March 27, 2019

The Honorable James R. Flaiz
Prosecuting Attorney
Geauga County, Ohio
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

SYLLABUS: 2019-011

1. In the discharge of his or her duties of office, a county auditor enjoys the authority to require documentation which enables the county auditor, pursuant to R.C. 319.16, to ascertain the propriety of the payment of public funds from the county treasury, and the discretion to determine what constitutes evidentiary matter that is sufficient to support a requested expenditure.

2. As to the determination of what constitutes a "proper public purpose" for which an expenditure of public funds may be effected, the public entity charged with the responsibility of overseeing and expending such funds is afforded considerable discretion, but the public entity may not abuse this entitlement. A finding as to whether a proposed expenditure serves a proper public purpose and is permissible is a factual determination, which must be considered on a case by case basis, and is not appropriate for determination through the opinion-rendering functions of the Attorney General.

3. Under the constitutional separation of powers principle, the authority of government is distributed among three, co-equal branches of government, to wit: the executive, legislative, and judicial, and no branch may improperly infringe on the prerogatives of any other. Although a county auditor is imbued by statute with authority and discretion incident to the fiscal functions of the county, including as set out in R.C. 319.16, under the principle of separation of powers, a county auditor may not exercise the prerogatives of his or her office so as to unreasonably refuse

to honor a proper and appropriate request of a court for the issuance of a warrant authorizing the payment of public funds from the county treasury, or refuse to issue a warrant in circumstances that involve an exercise of excessive control which compromises the integrity and independence of the court, or which creates an impediment to the proper discharge of the court's judicial functions.

4. The determination of whether any action or determination effected by a county auditor constitutes a violation of the separation of powers principle involves a factual review, which must be conducted on a case by case basis, and implicates constitutional issues. It is inappropriate, therefore, for the Attorney General to utilize the opinion-rendering process to resolve these issues. If differences cannot be resolved by agreement between the parties, either party may seek a writ of mandamus issued by a court of competent jurisdiction.

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OPINION NO. 2019-011

The Honorable James R. Flaiz
Prosecuting Attorney
Geauga County, Ohio
Court House Annex
231 Main Street
Chardon, Ohio 44024-1235

Dear Prosecutor Flaiz:

On February 8, 2019, you directed to us your letter by which you requested a formal opinion on certain matters incident to operations of Geauga County. You summarized the matters at issue as being "related to the county auditor's authority to require the juvenile/probate court to comply with requirements found in R.C. [Chapter] 5705 and the authority of the county auditor to request a 'proper order or voucher and evidentiary matter' from the court under R.C. 319.16 when the court requests a warrant from the auditor for the expenditure of court funds."

Since our receipt of your submission, you have provided supplemental information to a representative of my office. In addition, officials of the Geauga County Probate and Juvenile Court requested the opportunity to provide to us information, documents, and authority in support of the position of the judge of the court. We, of course, acquiesced to this request and we have received considerable input from that quarter. It is evident from the material we have in hand that your request for our formal opinion was precipitated by a dispute related to the relative authority and prerogatives of two county offices, to wit: the Geauga County Auditor and the Judge of the Geauga County Probate and Juvenile Court. However, we have not been provided with particular information or examples of the factual circumstances which have given rise to these differences.

As a prelude to our response, we direct your attention and that of the parties of interest to authority that counsels cooperation among government officials in the discharge of their duties with particular reference to matters related to the stewardship and expenditure of public funds. In *State ex rel. Dellick v. Sherlock*, the Ohio Supreme Court indicated that, "we advise the parties that 'the public interest is served when courts co-operate with executive and legislative bodies in the complicated budgetary processes of government.'" 100 Ohio St. 3d 77, 2003-Ohio-5058, 796 N.E.2d 897, at ¶ 58 (quoting *State ex rel. Giuliani v. Perk*, 14 Ohio St. 2d 235, 237, 237 N.E.2d 397 (1968)). In a concurring opinion in *Dellick*, Justice Lundberg Stratton wrote of the potential for "confrontation and a public perception of noncoooperativeness," advising that "a court should make every reasonable

effort, in the interests of intergovernmental cooperation, to adhere to the conventional legislatively promulgated budget process." *Dellick*, *supra*, at ¶ 61 (Lundberg Stratton, J., concurring). Having conveyed these judicial admonitions, we consider the matters here at issue.

The position of county auditor is established under Chapter 319 of the Ohio Revised Code. As you note in your letter, section 319.16 of the Ohio Revised Code provides as follows:

> The county auditor shall issue warrants, including electronic warrants authorizing direct deposit for payment of county obligations in accordance with division (F) of section 9.37 of the Revised Code, on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher and evidentiary matter for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal, including a county board of mental health or county board of developmental disabilities, so authorized by law. If the auditor questions the validity of an expenditure that is within available appropriations and for which a proper order or voucher and evidentiary matter has been presented, the auditor shall notify the board, officer, or tribunal who presented the voucher. If the board, officer, or tribunal determines that the expenditure is valid and the auditor continues to refuse to issue the appropriate warrant on the county treasury, a writ of mandamus may be sought. The court shall issue a writ of mandamus for issuance of the warrant if the court determines that the claim is valid.
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> Evidentiary matter includes original invoices, receipts, bills and checks, and legible copies of contracts.

The Ohio statutory scheme, therefore, envisions the payment of county funds only upon the presentation to the county auditor of a proper order or voucher, and the issuance by the auditor of a warrant directing that the payment be effected by the county treasurer. The auditor is empowered to question the validity of the payment even if it is within an available appropriation and a proper order or voucher with evidentiary support has been presented. In the event the county auditor makes the determination that the expenditure should not be allowed, the public entity seeking payment is specifically authorized to seek a writ of mandamus directing the auditor to issue a payment warrant in spite of that officer's concerns or objections.

The statute makes reference to payment of any claim against an officer or tribunal of the county. The word "tribunal" is not defined for the purposes of R.C. Chapter 319. In the absence of a statutory definition, words generally should be accorded their natural literal, common or plain meaning. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449 (1983); *Lake Cnty. Nat'l Bank v. Kosydar*, 36 Ohio St. 2d 189, 191, 305 N.E.2d 799 (1973); *In re Appropriation for Highway Purposes*, 18 Ohio St. 2d 214, 218, 249 N.E.2d 48 (1969); *Baker v. Powhatan Mining Co.*, 146 Ohio

St. 600, 606, 67 N.E.2d 714 (1946); *Carter v. Div. of Water, City of Youngstown*, 146 Ohio St. 203, 207, 65 N.E.2d 63 (1946); *Eastman v. State*, 131 Ohio St. 1, 7, 1 N.E.2d 140 (1936). The natural, literal, common, or plain meaning of the word "tribunal," as it is utilized in R.C. 319.16, is "a court or forum of justice." *Merriam-Webster Collegiate Dictionary* 1335 (11th ed. 2005). It seems apparent, therefore, that section 319.16 of the Ohio Revised Code was enacted with the legislative intention that its requirements be applicable to Ohio courts. Further, the use of the disjunctive "or" separating the words "proper order" and "voucher" indicates that either will suffice. The word "voucher" is defined as a "documentary record of a business transaction." *Id.* at 1403. The word "order" has various meanings, including the conveyance of a "command" or the submission or placing of a request for provision of some commodity, item, or service. *See id.* at 873. It is a well-established rule of statutory construction that, "in accordance with the maxim *noscitur a sociis*, the meaning of a word may be ascertained by reference to the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense." *Myers v. Seaberger*, 45 Ohio St. 232, 236, 12 N.E. 796 (1887). It is our opinion, therefore, that "order" and "voucher" are properly interpreted so as to be afforded similar and consistent meanings. The use of the conjunctive "and" preceding "evidentiary matter" suggests that both a proper order and a voucher must be accompanied by such material. Although you have provided us with no factual information as to this issue, it seems reasonable to assume that the court has chosen the permissible practice in the situation at hand of providing to the county auditor orders related to payments as opposed to vouchers.

Article IV, section 1 of the Ohio Constitution provides that "[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Section 2151.07 of the Ohio Revised Code describes a juvenile court as "a court of record within the court of common pleas," which is empowered to "exercise the powers and jurisdiction conferred in [R.C. Chapters 2151 and 2152]." Section 2101.01 of the Revised Code establishes "[a] probate division of the common pleas court" in each county. R.C. 2101.01(B)(1) defines "'probate court'" as the "probate division of the common pleas court," and "probate judge" as "the judge of the court of common pleas who is judge of the probate division."

The questions you raise implicate the "separation of powers" principle under the Ohio Constitution. As the court indicated in *City of Columbus v. Anderson*:

> The separation of powers doctrine is a fundamental principle in both the federal and state Constitutions. Although there is no explicit provision in the Ohio Constitution, there is no doubt that the principle is implied by the distribution of powers to the three branches of government. The Ohio Supreme Court, in State ex rel. Montgomery v. Rogers (1905), 71 Ohio St. 203, at 216-217, … stated:
>
> > [T]he fact that these governmental powers have been severally distributed by the constitution to the legislative, executive and judicial departments of our state government, clearly evidences a purpose that the powers and duties of each, shall be separate from and independent of the powers and duties of the other coordinate branches, and the

> distribution so made to the several departments, by clear implication operates as a limitation upon and a prohibition of the right to confer or impose upon either powers that belong distinctively to one of the other co-ordinate branches.
>
> Thus, the separation of powers doctrine prohibits the General Assembly from conferring on one branch powers that belong to another.

27 Ohio App. 3d 307, 308-309, 500 N.E.2d 1384 (Franklin County 1985). On the basis of the separation of powers doctrine, Ohio courts, with frequency, have pronounced the right of the judiciary to pursue the proper prerogatives of that branch of government without impediment imposed by any other. In *State ex rel. Durkin v. City Council of Youngstown*, the Ohio Supreme Court held that:

> "It is a well-established principle that the administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers. The proper administration of justice requires that the judiciary be free from interference in its operations by such other branches. Indeed, it may well be said that it is the duty of such other branches of government to facilitate the administration of justice by the judiciary."
>
> The courts' authority to effectuate the orderly and efficient administration of justice without monetary or procedural limitations by the legislature is said to be within the inherent powers of the courts.

9 Ohio St. 3d 132, 135, 459 N.E.2d 213(1984) (quoting *State ex rel. Foster v. Bd. of Cnty. Comm'rs.*, 16 Ohio St. 2d 89, 73 N.E. 461 (1968)). Although the body of relevant authority on the subject is replete with similar holdings, most, if not all, relate to the obligation of legislative and administrative authorities to provide judicial offices with funding which is sufficient and space which is adequate to permit a court to carry out its responsibilities. As the Court indicated in *State ex rel. Donaldson v. Alfred*, "[a] coordinate branch of government may not impede a court's business by refusing reasonable funding requests," and "[c]ourts must be free from excessive control of the legislative and executive branches in order to ensure their independence and integrity." 66 Ohio St. 3d 327, 612 N.E. 2d 717 (1993).[1]

It is our understanding that your questions, at least in the first instance, deal with the issue of whether a county auditor, in the discharge of the duties and responsibilities of that office as imposed by statute, may insist that a judicial officer comply with procedural requirements incident to the

[1] As part of your opinion request, you make specific reference to, and quote verbatim, R.C. 319.16, which appears to be the provision of primary relevance to your inquiry. In addition, you make reference to "requirements found in R.C. [Chapter] 5705," although without specificity. Our review, therefore, has focused on R.C. 319.16. We believe, however, that our analysis is similarly applicable to those provisions of R.C. Chapter 5705 that may relate to the operations of a judicial office.

payment processes of the county as a prerequisite to issuing a warrant for payment of a claim. Particularly, you ask if the county auditor is permitted to insist that, before the auditor issues to the county treasurer a warrant for the payment of an obligation of the court, the court submit "a proper order or voucher and evidentiary matter" supporting the payment, and whether it is appropriate for the county auditor to question any such expenditures without unduly infringing upon the prerogatives of the court. In 2003 Op. Att'y Gen. No. 2003-029, these issues were considered in the context of the submission of a request for payment for travel expenses, albeit not by a judicial office. The opinion advises that "[i]t is apparent that, in order to fully and properly perform her duty to determine whether a warrant should be issued for expenses presented to her for payment, an auditor must have access to documentation that will enable her to ascertain the propriety of those expenses," and that "[t]he authority to determine what constitutes sufficient 'evidentiary material' is necessarily implied from the auditor's statutory duty to issue warrants upon proper claims." 2003 Op. Att'y Gen. No. 2003-029, at 2-246. The opinion further indicates that "giving the power to decide what is sufficient documentation to the party seeking payment of an expense or other claim would circumvent the statutory scheme of fiscal controls and accountability that has been established to manage expenditures from the county treasury and safeguard public funds," and that "the authority to establish what is sufficient 'evidentiary material' must lie with the county auditor since it determines the extent to which she can fully perform her statutory duty, and is an integral part of the 'cumulative safeguard' established by the General Assembly to protect the public treasury." *Id.* Although we cannot predict what a court might do in any particular case seeking the issuance of a writ of mandamus, and it is not our province to attempt to do so, our review of relevant authority suggests that, if a county auditor is unable to determine, on the basis of the information and documentation provided to that officer, whether a proposed expenditure is for a proper public purpose, mandamus will not lie to compel such payment. This interpretation is consistent with an appropriate analysis of the separation of powers principle, which contemplates tripartite equality among the branches of government rather than the superiority of any one or another.[2]

The determination of whether an expenditure constitutes a proper public purpose lies, in the first instance, with the public entity that undertakes to make the payment, but the entity may not abuse its discretion in this regard. *See State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 96 N.E. 2d 835 (1951) (citation omitted); 1993 Op. Att'y Gen. No. 93-066, at 2-312; 1986 Op. Att'y Gen. No. 86-086, at 2-489; *see also* 2003 Op. Att'y Gen. No. 2003-29, at 2-248. Whether a particular expenditure serves a proper public purpose may be subject to fair debate. Even the courts have conceded that, "[t]he problem of deciding what constitutes public purpose has always been difficult of solution."

[2] A fundamental principle of statutory construction is to effect an interpretation so as to avoid "absurd results." *See* R.C. 1.49(E) ("the court, in determining the intention of the legislature, may consider … [t]he consequences of a particular construction"); *In re Appeal of Little Printing Co.*, 4 Ohio St. 3d 214, 216, 448 N.E.2d 152 (1983) ("statutes are to be construed so as to prevent ridiculous or absurd results"). In our judgment, overbreadth in the interpretation of the separation of powers principle as applied to judicial prerogatives, when taken to its logical conclusion, would accomplish the absurd and unintended result of eliminating all fiscal controls and limitations on Ohio courts.

State ex rel. McClure v. Hagerman, *supra*, at 324; *see* 1982 Op. Att'y Gen. No. 82-006, at 2-17 ("[u]nfortunately, the problem of deciding what constitutes a public purpose has always been difficult. The courts have attempted no absolute judicial definition of a public purpose but have left each case to be determined by its own peculiar circumstances"). Any discretion afforded a county auditor under section 319.16 of the Ohio Revised Code or otherwise does not imbue that officer with the authority to be the final arbiter of the propriety of an expenditure of public funds The refusal by a county auditor to issue a warrant for the payment of a claim may be challenged by a writ of mandamus, and whether an expenditure fails to meet the "public purpose" standard, or whether a public entity abused its discretion in authorizing the expenditure, ultimately are questions for the courts.

Your questions are nuanced, however, by the fact that they involve requests to the county auditor for the issuance of warrants directing the county treasurer to expend public funds that emanate from a judicial office. As is indicated in *State ex rel. Donaldson v. Alfred*, *supra*, at 329, "[a] coordinate branch of government may not impede a court's business by refusing reasonable funding requests." (Citing *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981)). "Courts must be free from excessive control of the legislative and executive branches in order to ensure their independence and integrity." *Id.* The Attorney General is unable to use the formal opinions process to provide an authoritative analysis of the proper separation of powers among the judiciary, the legislature, and the executive branches of government because the Attorney General is not empowered to make definitive determinations regarding the constitutionality of statutory provisions. *See* 2002 Op. Att'y Gen. No. 2002-032, at 2-210 n.1 ("the power to determine whether the enactments of a legislative body comply with the provisions of the United States Constitution or the Ohio Constitution rests exclusively with the judiciary, and … such a determination cannot be made by means of a formal opinion of the Ohio Attorney General"); 2002 Op. Att'y Gen. No. 2002-006, at 2-32 n.10 ("the Office of the Attorney General has no authority to determine the constitutionality of a statute, either facially or as applied"). Instead, the authority to determine whether the principle of separation of powers prohibits a county auditor from requiring compliance by a court with procedural processes incident to the expenditure of public funds under section 319.16 of the Ohio Revised Code and other relevant statutory enactments lies within the province of a court of proper jurisdiction. In any instance of dispute as to this issue, both the county auditor and the judicial officer requesting payment of a claim have recourse to secure such a determination. Further, issues as to the propriety of any action that a county auditor may take in declining to issue a payment warrant related to a judicial request or whether any such action improperly infringes judicial prerogatives or impedes judicial functions are factual determinations which involve constitutional implications. It is inappropriate for the Ohio Attorney General to utilize the opinion-rendering function to make findings of fact and determinations as to the rights of particular individuals or entities. 1986 Op. Att'y Gen. No. 86-039, at 2-198; 1983 Op. Att'y Gen. No. 83-087, at 2-342; 1983 Op. Att'y Gen. No. 83-057, at 2-232.

Conclusions

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

1. In the discharge of his or her duties of office, a county auditor enjoys the authority to require documentation which enables the county auditor, pursuant to R.C. 319.16, to ascertain the propriety of the payment of public funds from the county treasury, and the discretion to determine what constitutes evidentiary matter that is sufficient to support a requested expenditure.

2. As to the determination of what constitutes a "proper public purpose" for which an expenditure of public funds may be effected, the public entity charged with the responsibility of overseeing and expending such funds is afforded considerable discretion, but the public entity may not abuse this entitlement. A finding as to whether a proposed expenditure serves a proper public purpose and is permissible is a factual determination, which must be considered on a case by case basis, and is not appropriate for determination through the opinion-rendering functions of the Attorney General.

3. Under the constitutional separation of powers principle, the authority of government is distributed among three, co-equal branches of government, to wit: the executive, legislative, and judicial, and no branch may improperly infringe on the prerogatives of any other. Although a county auditor is imbued by statute with authority and discretion incident to the fiscal functions of the county, including as set out in R.C. 319.16,under the principle of separation of powers, a county auditor may not unreasonably exercise the prerogatives of his or her office so as to unreasonably refuse to honor a proper and reasonable request of a court for the issuance of a warrant authorizing the payment of public funds from the county treasury, or refuse to issue a warrant in circumstances that involve an exercise of excessive control which compromise the integrity and independence of the court, or which creates an impediment to the proper discharge of the court's judicial functions.

4. The determination of whether any action or determination effected by a county auditor constitutes a violation of the separation of powers principle involves a factual review, which must be conducted on a case by case basis, and implicates constitutional issues. It is inappropriate, therefore, for the Attorney General to utilize the opinion-rendering process to resolve these issues. If differences cannot be resolved by agreement between the

parties, either party may seek a writ of mandamus issued by a court of competent jurisdiction.

Respectfully,

DAVE YOST
Ohio Attorney General