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Attorney General

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OPINION NO. 2012-035

Syllabus:

2012-035

A county auditor that assesses and collects fees from the revenues generated by the county general levy for current expenses within the 10-mill limitation under R.C. 319.54 may not collect fees from the portion of the county general levy for current expenses that is appropriated by the board of county commissioners to the veterans service commission.

To: T. Shawn Hervey, Harrison County Prosecuting Attorney, Cadiz, Ohio

By: Michael DeWine, Ohio Attorney General, October 17, 2012

You have requested an opinion about the authority of a county auditor to assess fees pursuant to R.C. 319.54. Specifically, you ask whether a county auditor may assess fees pursuant to R.C. 319.54 on a .5 mill tax levy used to fund the county veterans service commission (VSC).

Each county has a VSC that is responsible for providing a variety of services for qualifying veterans and their family members, including financial assistance and burial and cremation services. R.C. 5901.02; R.C. 5901.03; R.C. 5901.08; R.C. 5901.15. The VSC also operates a veterans service office in the county. R.C. 5901.03.

A VSC is part of the county government. 2012 Op. Att’y Gen. No. 2012-019, at 2-165; 2008 Op. Att’y Gen. No. 2008-033, at 2-346; 2004 Op. Att’y Gen. No. 2004-034, at 2-311; 2004 Op. Att’y Gen. No. 2004-032, at 2-291. The manner in which a county funds its VSC is set forth in R.C. 5901.11. A VSC must meet each year and “determine in an itemized manner the probable amount necessary for the aid and financial assistance of persons entitled to such aid and assistance and for the operation of the veterans service office for the ensuing year.” R.C. 5901.11. The VSC then submits its proposed budget to the board of county commissioners in the manner specified in R.C. 5705.28(C) for review. *Id.*; see also R.C. 5705.28(C)(1) (“the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority . . . an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision”); R.C. 5901.03(D) (requiring VSC to submit its budget and the budget of the veterans service office to the board of county commissioners for approval).

Upon receiving the VSC’s proposed budget, the board of county commissioners may review the budget and is then required to provide the necessary funding of up to .5 mill. R.C. 5901.11. The board of county commissioners has “a very limited function in approving a VSC’s budget – the Board could *review* a budget to ensure that it conformed to statutory requirements, but it could not unilaterally *revise* a lawful budget.” *State ex rel. Atkins v. Harrison County Bd. of County Comm’rs*, Mahoning App. No. 09-HA-7, 2010-Ohio-3160, 2010 Ohio App. LEXIS 2648, at ¶17. After reviewing the budget, the board of county commissioners “shall appropriate funds” to the VSC and “shall make the necessary levy, not to exceed five-tenths of a mill per dollar on the assessed value of the property of the county, to

raise the amount that the board approves.” R.C. 5901.11. The Ohio Supreme Court reads R.C. 5901.11 to mean that a board of county commissioners is required to fund any lawful budget request by the VSC up to the .5 mill limitation. *Lynch v. Gallia County Bd. of Comm’rs*, 79 Ohio St. 3d 251, 253, 680 N.E.2d 1222 (1997); see also *State ex rel. Atkins*, 2010-Ohio-3160, at ¶16; 2008 Op. Att’y Gen. No. 2008-033, at 2-340 n.5 (“[e]xcept for the period between 1988 and 1994, the obligation of the county commissioners to provide funding in the amount requested by the VSC (previously the soldiers’ relief commission), up to the .5 mill permitted by statute, has been found to be mandatory”); 1985 Op. Att’y Gen. No. 85-066, at 2-252 to 2-253 (overruled in part, and on other grounds, by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment) (“[i]t has been held that it is a mandatory duty of the board of county commissioners to provide the amount which is certified as needed by the soldiers’ relief commission [now the VSC], within the five-tenths mill limitation”).

Taxes levied under R.C. 5901.11 for the benefit of a VSC are part of the county general tax levy for current expenses within the 10 mills of inside millage that may be levied without voter approval. See Ohio Const. art. XII, § 2; R.C. 5705.02; R.C. 5705.04(B); R.C. 5705.05(E); 2008 Op. Att’y Gen. No. 2008-033, at 2-341; 1983 Op. Att’y Gen. No. 83-032 (syllabus) (overruled in part, and on other grounds, by 1991 Op. Att’y Gen. No. 91-008 on the basis of statutory amendment). Proceeds of the county general levy, including amounts levied for the VSC, are placed in the county general fund. See R.C. 5705.10(A) (“[a]ll revenue derived from the general levy for current expense within the ten-mill limitation . . . shall be paid into the general fund”); *State ex rel. Veterans Serv. Office of Pickaway County v. Bd. of County Comm’rs*, 61 Ohio St. 3d 461, 464, 575 N.E.2d 206 (1991) (moneys levied for the VSC are included in the general fund); 2008 Op. Att’y Gen. No. 2008-033, at 2-341; 1935 Op. Att’y Gen. No. 4134, vol. I, p. 382, at 385 (proceeds of the levy for soldiers’ relief “should be set up as an item in the general fund”).

Revenues generated by the levy described in R.C. 5901.11 are appropriated by the board of county commissioners to the VSC. See R.C. 5705.38-.41; 2008 Op. Att’y Gen. No. 2008-033, at 2-340. Moneys appropriated to a VSC may be expended by the VSC without additional approval by the board of county commissioners. 2008 Op. Att’y Gen. No. 2008-033, at 2-342.

R.C. 319.28(A) requires the county auditor to prepare a general tax list of real and public utility property in the county and deliver one copy of that list to the county treasurer. See also R.C. 5705.03(C) (“[a]ll taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located”). “The copies prepared by the auditor shall constitute the auditor’s general tax list and treasurer’s general duplicate of real and public utility property for the current year.” R.C. 319.28(A); see also 5705.01(J) (“[t]ax list’ and ‘tax duplicate’ mean the general tax lists and duplicates prescribed by [R.C. 319.28] and [R.C. 319.29]”); 2003 Op. Att’y Gen. No. 2003-023, at 2-179 (“[e]ach year the county auditor prepares the general tax list of the owners and values of property located in each township, municipal corporation, special district, or school district in the county, and provides the county treasurer with the duplicate of the list”). Based

on information provided to him, the county auditor also must determine the amount of taxes to be levied upon the property. R.C. 319.30. The real property taxes levied in the county are collected by the county treasurer. R.C. 323.09; R.C. 323.12; R.C. 323.13; R.C. 5705.03(C). The proceeds are deposited in the county treasury "to the credit of the appropriate fund." R.C. 5705.03(C).

In determining whether a county auditor may assess fees on a .5 tax levy used to fund the VSC, we first note that the powers of a county auditor are fixed by statute, and the auditor "may not exceed the authority granted that office by the General Assembly." 1984 Op. Att'y Gen. No. 84-005, at 2-15. Additionally, "absent statutory authority, a county official may not charge a fee for services that he or his office provides." 2006 Op. Att'y Gen. No. 2006-036, at 2-333; 2001 Op. Att'y Gen. No. 2001-024, at 2-135 (cost of services provided by county auditor cannot be charged to the public bodies that receive them absent express statutory authority for the charge). We have found no statute that authorizes a county auditor to collect fees from funds appropriated by a board of county commissioners to the county VSC.

R.C. 319.54 authorizes the county auditor to assess against and collect fees as compensation for the auditor's services from the tax moneys collected by the county treasurer.¹ These fees are to be paid from the tax revenues. R.C. 319.54; *see also* 1999 Op. Att'y Gen. No. 99-054, at 2-331 n.1 ("Ohio statutes have long provided for fees relating to the collection of taxes to be paid from tax proceeds"). In particular, R.C. 319.54(A) authorizes a county auditor to collect fees as follows:

On all moneys collected by the county treasurer on any tax duplicate of the county, other than estate tax duplicates, and on all moneys received as advance payments of personal property and classified property taxes, the county auditor, on settlement with the treasurer and tax commissioner, on or before the date prescribed by law for such settlement or any lawful extension of such date, shall be allowed as compensation for the county auditor's services the following percentages:

- (1) On the first one hundred thousand dollars, two and one-half per cent;
- (2) On the next two million dollars, eight thousand three hundred eighteen ten-thousandths of one per cent;
- (3) On the next two million dollars, six thousand six hundred fifty-five ten-thousandths of one per cent;
- (4) On all further sums, one thousand six hundred sixty-three ten-thousandths of one per cent.

¹ Your request asks only about the authority of a county auditor to collect fees under R.C. 319.54. Accordingly, this opinion does not address other statutes that may authorize a county auditor to assess against and collect fees from a county veterans service commission or from any other entity that is a part of county government.

. . . . The compensation allowed in accordance with this section . . . shall be apportioned ratably by the auditor and deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, municipal corporations, and school districts.

This statute authorizes a county auditor to collect certain fees from “any tax duplicate of the county.” “[A]ny tax duplicate of the county” includes the county’s tax duplicate of real and public utility property. *See* R.C. 319.28(A) (requiring county auditor to prepare tax list and duplicate of real and public utility property in the county); R.C. 5705.01(J) (defining the terms “tax list” and “tax duplicate” to include a tax list prepared pursuant to R.C. 319.28). Therefore, R.C. 319.54(A) authorizes a county auditor to collect fees on moneys collected from the tax duplicate of taxable real and public utility property located in the county. Because the county general levy for current expenses within the 10-mill limitation is derived from taxes levied and collected on the county tax duplicate of real and public utility property, R.C. 319.54(A) authorizes a county auditor to collect certain prescribed fees from the revenues generated by the county general levy for current expenses. *See* R.C. 5705.02; R.C. 5705.04(B); R.C. 5705.05(E).

R.C. 319.54(A) explicitly states that the auditor’s fees “shall be . . . deducted from the shares or portions of the revenue payable to the state as well as to the county, townships, municipal corporations, and school districts.” Consequently, the auditor’s fees must be deducted from the revenue payable to the county’s general fund. Nothing in R.C. 319.54 authorizes a county auditor to assess and collect fees directly from the portion of the county general levy for current expenses that is appropriated by the board of county commissioners to the VSC.

This conclusion is further supported by the language of R.C. 5901.11, which requires the board of county commissioners to provide the VSC with any moneys requested by the VSC in a lawful budget proposal of up to .5 mills. The board of county commissioners “shall appropriate funds” to the VSC and “shall make the necessary levy . . . to raise the amount that the board approves.” R.C. 5901.11. Neither the board of county commissioners nor the county auditor has authority to deduct fees for the county auditor from a lawful budget request submitted by the VSC or from the money appropriated to the VSC.

Based on the foregoing, it is my opinion, and you are hereby advised that a county auditor that assesses and collects fees from the revenues generated by the county general levy for current expenses within the 10-mill limitation under R.C. 319.54 may not collect fees from the portion of the county general levy for current expenses that is appropriated by the board of county commissioners to the veterans service commission.