 creates a county LLRB in each county in the state.⁴ An LLRB is required to “provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county and shall manage the coordination, acquisition, and utilization of legal resources.” R.C. 307.51(B). In addition, subject to the approval of the board of county commissioners, an LLRB may contract with other public or private entities for the provision of services that the LLRB determines are necessary. R.C. 307.51(F). R.C. 307.51(F) states:

[s]ubject to the approval of the board of county commissioners of the county, the county law library resources board *may contract with* other county law library resources boards, the statewide consortium of law library resources boards, *private entities*, or public agencies for the provision of any services that the county law library resources board considers necessary. (Emphasis added.)

An LLRB is supported with monies from the county law library resources fund, which is created in the county treasury. *See* R.C. 307.514. The county law library resources fund is composed of revenue received from the LLRB’s share of fines, penalties, and forfeited bail collected by the municipal, county, common pleas, and probate courts pursuant to R.C. 307.515, private gifts or bequests made to the fund, and any other “revenue that is required to be deposited into the fund pursuant to [R.C. 307.51(D)(1).]” R.C. 307.514.

The county law library resources fund also consists of general fund appropriations made by the board of county commissioners. *Id.* Each year, in accordance with R.C. 5705.28, an LLRB is required to submit to the board of county commissioners an estimate of the revenue and expenditures sufficient to operate the LLRB. R.C. 307.513(A). “The estimate of revenue ... shall include a specific request for monies to be appropriated to the county law library resources fund established pursuant to [R.C. 307.514] from the county general fund for the ensuing fiscal year.” *Id.* A board of county commissioners’ exercise of authority to make general fund appropriations to the county law library resources fund for the use of the LLRB is permissive. R.C. 307.513(B); 2010 Op. Att’y Gen. No. 2010-001, at 2-6. “Expenditures from the [county law library resources] fund shall be made pursuant to the annual appropriation measure adopted by the board of county commissioners under [R.C. 5705.38].” R.C. 307.514. None of the statutes identifying sources of revenue for the law library resources fund further restrict the use of those funds to a particular purpose. 2011 Op. Att’y Gen. No. 2011-036, at 2-290 n.2 (citing to R.C. 307.51(D)(1)(c), R.C. 307.513(B), R.C. 307.514, and R.C. 307.515).

An LLRB “may adopt any rules it considers necessary for its operation[.]” but must adopt rules governing the expenditure of funds appropriated from the county general fund, access to the law library, implementation of fees for the services performed by the law library, and “[t]he receipt of gifts

⁴ R.C. 307.516 provides, in pertinent part, “[u]pon the recommendation of the county law library resources boards of two or more adjacent counties, the boards of county commissioners of those counties may enter into a contract to form a multi-county law library resources commission[.]”

to the county law library resources fund.” R.C. 307.51(D)(1). Fees may not be charged for access to the law library or for the performance of services “provided to any member of the general assembly or to any officer or employee of a county, municipal, or township government or court located within that county when the officer or employee is acting within the scope of the officer’s or employee’s employment.” R.C. 307.51(D)(2) and (3).

In 2011 Op. Att’y Gen. No. 2011-036, at 2-287 to 2-288, the Attorney General was asked to consider, in part, the authority of an LLRB to contract with a third-party vendor and to pay directly the cost of uploading images of records filed with a county recorder to a third-party website. After defining the phrases “legal reference services” and “legal resources” according to their ordinary meanings, the opinion reasoned that, for the purposes of R.C. 307.51(B), “‘legal reference services’ include acts that facilitate the conveyance of information about the legal rights of individuals and other entities and that is relevant to the municipal corporations, townships, and courts within the county, and a ‘legal resource’ includes a mechanism through which this information is conveyed.” *Id.* at 2-294. The opinion examined the nature of a county recorder’s records and how the records are used by the public and governmental entities. *Id.* at 2-294 to 2-295. The opinion reasoned that “by contracting and paying for the cost of uploading county land records to a third-party website, and thereby making such records more easily accessible, an LLRB provides a legal reference service and coordinates the acquisition of a legal resource under R.C. 307.51(B).” *Id.* at 2-295. The opinion recognized that insofar as R.C. 307.51(B) does not specify the means by which an LLRB must provide legal reference services and legal resources, the selection of a means to perform those statutory duties is within the reasonable discretion of an LLRB. *Id.* Accordingly, it is within the reasonable discretion of an LLRB to determine “whether contracting with a vendor and paying for the cost of uploading to a third-party website public land records filed with the county recorder furthers the statutory purposes and responsibilities of the LLRB” and whether “the expenditure fits within a specific appropriation for or to the LLRB.” *Id.* at 2-295 to 2-296. In making those determinations, “[a]n LLRB must ... exercise its discretion in a reasonable manner.” *Id.* at 2-296. 2011 Op. Att’y Gen. No. 2011-036 (syllabus, paragraph 2) thus states:

[a] county law library resources board may contract with a vendor and pay for the cost of uploading to a third-party website public land records filed with the county recorder if the county law library resources board determines, in the reasonable exercise of its discretion, that the expenditure furthers the statutory purposes and responsibilities of the county law library resources board and fits within a specific appropriation adopted by the board of county commissioners under R.C. 5705.38. The expenditure also must be consistent with any rule adopted by the county law library resources board pursuant to R.C. 307.51(D)(1)(a).

The relevant statutes governing an LLRB have not altered an LLRB’s powers since the issuance of 2011 Op. Att’y Gen. No. 2011-036. We, therefore, approve and adopt the reasoning and conclusions of the 2011 opinion.

In addition, we extend the conclusion reached in 2011 Op. Att’y Gen. No. 2011-036 to the authority of an LLRB to contract with a vendor to digitize the public records of a county recorder for

the purpose of posting those records on a third-party website. Converting the public records of a county recorder into an electronic format is an integral part of posting the records on a third-party website. As an integral part of posting the records on a third-party website, digitizing the records also facilitates the conveyance of information about the legal rights of individuals. Accordingly, in contracting with a vendor to digitize the public records of a county recorder, an LLRB provides a legal reference service and manages the acquisition of legal resources.

We also extend the conclusion reached in 2011 Op. Att’y Gen. No. 2011-036 to the public records of a clerk of court. Records kept by a clerk of court include, but are not limited to, the following: all pleadings filed in a legal action; all papers filed in the clerk’s office; “the appearance docket, trial docket ..., journal, and execution docket[;]” “the journals, records, books, and papers appertaining to the court[;]” an index of judgments that are not dormant; and an index of lawsuits. R.C. 2303.08; R.C. 2303.09; R.C. 2303.12; R.C. 2303.14; R.C. 2303.18; R.C. 2303.19; *see* R.C. 2303.31 (“[t]he duties prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record”). It is axiomatic that records of a clerk of court provide, *inter alia*, information about pending court cases and the legal rights and responsibilities of the parties in those cases. Making those records more easily accessible by posting them on a website that may be accessed by the public facilitates the conveyance of that information. Therefore, when an LLRB posts a clerk of court’s records on a website, an LLRB provides legal reference services and manages the acquisition and utilization of legal resources – two services that R.C. 307.51 requires an LLRB to provide.

We, therefore, conclude that when an LLRB contracts with and pays a vendor to digitize the public records of a county recorder for the purpose of posting those records and the public records of a clerk of court on a third-party website, an LLRB provides legal reference services and manages the coordination, acquisition, and utilization of legal resources.

As stated above, expenditures from a county law library resources fund are to be made pursuant to an annual appropriation measure by the board of county commissioners. R.C. 307.514. The authority to determine whether a specific expenditure is consistent with an appropriation made by a county board of commissioners rests with the county board or agency for which the appropriation is made. *See* 2011 Op. Att’y Gen. No. 2011-036, at 2-296; 2003 Op. Att’y Gen. No. 2003-019, at 2-153 (“the authority to exercise discretion regarding the expenditure of school district funds is placed initially in the hands of the board of education”); 1994 Op. Att’y Gen. No. 94-007, at 2-27 n.3. In this case, the county board or agency for which the appropriation is made is an LLRB. Thus, when an LLRB deems it necessary, and subject to the approval of the board of county commissioners, R.C. 307.51(F), an LLRB may contract with and pay a vendor to digitize public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website. An LLRB shall, in the reasonable exercise of its discretion, determine that the expenditure of monies for the contract is necessary to further the LLRB’s statutory purposes and responsibilities, does not

violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.⁵

In reaching this conclusion, we remind public offices of their responsibilities and obligations under R.C. 149.43. Nothing in this opinion shall be construed as relieving a county recorder and a clerk of court of their duty under R.C. 149.43 to make public records available for inspection and copying pursuant to R.C. 149.43(B). If the public records of a county recorder and a clerk of court are available on a third-party's website as a service provided by an LLRB, a county recorder and a clerk of court must nevertheless make their public records available for inspection or copying in accordance with R.C. 149.43(B) when a public records request is made to that public office. The obligation of a county recorder and a clerk of court to make copies of their public records available in response to a public records request for copies cannot be fulfilled by referring the requester to public records that are available on a website. *See* R.C. 149.43(B)(1) (requires the public office or person responsible for public records to make copies available, upon request); R.C. 149.43(B)(7) (if copies of public records are requested, "a public office or person responsible for public records shall transmit a copy of a public record" to the requester); 2014 Op. Att'y Gen. No. 2014-009, at 2-84 ("we conclude that for purposes of R.C. 149.43, a county auditor makes a public record available for inspection when he provides access to the public record online through the county's website"). *But see State ex rel. Patton v. Rhodes*, 129 Ohio St. 3d 182, 2011-Ohio-3093, 950 N.E.2d 965, at ¶15-16 and ¶20 (R.C. 149.43(B) does not require a public office to post public records online, nor does it obligate a public office to comply with a request to post records online; however, when a public records requester asks for copies of the public records to be provided to him by posting them online, a public office may be found to have timely fulfilled the request for copies by posting the records online).

County Law Library Resources Board's Authority to Purchase Items for Law Library

We now turn to your other question, whether an LLRB may purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library. A board of county commissioners is required to provide county agencies with office space when needed. *See* R.C. 307.01(A). A board of county commissioners also must provide county agencies equipment and facilities that the board of county commissioners considers necessary to the agencies' operations. *See*

⁵ In a county in which an automatic data processing board (ADPB) has been established by the board of county commissioners, and after a resolution has been passed requiring an ADPB to perform various information resources management operations in lieu of a county records commission and a county microfilming board, the LLRB may be required to seek the approval of the ADPB prior to contracting with a vendor to digitize the public records of a county recorder. *See* R.C. 307.84 ("[a]fter the initial meeting of the county [ADPB], no county office shall ... contract for the use of any automatic or electronic data processing or record-keeping ... services without prior approval of the board"); R.C. 307.847(A) ("[a]fter a resolution is adopted under [R.C. 307.847], no county office shall ... contract for the use of ... any other image processing ... services without prior approval of the [ADPB]").

id. Insofar as an LLRB is a county agency, a board of county commissioners is required to provide necessary equipment and facilities to an LLRB. 2010 Op. Att’y Gen. No. 2010-001, at 2-3; *see also* R.C. 307.01(A). The provision of equipment under R.C. 307.01 may be done “by direct expenditure from the general fund” or by way of an appropriation to the agency. 1985 Op. Att’y Gen. No. 85-066, at 2-249 (overruled, in part, on other grounds by 1991 Op. Att’y Gen. No. 91-008); *accord* 1983 Op. Att’y Gen. No. 83-053, at 2-212 to 2-213.

As discussed above, a board of county commissioners may appropriate funds from the general fund of the county for the use of an LLRB. R.C. 307.513(B). Monies appropriated by a board of county commissioners for the use of an LLRB are deposited in the county law library resources fund. R.C. 307.514. Monies in a county law library resources fund are expended pursuant to an annual appropriation measure made by a board of county commissioners in accordance with R.C. 5705.38.⁶ R.C. 307.514. Appropriations from a county law library resources fund “shall be disbursed by the county auditor’s warrant drawn on the county treasury five days after receipt of a voucher approved by the county law librarian pursuant to procedures established by the county law library resources board.” R.C. 307.513(B).

The analysis that applies to the determination whether an LLRB may pay a vendor to digitize public records and post those records on a third-party website also applies to the determination whether an LLRB may purchase items to furnish the county law library. “[P]ublic moneys in a county law library resources fund may be expended only pursuant to statutory authority and for a proper purpose of the LLRB.” 2011 Op. Att’y Gen. No. 2011-036, at 2-290 n.2. Therefore, an LLRB may purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library so long as the purchases are necessary to fulfill the statutory duties and responsibilities of an LLRB. *See id.* at 2-295.

R.C. 307.51(B) requires an LLRB to “provide legal research, reference, and library services to the county and to the municipal corporations, townships, and courts within the county” and to “manage the coordination, acquisition, and utilization of legal resources.” A computer and a printer are necessary tools to provide members of the public and government entities access to and a means of obtaining copies of a county law library’s legal research and reference resources that are maintained in electronic form. Bookshelves that house and organize printed reference materials and tables and chairs to be used by patrons of the law library while reviewing those resources are part of providing library services and managing the utilization of legal resources. Accordingly, an LLRB may purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library, provided that, in the reasonable exercise of its discretion, the board determines that the purchases are necessary to further the board’s statutory purposes and responsibilities, the purchases do not violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and the expenditure of

⁶ Pursuant to R.C. 5705.38(A), “the taxing authority of each subdivision or other taxing unit shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget or the official certificate of estimated resources or amendments of the certificate.”

monies to make the purchases is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.

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

1. When a county law library resources board deems it necessary, and subject to the approval of the board of county commissioners, a county law library resources board may contract with and pay a vendor to digitize public records of the county recorder, and to post those records and the public records of the clerk of court on a third-party website. A county law library resources board shall, in the reasonable exercise of its discretion, determine that the expenditure of monies for the contract is necessary to further the board's statutory purposes and responsibilities, does not violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.
2. A county law library resources board may purchase a public access computer and printer, bookshelves, tables, and chairs for placement in the county law library, provided that, in the reasonable exercise of its discretion, the board determines that the purchases are necessary to further the board's statutory purposes and responsibilities, the purchases do not violate any rules adopted by the board pursuant to R.C. 307.51(D)(1), and the expenditure of monies to make the purchases is consistent with an appropriation made to or from the county law library resources fund pursuant to R.C. 307.513-.514.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General