

Note from the Attorney General's Office:

1989 Op. Att'y Gen. No. 89-090 was modified
by 1990 Op. Att'y Gen. No. 90-022.

OPINION NO. 89-090**Syllabus:**

1. A county prosecutor may expend mandatory drug fines, distributed pursuant to R.C. 2925.03(J), for those expenses determined by him to be consistent with the activities of his office that pertain to drug offenses. This determination must be reasonable and within the limitations set by statute.
2. The determination as to the most appropriate method of establishing an understanding or agreement between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03, remains with such prosecutor and the law enforcement agencies within his jurisdiction. Any exercise of discretion must, however, be reasonable.

3. The auditor of state has the discretion to determine whether the accounting method utilized by a county prosecutor for his furtherance of justice fund is an appropriate accounting procedure for mandatory drug fines disbursed to a county prosecutor, pursuant to R.C. 2925.03(J).
4. Mandatory drug fines collected under R.C. 2925.03 are excluded from the disbursement provisions of R.C. 3719.21.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 6, 1989

I have before me your request for my opinion concerning mandatory drug fines imposed by R.C. 2925.03(H). Specifically, you ask:

1. Can the equitable share of mandatory drug fine money received by the County Prosecutor pursuant to Ohio Revised Code § 2925.03(J) be used for the following purposes: a) for continuing legal education of the Prosecuting Attorney and his assistants pertaining to drug prosecutions; b) for purchasing technical resources which will assist in preparation and prosecution of drug offenses; c) to obtain the services of expert witnesses, consultants, and reimbursement of their expenses for drug offenses; d) to pay for matching funds for grants pertaining to drug prosecutions, and e) to hire personnel including assistant prosecutors for the prosecution of drug offenses?
2. Since the Prosecutor's Office is entitled to an equitable distribution of the mandatory fines pursuant to § 2925.03(J), what is the most appropriate method of establishing an understanding or agreement between the Prosecutor's Office and individual law enforcement agencies in the jurisdiction for the equitable distribution of the mandatory fine money?
3. Would the accounting method utilized by the Prosecutor for his Furtherance of Justice Fund be appropriate for money collected and distributed in a Mandatory Drug Fine Fund established pursuant to § 2925.03(J) to satisfy the accounting procedures of the State Auditor?
4. Are [mandatory drug] fines collected under § 2925.03 [excluded from the disbursement provisions] of § 3719.21 ...?

R.C. 2925.03 sets forth the statutory classifications for drug trafficking offenses and the penalties for such offenses. Division (H) thereof imposes mandatory drug fines for specified drug trafficking offenses.¹

¹ The mandatory drug fines imposed by R.C. 2925.03(H) are in addition to the fines for felonies imposed by R.C. 2929.11 and fines imposed upon organizations by R.C. 2929.31. See R.C. 2925.03(I). Where a mandatory drug fine imposed pursuant to R.C. 2925.03(H) is less than the maximum fine allowed by either R.C. 2929.11 or R.C. 2929.31, a sentencing court may impose an additional fine, provided the total of such mandatory drug and additional fines combined does not exceed the maximum fine allowed by either R.C. 2929.11 or R.C. 2929.31. R.C. 2925.03(I). A sentencing court may not, however, impose an additional fine when a mandatory drug fine imposed by R.C. 2925.03(H) exceeds the maximum fine allowed under either R.C. 2929.11 or R.C. 2929.31. R.C. 2925.03(I). All additional fines authorized and imposed pursuant to R.C. 2925.03(I) are to "be disbursed as otherwise provided by law." R.C. 2925.03(J). Hence, mandatory drug fines are only those fines authorized and imposed pursuant to R.C. 2925.03(H).

I turn now to your first question which concerns the use of these mandatory drug fines by a county prosecutor. R.C. 2925.03(J), which authorizes the disbursement of mandatory drug fines to a county prosecutor, provides:

Any mandatory fine imposed pursuant to this section shall be paid to the law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender. *The mandatory fines shall be used to subsidize each agency's law enforcement efforts that pertain to drug offenses.* Any additional fine imposed pursuant to division (I) of this section shall be disbursed as otherwise provided by law. (Emphasis added.)

Hence, a prosecutor may only use mandatory drug fines for purposes consistent with its activities "that pertain to drug offenses." See generally *State ex rel Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) (per curiam) ("[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county"); *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 363-64, 106 N.E. 41, 45 (1914) (where the expenditure of public moneys is limited by statute, the moneys may only be spent in accordance with the statutory provisions).

Whether a specific expenditure is for a purpose consistent with the activities of a prosecutor "that pertain to drug offenses" depends upon the facts surrounding each proposed expenditure. You have indicated in your letter that the fines are to be used for various purposes associated with the prosecution of drug offenses. Generally, the prosecution of drug offenses by a prosecutor is an activity that is consistent with efforts pertaining to drug offenses. As a result, an expenditure by a county prosecutor which facilitates or promotes the prosecution of drug offenses is a proper expenditure of mandatory drug fines. However, a final determination as to the appropriateness of the specific expenditures about which you ask, is dependent upon the functions of the new personnel, the type of resources, grants, and legal education contemplated, and the services and expenses to be performed by the expert witnesses or consultants. Such factual determinations cannot be made by the Attorney General. See generally 1989 Op. Att'y Gen. No. 89-057; 1988 Op. Att'y Gen. No. 88-008; 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body;....I shall not attempt to make final determinations where issues of fact are involved").

In addition, the broad language of the statute makes it clear that the county prosecutor is to use his discretion with regard to the expenditure of mandatory drug fines. Such fines are paid to his office and used to subsidize his office's "efforts that pertain to drug offenses." R.C. 2925.03(J). Where discretion has been delegated to another governmental officer, I have no authority to exercise such discretion on behalf of that governmental officer. See generally 1988 Op. Att'y Gen. No. 88-100; 1988 Op. Att'y Gen. No. 88-007; 1985 Op. Att'y Gen. No. 85-007. Thus, the exercise of any judgment which is necessary in determining whether a specific expenditure is for a purpose consistent with the activities of a prosecutor's office that pertain to drug offenses remains with the appropriate county prosecuting attorney. Any exercise of discretion must, however, be reasonable and within the limitations set by statute. See generally Op. No. 88-100; 1985 Op. Att'y Gen. No. 85-003; 1969 Op. Att'y Gen. No. 69-159. I conclude, accordingly, that a county prosecuting attorney may expend mandatory drug fines, distributed pursuant to R.C. 2925.03(J), for those expenses determined by him to be consistent with the activities of his office that pertain to drug offenses. This determination must be reasonable and within the limitations set by statute.

Your second question asks what is the most appropriate method of establishing an understanding or agreement between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03. According to division (J) of R.C. 2925.03, mandatory drug fines are shared by "the law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender."

I note that neither R.C. 2925.03 nor any other provision in the Revised Code authorizes or sets forth a method of establishing an understanding or agreement

between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03. It, however, is a long-established proposition of law that an implied power may be found to exist where it reasonably relates to the execution of an express power. *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 469-71, 423 N.E.2d 105, 112-13 (1981); *Federal Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 118 N.E. 103 (1917) (syllabus, paragraph two), *appeal dismissed mem. for want of jurisdiction*, 248 U.S. 547 (1919). Consequently, a county prosecutor and the law enforcement agencies within his jurisdiction have the necessarily implied power to enter into an agreement or understanding for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03.

"Where authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Thus, a county prosecutor and the law enforcement agencies within his jurisdiction may exercise their discretion in determining what is the most appropriate method of establishing an understanding or agreement for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03.

As stated above, I have no authority to exercise discretion which has been delegated to another governmental office. *See generally* Op. No. 88-100; Op. No. 88-007; Op. No. 85-007. Therefore, I am unable, in this opinion to make the determination as to what is the most appropriate method of establishing an understanding or agreement for the sharing of mandatory drug fines. The use of any judgment required in making such determinations remains with the appropriate county prosecutor and officials of the law enforcement agencies within such prosecutor's jurisdiction. I caution, however, that such exercise of discretion must be reasonable. *See generally* 1989 Op. Att'y Gen. No. 89-038; Op. No. 88-100; Op. No. 85-003. I find, accordingly, that the determination as to the most appropriate method of establishing an understanding or agreement between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03, remains with such prosecutor and the law enforcement agencies within his jurisdiction. Any exercise of discretion must, however, be reasonable.

Question number three asks whether the accounting method utilized by a county prosecutor for his furtherance of justice fund, R.C. 325.12, satisfies the accounting procedures of the auditor of state with regard to mandatory drug fines collected and distributed to a county prosecutor, pursuant to R.C. 2925.03. I am unaware of the accounting method utilized by a prosecuting attorney for his furtherance of justice fund, as no such method is codified in the Revised Code or Ohio Administrative Code. I am, however, aware that R.C. 325.12, which establishes the prosecutor's furtherance of justice fund, provides in part:

The prosecuting attorney shall, annually, before the first Monday of January, file with the auditor an itemized statement, verified by him as to the manner in which such fund has been expended during the current year, and shall if any part of such fund remains in his hands unexpended, forthwith pay such remainder into the county treasury.

The question of whether a particular accounting method satisfies the accounting procedures of the auditor of state with regard to mandatory drug fines disbursed to a prosecutor, pursuant to R.C. 2925.03(J), is a question which cannot properly be answered by means of an Opinion of the Attorney General. *See generally* 1979 Op. Att'y Gen. No. 79-110 at 2-356 ("[t]he actual question that you present is whether or not your proposed fixed fee assessment will satisfy the accounting and reporting procedures prescribed by the chief inspector and supervision of public offices [now auditor of state]² and I am not in a position to answer that question" (footnote added)).

² Pursuant to 1985-1986 Ohio Laws, Part 1, 1760, 1796 (Sub. H.B. 201, eff. July 1, 1985), the auditor of state now performs the duties assigned to the chief inspector and supervision of public offices. *See also* R.C. 117.09.

R.C. 117.38 provides, in part, that "[a] financial report of each public office,³ other than a state agency, for each fiscal year shall be made in accordance with forms prescribed by rule by the auditor of state." (Footnote added.) Further, R.C. 117.43 authorizes the auditor of state to "prescribe by rule, requirements for accounting and financial reporting for public offices other than state agencies." Clearly, whether the accounting method utilized by a county prosecutor for his furtherance of justice fund satisfies the auditor of state with regard to mandatory drug fines disbursed to a prosecutor, pursuant to R.C. 2925.03(J), is a determination for the auditor of state. Therefore, I am unable to determine if the accounting method utilized by the prosecutor for his furtherance of justice fund satisfies the accounting procedures of the auditor of state with regard to mandatory drug fines collected and distributed to a county prosecutor, pursuant to R.C. 2925.03.⁴

The final question you ask is whether mandatory drug fines⁵ collected under R.C. 2925.03 are excluded from the disbursement provisions of R.C. 3719.21. R.C. 3719.21, which delineates the disposition of fines and forfeited bonds collected under R.C. Chapters 2925 and 3719, provides:

All fines or forfeited bonds assessed and collected under prosecutions or prosecutions commenced for violations of Chapters 2925 and 3719 of the Revised Code, shall within thirty days, be paid to the executive director of the state board of pharmacy and by him paid into the state treasury to the credit of the general revenue fund.

However, as stated above, R.C. 2925.03(J) requires that mandatory drug fines "be paid to the law enforcement agencies in this state that were primarily responsible for or involved in making the arrest of, and in prosecuting, the offender." In determining whether R.C. 2925.03(J) creates an exception to the disposition of fines and forfeited bonds collected under R.C. Chapter 2925 set forth in R.C. 3719.21, I am guided by the long-standing rule of statutory construction that a special statute excepts an earlier general statute to the extent of any irreconcilable conflict between their provisions. *Metropolitan Securities Co. v. Warren State Bank*, 117

³ Pursuant to R.C. 117.01(D) a "public office" is "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." It is clear that a county prosecutor holds a public office as defined in R.C. 117.01(D). See generally R.C. Chapter 309; *State ex rel. Finley v. Lodwich*, 137 Ohio St. 329, 29 N.E.2d 959 (1940); 1985 Op. Att'y Gen. No. 85-035 at 2-123 ("[i]t is clear that the office of prosecuting attorney is a county office"), modified, 1989 Op. Att'y Gen. No. 89-012.

⁴ I note that:

Notwithstanding any contrary provision of the Revised Code, the auditor of state may prepare and disseminate, to public offices and other interested persons and organizations, advisory bulletins, directives, and instructions relating to accounting and financial reporting systems, budgeting procedures, fiscal controls, and the constructions by the auditor of state of constitutional and statutory provisions, court decisions, and opinions of the attorney general. The bulletins, directives, and instructions shall be of an advisory nature only.

R.C. 117.20(C). Accordingly, your office may request the auditor of state for a directive or instructions as to what accounting method is appropriate for mandatory drug fines distributed to your office, pursuant to R.C. 2925.03(J).

⁵ As stated in footnote one, *supra*, mandatory drug fines are only those fines imposed by R.C. 2925.03(H).

Ohio St. 69, 158 N.E. 81 (1927); *State ex rel. Crabbe v. City of Cleveland*, 115 Ohio St. 484, 154 N.E. 738 (1926); *Thomas v. Evans*, 73 Ohio St. 140, 76 N.E. 862 (1905). In this sense, the special statute operates as an exception to the general statute when there is a conflict between the two. The General Assembly has codified this rule of statutory construction in R.C. 1.51, which provides:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

A review of the foregoing indicates that both R.C. 2925.03(J) and R.C. 3719.21 control the disposition of mandatory drug fines collected under R.C. 2925.03. Thus, there is an irreconcilable conflict between R.C. 2925.03(J) and R.C. 3719.21.

R.C. 3719.21 is a general provision in that it requires all fines and forfeited bonds assessed and collected under R.C. Chapter 2925 be paid to the executive director of the State Board of Pharmacy. R.C. 2925.03(J), however, is a special provision in that it specifically covers only the mandatory fines imposed by R.C. 2925.03(H). See, e.g., *State v. Cravens*, 42 Ohio App. 3d 69, 73, 536 N.E.2d 686, 690 (Hamilton County 1988) ("we believe it is abundantly clear that the provisions of R.C. 2925.03(H) through (L) are special provisions, applicable only in the drug cases detailed in division (H), and that these provisions were enacted subsequent to the general provisions for fines in felony cases found in R.C. 2929.11, 2929.14, 2929.31 and 2929.51(F)"). Further, the drug fine disbursement provision of R.C. 2925.03(J), 1985-1986 Ohio Laws, Part I, 164, 168-70 (Am. S.B. 67, eff. Aug. 29, 1986), was enacted subsequent to the provision of R.C. 3719.21, which incorporated R.C. Chapter 2925 fines, 1975-1976 Ohio Laws, Part II, 2311, 2356 (Am. Sub. H.B. 300, eff. July 1, 1976). "Utilizing the rules of statutory construction contained in R.C. 1.12, 1.51, and 1.52, a specific statute, enacted later in time than a preexisting general statute, will control where a conflict between the two arises." *Davis v. State Personnel Bd. of Review*, 64 Ohio St. 2d 102, 105, 413 N.E.2d 816, 818 (1980). Additionally, it is an established rule that "it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation." *State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979). As a result, R.C. 2925.03(J) creates an exception to the general provisions of R.C. 3719.21 with regard to the distribution of mandatory drug fines. Accordingly, I find that mandatory drug fines collected under R.C. 2925.03 are excluded from the disbursement provisions of R.C. 3719.21.

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

1. A county prosecutor may expend mandatory drug fines, distributed pursuant to R.C. 2925.03(J), for those expenses determined by him to be consistent with the activities of his office that pertain to drug offenses. This determination must be reasonable and within the limitations set by statute.
2. The determination as to the most appropriate method of establishing an understanding or agreement between a county prosecutor and the law enforcement agencies within his jurisdiction for the sharing of mandatory drug fines imposed and collected pursuant to R.C. 2925.03, remains with such prosecutor and the law enforcement agencies within his jurisdiction. Any exercise of discretion must, however, be reasonable.
3. The auditor of state has the discretion to determine whether the accounting method utilized by a county prosecutor for his furtherance of justice fund is an appropriate accounting procedure for mandatory drug fines disbursed to a county prosecutor, pursuant to R.C. 2925.03(J).
4. Mandatory drug fines collected under R.C. 2925.03 are excluded from the disbursement provisions of R.C. 3719.21.