

**OPINION NO. 91-031****Syllabus:**

1. A board of county commissioners may transfer money received by a county as a grant from the Department of Youth Services pursuant to R.C. 5139.33 to the board of county commissioners of another county by entering into a contract, pursuant to R.C. 307.15 and R.C. 307.16, that provides for the implementation of a joint-county program established in accordance with [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5139-55-04 at 662 and that specifically provides for the transfer of such money to the board of county commissioners of such other county.
2. The transfer of money received by a county as a grant from the Department of Youth Services pursuant to R.C. 5139.33 to the board of county commissioners of another county under the terms of a contract pursuant to R.C. 307.15 and R.C. 307.16 must comply with the requirements of R.C. 5705.41.

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**To: John G. Gosling, Vinton County Prosecuting Attorney, McArthur, Ohio**  
**By: Lee Fisher, Attorney General, July 15, 1991**

I have before me your request for an opinion regarding the proper procedure through which the Vinton County Commissioners and the Vinton County Auditor can transfer funds received pursuant to R.C. 5139.33 to the Board of County Commissioners of Hocking County<sup>1</sup> as part of an eleven-county regional project in which Vinton County will participate. You have indicated that Vinton County shall receive \$5,301 in such funds and proposes to contribute the money to the regional project.

R.C. 5139.33, which became effective June 28, 1990, Am. Sub. S.B. 268, 118th Gen. A. (1990), requires the Department of Youth Services to make grants "to encourage counties to use community-based programs and services for juveniles who are adjudicated delinquent children for the commission of acts that would be felonies if committed by an adult." R.C. 5139.33(A). In order to receive such a grant, a

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<sup>1</sup> In your letter requesting my opinion, you asked how the funds received by Vinton County pursuant to R.C. 5139.33 could be transferred to the Hocking County Board of County Commissioners and the Hocking County Juvenile Judge as "lead judge" for the regional project. I note that the relevant administrative rules in effect at the time of your request required a "lead judge" to represent the region and to administer the program, including certain financial matters. [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5139-55-04(B)(2) at 316. However, the current administrative rules specify instead that "[j]oint-county programs shall be implemented in accordance with section 307.15 of the Revised Code." [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5139-55-04(A)(2) at 662. I assume that the reference in your letter to a "lead judge" was based on the former rule in effect at the time, and I therefore have not addressed the issue of a "lead judge" in this opinion.

county must file an application in accordance with R.C. 5139.33 and with rules adopted by the Department of Youth Services pursuant to R.C. 5139.33(D). Specifically, [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5539-55-04 at 662, provides that "a county is allowed to apply for a grant under this program as a single county or as part of a joint-county application." However, the actual distribution of funds by the Department of Youth Services is made "on a per capita basis to each county that applies and complies with division (B) of Section 5139.33 of the Revised Code, as well as Chapters 5139-55 and 5139-57 of the Administrative Code." [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5139-55-08 at 663. Although neither the statute nor the rules specifically authorize the transfer of funds from one county to another county within a joint county program, rule 5139-55-04(A)(2) provides that "[j]oint-county programs shall be implemented in accordance with section 307.15 of the Revised Code."

R.C. 307.15 provides that "[t]he boards of county commissioners of any two or more counties may contract with each other or by contract create any joint agency to exercise any power, perform any function, or render any service which any board of county commissioners may exercise, perform or render." Thus, the Board of County Commissioners of Vinton County has the authority pursuant to R.C. 307.15 to enter into a contract with one or more other counties in order to implement a joint-county program. Alternatively, R.C. 307.15 gives the board of county commissioners the authority to create, by contract with the commissioners of any other county or counties, a joint agency to implement such program. In either case, R.C. 307.16 provides that "[a]ny agreement entered into by and between two or more boards of county commissioners shall specify the method of payment for the joint exercise of any power, the joint performing of any function, or the joint rendering of any service which method of payment shall be authorized and binding on the counties so long as the agreement is in effect." Thus, with respect to agreements entered into by two or more boards of county commissioners pursuant to R.C. 307.15, the method of payment for the joint performance of any function is a matter to be determined by agreement of such boards. In order for the funds received by Vinton County pursuant to R.C. 5139.33 to be transferred to the Board of County Commissioners of Hocking County, therefore, the Board of County Commissioners of Vinton County must enter into a contract, pursuant to R.C. 307.15 and R.C. 307.16, that provides for the implementation of the joint-county program established pursuant to rule 5139-55-04 and that specifically provides for the transfer of such funds to the Board of County Commissioners of Hocking County. Such contract must be "assented to at a regular or special session of the board, and entered in the minutes of [the proceedings of the board] by the county auditor or clerk of the board." R.C. 305.25.

With respect to grants made pursuant to R.C. 5139.33, R.C. 5705.42 provides that

[w]hen the...*state or any department...thereof makes a grant* or loan of money to any political subdivision of this state to aid in paying the cost of any program, activity, or function of such subdivision...*the amount thereof is deemed appropriated* for such purpose by the taxing authority of the subdivision as provided by law and shall be recorded as such by the fiscal officer of the subdivision, and *is deemed in process of collection* within the meaning of section 5705.41 of the Revised Code.

"Subdivision" is defined to include "any county." R.C. 5705.01(A). The "fiscal officer" of a county is the county auditor. R.C. 5705.01(D). Thus, the county auditor shall record the amount of the grant pursuant to R.C. 5139.33 as appropriated, and such amount is to be considered "in process of collection" for purposes of R.C. 5705.41.

R.C. 5705.41 specifies that "[t]axes and other revenue in process of collection...shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund." R.C. 5705.41(D). Since the grant to the county pursuant to R.C. 5139.33 is for the specific purpose of encouraging the county "to use community-based programs and services for juveniles who are adjudicated delinquent children for the commission of acts that would be felonies if

committed by an adult," R.C. 5139.33(A), the appropriate fund for the grant money is a special fund established pursuant to R.C. 5705.09. R.C. 5705.09 requires a subdivision to establish "[a] special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose." R.C. 5705.09(F). Thus, for purposes of R.C. 5705.41, the grant money received by the county pursuant to R.C. 5139.33 is deemed to be in the treasury or in process of collection and in a special fund pursuant to R.C. 5705.09(F).

Moreover, R.C. 5705.41 limits the authority of the board of county commissioners and the county auditor with respect to grant money received pursuant to R.C. 5139.33. In relevant part, R.C. 5705.41 provides that

[n]o subdivision or taxing unit shall:

....

(B) Make any expenditure of money unless it has been appropriated as provided in [R.C. Chapter 5705];

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

(D) ...make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the obligation or, in the case of a continuing contract to be performed in whole or in part in an ensuing fiscal year, the amount required to meet the obligation in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

The requirement of paragraph (B) that any expenditure of money must be appropriated as provided in R.C. Chapter 5705.41 is satisfied since a grant by a department of the state is "deemed appropriated" pursuant to R.C. 5705.42. Paragraph (C) requires the expenditure of grant money to be made by proper warrant against the "appropriate fund," which is, as determined above, a special fund established pursuant to R.C. 5705.09(F). *See also* R.C. 321.15 ("[n]o money shall be paid from the county treasury, or transferred to any person for disbursement, except on warrant of the county auditor"). Finally, paragraph (D) requires that the contract made by the board of county commissioners pursuant to R.C. 307.15 and R.C. 307.16 bear the certificate of the county auditor that the amount of money to be transferred under the terms of such contract has been lawfully appropriated and is in the treasury or in process of collection to the credit of the appropriate, unencumbered fund. Since, pursuant to R.C. 5705.42, the amount of the grant is deemed to be lawfully appropriated and in process of collection and, pursuant to R.C. 5705.41, is deemed to be in the appropriate fund, the county auditor may issue such certificate with respect to the amount of the grant money received pursuant to R.C. 5139.33, provided the fund to which such money is credited is unencumbered.

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

1. A board of county commissioners may transfer money received by a county as a grant from the Department of Youth Services pursuant to R.C. 5139.33 to the board of county commissioners of another county by entering into a contract, pursuant to R.C. 307.15 and R.C. 307.16, that provides for the implementation of a joint-county program established in accordance with [1990-1991 Monthly Record, vol. 1] Ohio Admin. Code 5139-55-04 at 662 and that specifically provides for the transfer of such money to the board of county commissioners of such other county.
2. The transfer of money received by a county as a grant from the Department of Youth Services pursuant to R.C. 5139.33 to the board of county commissioners of another county under the terms of a contract pursuant to R.C. 307.15 and R.C. 307.16 must comply with the requirements of R.C. 5705.41.